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State Superintendent of Schools

Student Data Privacy Council Meeting

April 9, 2020
WebEx Virtual Meeting

Meeting Minutes

Council Members in Attendance: Dr. Carol A. Williamson (Chairperson), Mr. Thomas Chapman, Ms. Chrystie Crawford-Smick, Ms. Michael Garman, Ms. Ann Kellogg, Dr. Jeffrey Lawson, Mr. Michael Lore (on behalf of the Honorable Senator Susan C. Lee), Ms. Michelle McNeil, Mr. Tyler Park (on behalf of Amelia Vance), Mr. Baron Rodriguez, Ms. Tonya Sweat, Ms. Amelia Vance, 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, Dr. Jennifer Judkins, Mr. Shane J. McCormick, and Ms. Laia Tiderman

Members Absent: Mr. Ryan Cowder, Mr. Theodore Hartman, Ms. Allison Vannoy, and 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

Dr. Carol Williamson, chairperson, welcomed the members and reviewed the meeting agenda. The members reviewed the minutes from the March 12, 2020, meeting. A motion to approve the minutes as presented was made by Ms. Tonya Sweat and seconded by Mr. Michael Garman. A roll call vote of the members was conducted to approve the minutes.

Roll Call Vote: 12 Yes, 0 No, 0 Abstained. The motion carried.

Proposed Changes to Council Norms-Meeting Policies

The members reviewed proposed changes to the council's adopted norms and practices to address procedures in the event of a State of Emergency. The proposed change in the inclement weather policy to the "emergency and inclement weather policy," was proposed to address council activities in the event of a State of Emergency, specifically as it pertains to the State of Maryland response to the COVID-19 pandemic.

These changes would allow council meetings to be held virtually when State agencies or offices were closed. If a meeting is cancelled, the council would meet again during the next regularly scheduled meeting.

A motion to adopt the proposed changes was made by Ms. Sweat and seconded by Mr. Baron Rodriguez. A roll call of the members was conducted to adopt the approved changes.

Roll Call Vote: 12 Yes, 0 No, 0 Abstained. The motion carried.

Student Privacy and Coronavirus

The members were directed to an article provided with the meeting materials, published in Education Week regarding data privacy concerns and digital and online learning resources. The members were asked for their feedback on the response to the COVID-19 outbreak on issues related to student data privacy. Mr. Rodriguez shared that some states, such as the State of New York, have banned the use of free digital platforms during the outbreak.

Mr. Rodriguez argued school systems need to have strong policies in place that emphasize training and professional development of instructional staff to ensure proper implementation. Mr. Thomas Chapman concurred with Mr. Rodriguez and discussed issues related to digital platforms, such as Zoom.

Mr. Michael Lore, on behalf of the Honorable Senator Susan C. Lee, discussed privacy concerns in the State of Maryland, and expressed there is a lack of understanding about digital services and the difference between free and paid versions of these digital services. Ms. Amelia Vance further discussed issues related to Zoom, but shared that other digital applications carry their own issues and risks. Ms. Vance recommended that ideally local school systems should utilize approved education technology products in their digital learning platform.

Ms. Val Emrich, MSDE staff, discussed the response from the MSDE to the current pandemic and addressing distance learning needs. Ms. Sweat discussed responses in other states, such as the State of Connecticut, that have waived components of standing privacy laws and guidelines. Ms. Sweat discussed issues regarding parental consent to using digital software, specifically Zoom, which has been restricted by the State of Maryland under guidance of the Department of Information Technology (DoIT).

Mr. Thomas Chapman discussed the challenges of restricting usage of Zoom in the State of Maryland due to local school systems already utilizing it during the state-wide school closure. Mr. Derek Wheeler clarified that the restriction of Zoom in the State was made under the guidance of DoIT, but that it was done as general guidance and should not be viewed as a law or an executive order. Mr. Rodriguez expressed that the software issue is generally more of a security issue and not a privacy issue and reiterated that a lack of training and professional development is a major issue. Mr. Rodriguez stated that laws need to focus on teacher and staff training.

Dr. Williamson asked the members if there were any aspects of the conversation that the members would want to address during future meetings and in the council's activities. Dr. Williamson summarized based on feedback from the members that staff training and professional development would be a part of the council's activities and overall recommendations.

Emerging Technologies

The members were asked to review and analyze developments in emerging technologies, and the members were asked to identify any potential emerging technologies. Ms. Laia Tideman, MSDE staff, reminded the members that one of the charges of the council was to review and identify emerging technologies, which generally are technologies that are brand new, or that are growing, and are quickly adopted.

Ms. Emrich provided examples of emerging technologies, which includes technology such as wearable technology, such as smart watches in physical education classes to help students track and understand fitness. Ms. Emrich discussed virtual reality technology as an emerging technology and shared the current policy language from a technology provider and asked the members for their feedback. Mr. Rodriguez shared that one of the concerns with virtual reality technology is that it can sync to social media services, which would require an extra level of regulation. Ms. Sweat expressed concern about potential identity theft.

Ms. Emrich discussed the use of drones as an emerging technology, which allows for students to experience flight, and in some instances build their own drones. Ms. Emrich shared the current policy language from a drone technology provider and asked the members for their feedback. The members expressed general concern with language regarding waiving of liability by the company.

Ms. Emrich discussed the use of “The Cube”, an augmented reality emerging technology, and discussed the various features of the technology. Ms. Emrich shared the current policy language from a technology provider and asked the members for their feedback. The members were generally satisfied with the language in the current policy but expressed that the current language indicated that any prior language would have raised red flags. Mr. Chapman discussed current emerging technologies in Montgomery County Public Schools (MCPS) and the vetting process.

Dr. Williamson summarized that the council would not want to restrict the types of technology that local school systems can utilize, but that there must be safeguards in place regarding privacy and data protection. Ms. Emrich discussed the feedback received from local school systems regarding emerging technologies and current discussions regarding free digital platform services.

Preliminary LSS Survey Results

Ms. Laia Tideman, MSDE staff, discussed the local school system survey with the members, and the preliminary results of the survey. Fifteen of the twenty-four local school systems in the State of Maryland have responded to the survey; the members were provided a breakdown of the position type of the fifteen respondents in the survey, which includes staff in information technology, virtual learning, data/research, and local accountability coordinators.

Dr. Jeffrey Lawson expressed that the local superintendents did not raise concerns with the survey or with the questions asked; Dr. Lawson offered to reach out to the nine local school systems that had not responded to the survey.

Ms. Tiderman shared that there was a general familiarity with current Maryland privacy laws and with the *Student Data Privacy Act of 2015*, but there was not uniform familiarity. Most local school systems that responded indicated that professional development on the use of vetting processes for online services are conducted only once per year.

The members discussed the responses further, the distribution of the survey, and the structure of specific questions. Ms. Tiderman shared with the members that of the fifteen respondents none reported that no student data privacy requirements were in place.

Relevant Definitions

Ms. Molly Abend, MSDE staff, discussed updates to the council's relevant definitions. The relevant definitions are covered information, operator, persistent unique identifier, preK-12 school purpose, and targeted advertising. The overall definition of covered information had been amended, and additional types of covered information were added. Additional language was added to the definition of persistent unique identifier. No changes were made to preK-12 school purpose, and some minor changes were made to the definition of targeted advertising.

Ms. Abend asked the members for feedback on the changes to the definitions. Mr. Rodriguez asked for clarification on the assignment of the operator definition. The members discussed adding exceptions to the definition to cover specific entities, such as an outside researcher that has been contracted to conduct a data analysis. Ms. Emrich stated that in many instances such a partnership would be conducted under a memorandum of understanding (MOU) or memorandum of agreement (MOA) instead of a contract.

The members expressed additional concerns regarding the definition of an operator. Ms. Abend discussed the intention of the definition's workgroup, which was established to identify and revise the council's definitions, on including the language of operator intent and the services provided. Ms. Abend suggested that the workgroup reconvene to discuss the definition further and bring back its revisions to the council members.

Ms. Sweat asked if the workgroup would consider adding language to the definition of entities that would not be covered or considered as an operator. Mr. Rodriguez offered to forward relevant information to the definition's workgroup for consideration; the other members were also encouraged to send any relevant information to the workgroup.

Ms. Abend reaffirmed that the workgroup would reconvene to review the operator definition and send out its revisions to the members prior to the next meeting for review. Ms. Jacqueline LaFiandra, Office of the Attorney General, recommended legal revisions of the definition of persistent unique identifier. Ms. Sweat recommended that language under the definition pertaining to any minor children be revised to any preK-12 student.

Dr. Williamson asked the members if there were any additional concerns with any of the other council definitions. The members expressed no further concerns or recommendations.

Similar Laws Review

Ms. Tiderman shared with the members the feedback on similar state laws that were discussed during the March meeting. The members reviewed in small groups similar privacy laws in the States of California, Louisiana, New York, and Utah. The members were asked to identify aspects of the laws they were concerned about, and what aspects may have applicability to the State of Maryland. Ms. Michele McNeil and Ms. Sweat provided feedback on the State of New York law, including concerns regarding the definition of student data and heavy emphasis placed on the vendors.

Mr. Rodriguez discussed the law in the State of Utah, including the training requirements built into the law. Ms. Ann Kellogg stated that the law outlined the responsibilities expected at specific levels, such as the local school systems, vendor levels, etc. Ms. Tiderman clarified the funding structure in the State of Utah for the members. Ms. Tiderman summarized the feedback from the members on the law in the State of Louisiana, including that the law is very restrictive.

Ms. Tiderman asked the members about the applicability of similar state laws provisions to the State of Maryland. Mr. Rodriguez stated that laws in the State of Maryland need to not be reactionary, and that there needs to be some level of an appeal process for parents. Ms. Sweat recommended greater investment from the Maryland State Department of Education in assisting with training and ensuring equity across the State. Ms. Tiderman summarized the concerns of the members.

Adjournment

Dr. Williamson asked the members for feedback regarding the structure and length of the meeting, and the platform used to conduct the meeting. The members expressed their approval. Ms. Vance asked if the remaining council dates could be sent out; the dates would be sent to the members.

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