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State Superintendent of Schools

Student Data Privacy Council Meeting

**February 13, 2020
100 Community Place
1st Floor Conference Room, Side B
Crownsville, MD**

Meeting Minutes

Council Members in Attendance: Dr. Carol A. Williamson (Chairperson), Mr. Thomas Chapman, Mr. Ryan Cowder, Ms. Chrystie Crawford-Smick, Mr. Michael Garman, Mr. Chas Goldman (remote attendee-on behalf of the Honorable Senator Susan C. Lee), Mr. Theodore Hartman, Ms. Ann Kellogg, Dr. Jeffrey Lawson, Ms. Michele McNeil, Mr. Baron Rodriguez, Ms. Tonya Sweat, Ms. Amelia Vance, Ms. Alison Vannoy, and Mr. Derek Wheeler (on behalf of Mr. Chip Stewart)

MSDE Staff in Attendance: Ms. Molly Abend, Ms. Val Emrich, Ms. Chandra Haislet, Dr. Jennifer Judkins, Mr. Shane J. McCormick, Mr. Elliott Schoen, and Ms. Laia Tideman

Members Absent: The Honorable Delegate Jheanelle Wilkins

The meeting was called to order at 9:02 a.m. and a quorum was established.

Welcome & Approval of Meeting Minutes

The members reviewed the minutes from the January 9, 2020, meeting. A motion to approve the minutes as presented was made by Ms. Ann Kellogg and seconded by Ms. Val Emrich; the motion carried. The members reviewed the meeting agenda and were provided insight on the presentation and discussion regarding procurement practices and contracts. The members had expressed an interest in learning about procurement contracts during prior meetings.

Procurement Overview: Maryland Law

Mr. Elliott Schoen, MSDE Principal Counsel, provided an overview of current State and local laws regulating procurement practices. Mr. Schoen discussed the structure of State procurement and existing policies and procedures for purchasing, solicitation, and processing. Procurement levels vary depending on it being at the State or local levels, whether the purchasing agency falls under the executive branch, the scope of purchasing by goods or services, cost amounts, and the control agency that provides purchasing oversight. Mr. Schoen shared that the Department of Information Technology (DoIT) is the control agency for purchases centered on technology and data privacy.

Mr. Schoen discussed the appeals process under existing procurement laws for individuals looking to file a complaint, and discussed the formal bidding process. If a contract of \$200,000 or more is approved it is sent to the control agency and is then approved at the executive level by the Board of Public Works (BPW), which is chaired by the Governor, Treasurer, and Comptroller.

Mr. Schoen discussed procurement reforms aimed at streamlining existing processes. Mr. Schoen stated that once a contract has gone before the BPW it has been fully vetted and scrutinized. Dr. Carol Williamson, chairperson, reminded the members that one of the goals of the council, as established under House Bill (HB) 245 of 2019, was to review existing State procurement practices to identify areas where the council may be able to provide recommendations to streamline and improve existing practices. Ms. Allison Vannoy asked what provisions of data privacy are currently contained within existing requests for proposal (RFP). Mr. Schoen clarified some of the current provisions, including sensitive data and compliance with the *Family Educational Rights and Privacy Act* (FERPA).

Mr. Schoen reviewed local procurement practices with the members, referencing the ruling in the case of *Chesapeake Charters Inc., et al v. Anne Arundel County Board of Education (2000)*. Mr. Schoen stated that the ruling determined that local school systems (LSS) do not fall under the executive branch, thereby they do not fall under the Maryland State Department of Education (MSDE). Procurement and appeals processes must still go through a competitive bid process at the local level, but do not have to follow State level practices. Mr. Schoen stated the biggest difference is that at the State level the Maryland State Board of Contract of Appeals must approve a contract, whereas at the local levels it is the responsibility of the local superintendent.

Procurement Overview: Consortiums

Ms. Laia Tiderman, MSDE staff, introduced Ms. Tamara Petronka, Executive Director of the Maryland Educational Enterprise Consortium (MEEC). Ms. Petronka provided the members with an overview and a brief history of MEEC, which is hosted by the University System of Maryland (USM). MEEC is comprised of representatives from K-12 education, higher education, federal institutions, and community colleges, and local public libraries.

Ms. Petronka discussed current MEEC procurement practices, which are hosted on MEEC's behalf by USM institutions and community colleges, which both have separate procurement processes and regulations. Ms. Petronka reviewed current bidding practices at MEEC, which includes multi-vendor awards and no differential pricing on awards. The members were directed to the MEEC website, which contains information on contracts and processes for RFP's, information for vendors and operators, etc.

Mr. Thomas Chapman asked for clarification on where MEEC would fit into the negotiation process with a vendor or operator, whether the client would come to MEEC on the front end or come to MEEC on the back end after receiving a proposal. Ms. Petronka stated that MEEC would help the client negotiate the contract. Ms. Tonya Sweat asked about any applicable

training or professional development provided by MEEC regarding contracts and data privacy. Ms. Petronka stated no such training is currently offered by MEEC.

Dr. Jeffrey Lawson, Superintendent of Cecil County Public Schools, provided an overview of the Eastern Shore of Maryland Educational Consortium (ESMEC). ESMEC represents the nine counties on the Eastern Shore of Maryland and provides general administrative services in support of cooperative programs and activities. Dr. Lawson provided a handout detailing the mission, activities, and impact of ESMEC.

Mr. Schoen provided the members with information regarding the State of Maryland's RFP for data protection. Within the RFP are provisions on data breach insurance, requirements for safeguards of physical and digital protections of State data, restrictions against commingling of data, encryption requirements, establishment of a security plan and security plan response, and a loss of data provision.

Status Updates from Council Staff

Ms. Tiderman provided the members with an update on the proposed LSS survey discussed during the February meeting. Revisions to the survey were made based on feedback and assistance from the MSDE Office of Research. The purpose of the survey will be to evaluate the impact of the *Student Data Privacy Act of 2015* on LSS's and the implementation status of the Act in LSS's.

Mr. Baron Rodriguez recommended adding clarification of the definition of an operator to the survey, as one of the questions asked respondents to answer what qualifies as an operator in their system. Ms. Ann Kellogg provided additional recommendations regarding a proposed question about training employees regarding the vetting process.

Ms. Tiderman summarized the recommended feedback and recommendations from the members; the revised survey would be vetted through the MSDE Office of Research. Mr. Theodore Hartman recommended adding a question for respondents to identify the offices/divisions within their system that are involved in vetting processes.

Ms. Molly Abend, MSDE staff, and Mr. Hartman provided an update to the members on the technical definitions of the council, which had been reviewed and revised by a small workgroup. Mr. Hartman stated that the definition of an operator is still being refined. The total number of definitions has been reduced from nineteen terms to fourteen terms. Dr. Williamson asked for clarification on how the number of terms had been reduced; Mr. Hartman stated that some definitions had been consolidated under coverable information.

Ms. Abend stated that the workgroup would have the revised list of terms available to the members at the March meeting. Mr. Hartman stated the intention of the workgroup was that any definitions established by the workgroup and accepted by the council members would be part of the council's final recommendations.

The members recessed for break at 10:42 a.m. The meeting reconvened at 10:55 a.m.

Overview of Similar Laws from Other States

Ms. Amelia Vance facilitated a presentation of student data privacy laws in other states. Ms. Vance stated that 130 state laws have been passed since 2013, primarily concerned with issues related to commercialism, digital advertising placement, data breaches, and the impact of digital records and historical discrimination on students. The members received an overview of FERPA and the *Children's Online Privacy Protection Act* (COPPA), and their impact on service provider requirements. FERPA contains a school official exception, whereby a lack of direct control could be found if certain provisions within a service provider contract or terms of service are met. COPPA provides regulations for operators, including measures for consent to action and deletion of personal data. Under COPPA operators are required to disclose an online privacy policy, provide a direct notice to parents, and obtain parental consent.

Ms. Vance provided a summary of the state laws passed since 2013, and noted that forty-two states have passed student data privacy laws. The members were informed that two types of laws exist, one based on FERPA and one based on the *Student Online Personal Information Protection Act* (SOPIPA), and that laws aimed at vendors are based on COPPA. Ms. Vance summarized existing laws aimed at regulating vendors and vendor practices, which focus primarily on restricting targeted advertising, ensuring that reasonable security practices are in place, protecting personal student data, and deleting data upon request by LSS's.

Ms. Vance reviewed with the members laws aimed at vendors through LSSs, and the unintended consequences of specific laws. The members were informed of current trends in student data protection laws, which include restrictions within contracts between vendors and LSSs, and issues with security standards. Ms. Vance stated that most laws do not require any level of training. The members discussed issues related to establishing minimum security standards within LSSs, which has included pushback from vendors and operators, and a lack of resources at the local levels in the form of a chief information officer.

Roadmap and Planning

Ms. Tiderman reviewed topics that will be discussed during upcoming meetings. The members will receive additional information at the March meeting regarding procurement processes, specifically at the local level. The members will review best practices and emerging technologies during the April and May meetings. The members were asked if there were additional topics they would like to be covered during future meetings; Mr. Chapman requested examples of local contracts be provided. The council staff agreed to research an example for the members to review. The members were encouraged to forward any additional topics or presentations they would be interested in receiving information on to council staff.

Adjournment

The meeting was adjourned at 11:56 a.m.