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State Superintendent of Schools

Student Data Privacy Council Meeting

March 12, 2020
Anne Arundel County Public Schools
Board of Education
Annapolis, MD

Meeting Minutes

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

MSDE Staff in Attendance: Ms. Molly Abend, Ms. Val Emrich, Ms. Chandra Haislet, Ms. Jacqueline LaFiandra (remote attendee), Mr. Shane J. McCormick, and Ms. Laia Tiderman

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 February 12, 2020, meeting. A motion to approve the minutes as presented was made by Ms. Tonya Sweat and seconded by Mr. Michael Garman; the motion carried.

Reflection on February Meeting and Updates

The members reviewed the charge of the council as established under House Bill (HB) 245 and the presentations facilitated during the February meeting that discussed state procurement laws, and consortiums. Dr. Carol Williamson, chairperson, reviewed the agenda with the members and the presentations and information that would be discussed during this meeting.

Procurement Overview: Local School System

Ms. Laia Tiderman, MSDE staff, introduced Ms. Mary Jo Childs and Mr. Mike Borkoski, Anne Arundel County Public Schools (AACPS), to present on local school system procurement practices. Ms. Childs discussed challenges with click-through agreements and software license agreements, particularly within a large school system where several individuals are involved in

the purchasing and procurement process. Ms. Childs shared that AACPS conducts an inventory of online educational services and has an approval process in place for each educational service. Ms. Tiderman shared with the members that the presentation would be made available via the council's shared Dropbox folder.

Mr. Borkoski discussed AACPS data destruction policies and procedures with the members, which governs what happens with data when it is no longer needed or required. Mr. Borkoski shared that agreements should identify the contract individual responsible for data destruction. The members were directed to a vendor checklist developed by AACPS, which contains several provisions for vendors and states, and indicates which provisions are highly recommended and which are mandatory.

Mr. Borkoski discussed the procurement timeline, noting that AACPS hosts four meetings a year to discuss purchasing requests. Ms. Val Emrich, MSDE staff, asked about communication with teaching staff regarding purchasing and instructional technology requests. Mr. Borkoski stated that AACPS has an Office of Instruction which communicates and disseminates information with teacher's system wide. Ms. Allison Vannoy, council member and AACPS teacher, further discussed district-wide communication.

The members discussed discrepancies in infrastructure and staff support between larger local school systems (LSSs) and smaller LSSs, and that in smaller LSSs processes and procedures are likely not in place. Ms. Emrich asked if AACPS procurement process incorporates accessibility; Mr. Borkoski confirmed the process does. Mr. Borkowski stated that the vendor checklist would be made available to the members.

The members asked if AACPS has had any instances of a vendor refusing to work with AACPS or vice versa due to data protection and destruction requirements. Mr. Borkoski stated that AACPS prioritizes data privacy and data protection, which has been reinforced by the system leadership. Ms. Childs stated that each situation is reviewed and handled on a case-by-case basis.

Dr. Williamson provided an update to the members on the proposed LSSs survey that the members had discussed during prior meetings. Dr. Williamson shared that the LSSs survey has been distributed to the local superintendents via a paper copy and is being disseminated electronically to LSSs.

Operator's Perspective

Ms. Tiderman introduced Ms. Michele McNeil, council member and Vice President for Policy at The College Board, to present on The College Board's privacy policies and practices. Ms. McNeil discussed The College Board's mission and services and provided data on student participation in the State of Maryland in College Board exams, including Advanced Placement (AP) exams, the SAT, and the PSAT. The members were provided information on how The College Board has prioritized data privacy. The College Board has created a new chief privacy officer position, revised privacy policies and created an online "Privacy Center," and partnered with districts and states to comply with data privacy policies.

Mr. Theodore Hartman asked about the AP platform sponsored by The College Board and challenges with protecting privacy. Ms. McNeil discussed with the members the steps required for a student to participate in the platform. Ms. McNeil stated there have been questions regarding the AP platform and privacy protection, and that The College Board is working to address them. The members received information on The College Board's student search service, which was established in 1972 to help education organizations connect with students about college and scholarship opportunities. Universities and colleges are charged a fee to participate and must sign a terms and conditions agreement. The members were informed that students who agree to participate in the student search service must affirmatively opt-in and are free to opt-out at any time. The members were directed to an example of the student search service opt-in language.

Operator Agreements

Ms. Tiderman introduced Mr. Baron Rodriguez, council member, to discuss operator clauses and agreements. The members received technical definitions of an operator and PreK-12 school purpose as established under HB 298-the *Student Data Privacy Act of 2015*. Mr. Rodriguez discussed discrepancies in definitions of operators across states, such as the State of Texas, which defined an operator as a school official. The members were informed of potential issues with unclear guidelines and definitions, which includes a lack of consistent minimum security and privacy standards, and the adoption of a "one-size fits all" mentality by local school districts. There also exists the potential for the creation of compliance issues with the *Family Educational Rights and Privacy Act (FERPA)*.

Mr. Rodriguez recommended that the council members consider adopting clear language around defining an operator, clarify contracts versus agreements, and review implicit or explicit tie-ins to HB 298 to research uses deemed applicable to operator responsibilities. Mr. Rodriguez also recommended that the members consider adoption of clear principles and best practices around privacy and security protection, and review principles and guidelines for "free" online services.

The members discussed differences in privacy laws in other states compared to the State of Maryland and the limits of the council's authority to amend existing laws through its recommendations. Ms. Tiderman shared that the members would review other state laws to compare to laws within the State of Maryland after a short break.

The meeting was recessed for break at 10:42 a.m. The meeting was reconvened at 10:54 a.m.

Small Group Study of Similar Laws

Ms. Tiderman shared with the members that they would break into small groups to review and discuss similar data privacy laws from other states. The members were provided a set of guiding questions to discuss within their groups, including positive aspects and negative aspects of the law, and whether any aspects of the law may have applicability to the State of Maryland. Ms. Vannoy discussed laws within the State of Louisiana; the members described the law as dense and restrictive. The members found it difficult to establish who the law was applicable to and

were unable to find a definition of a contractor. The members found that a provision within the law regarding local systems ability to contract with a public or private entity for education services could have applicability within the State of Maryland.

Mr. Hartman discussed laws within the State of New York. The members found the law to be somewhat restrictive. The law consists of a state-level portion, which includes the establishment of a state-level privacy officer. The law also creates a parent bill of rights. The members found that the privacy officer and parent bill of rights would have some applicability to the State of Maryland. Ms. Sweat shared with the members that the law carries provisions which allows for parents to file a lawsuit in the event of a data breach.

Mr. Rodriguez discussed laws within the State of Utah, which the members felt was more focused on privacy. The law contains penalties for misuse of data, allocates resources to the state towards training on data protection and privacy, and creates a privacy advisory group. The law provides funding for staff travel to attend training and professional development. Ms. Ann Kellogg stated that the law includes provision on how data is to be used.

Ms. Tideman informed the members that the council will continue to review similar state laws during the April meeting, including laws from the State of California. The California law would be posted to the council's Dropbox folder. The members discussed the mission and legal scope of the council. Ms. Tideman recommended that the council also review laws in the State of Colorado.

Ms. Molly Abend, MSDE staff, provided an update to the members on the development of the council's technical definitions. The updated list of definitions would be made available to the members during the April meeting.

Adjournment

The meeting was adjourned at 11:57 a.m.