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State Superintendent of Schools

Student Data Privacy Council Meeting

July 9, 2020
WebEx Virtual Meeting

Meeting Minutes

Council Members in Attendance: Dr. Carol A. Williamson (Chairperson), Mr. Thomas Chapman, Mr. Ryan Cowder, Mr. Michael Garman, Ms. Theodore Hartman, Ms. Ann Kellogg, Dr. Jeffrey Lawson, Mr. Michael Lore (on behalf of the Honorable Senator Susan C. Lee), Ms. Michele McNeil, Mr. Baron Rodriguez, Ms. Tonya Sweat, Ms. Samantha Zwerling (on behalf of Ms. Chrystie Crawford-Smick), 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, Ms. Jacqueline LaFiandra, Mr. Shane J. McCormick, and Ms. Laia Tiderman

Members Absent: The Honorable Delegate Jheanelle Wilkins

The meeting was called to order at 9:00 a.m. and a quorum was established.

Welcome & Approval of Meeting Minutes

Dr. Carol Williamson, chairperson, welcomed the members and the members reviewed the meeting minutes from June 11, 2020. A motion to approve the minutes as presented was made by Mr. Michael Garman and seconded by Ms. Alison Vannoy. A roll call of the members was made to approve the minutes.

Roll Call: 15 Yes, 0 No, 0 Abstention. The motion carried.

Operator Panel Presentations: Discovery Education

Dr. Williamson reviewed the agenda with the members and welcomed the panel of operators invited to speak with the members. Ms. Stephanie Milikh, General Counsel, presented on behalf of Discovery Education. Ms. Milikh provided an overview of the services offered by Discovery Education, the targeted audience of these services, and the flexibility of services provided. Ms. Milikh highlighted current contracts with local school systems (LSS) in the State of Maryland and the services that some of these LSSs currently utilize.

Ms. Milikh reviewed Discovery Education's current privacy policies and highlighted policies regarding the storage and usage of student personally identifiable information (PII). Ms. Milikh noted additional provisions of the policy, including that PII must be destroyed within sixty days of the termination of a contract with an LSS. The members received additional information

regarding data privacy components incorporated at Discovery Education, including processes and procedures in the event of a data breach, how LSSs are notified, access termination, restrictions to access PII, etc. The members were directed to Discovery Education's Data Protection Addendum (DPA), which mandates many of its privacy policies and regulations.

Ms. Milikh discussed Discovery Education's experience with student data privacy laws in other states; specifically referring to the *California Consumer Privacy Act of 2018 (CCPA)* in the State of California, which regulates the collection of PII from minors. Ms. Milikh also referred to privacy laws in the State of New York. The members were informed that Discovery Education requires new employees to take mandatory online training on data protection and PII, as well as a periodic refresher training. Ms. Milikh noted that team specific training is also provided, such as training with the marketing team.

Ms. Tonya Sweat asked if there were components of current privacy laws in the State of Maryland that were burdensome. Ms. Milikh stated that language in the legislation regarding reasonability is vague, and that clarifying language on what constitutes reasonability under the law would be beneficial.

Operator Panel Presentations: BrainPop

Ms. Shiri Levi-Kluska, General Counsel, presented on behalf of BrainPop. Ms. Levi-Kluska shared the background and mission of BrainPop, noting that BrainPop aims to educate and assist students through animated videos and presentations. The members were provided examples of BrainPop solutions on issues such as distance learning and conflict resolution and were shown an example of a learning video module. Ms. Levi-Kluska shared that BrainPop is primarily targeted to students in grades K-8.

Ms. Levi-Kluska reviewed BrainPop's privacy and student data protection policy, noting that BrainPop only collects the minimum amount of personal data required to serve students. Ms. Levi-Kluska reviewed training and technical support provided to LSSs. Each LSS has access to a dashboard that allows for real time training and support. Onboarding and training are provided for new educators to provide information on what student data is collected, and users have access to an online help center.

Ms. Levi-Kluska reviewed current contracts in the State of Maryland and BrainPop's compliance with other state laws. Ms. Levi-Kluska shared that BrainPop continually works to ensure compliance with a variety of state and local student data privacy laws and regulations. Ms. Levi-Kluska noted that in some state's regulations vary district by district, which can be cumbersome and time consuming to manage.

Discussion with Operators

The members were invited to ask additional questions to the presenters. Mr. Baron Rodriguez asked whether marketing teams are provided training on how to approach LSSs with products and services. Ms. Milikh stated that training is conducted with the marketing team at Discovery

Education. Ms. Levi-Kluska stated that training is conducted at BrainPop, and reiterated BrainPop's commitment to ensure that the minimal amount of personal student data is collected. Ms. Ann Kellogg asked whether LSSs are provided an opportunity to participate in a short-term trial of products and services prior to signing a contract. Ms. Milikh stated that free trials are offered through Discovery Education, and that trials contain specific terms and conditions. Ms. Levi-Kluska shared that trials are also offered through BrainPop with terms and conditions.

Mr. Theodore Hartman asked about discrepancies between the *Family Educational Rights and Privacy Act* (FERPA) and the *Children's Online Privacy Protection Act* (COPPA) with regards to parental consent for authentication. Ms. Levi-Kluska stated that students would never need to read or sign up to the terms of a contract, but that teachers and administrators would. Ms. Milikh stated that Discovery Education never requests that a student read and sign terms and conditions.

Ms. Tideman asked the presenter's what the State of Maryland can do to assist smaller LSSs to be compliant and to facilitate conversations vendors. Ms. Milikh recommended the creation of a standard questionnaire that LSSs can utilize, because larger systems have more resources and expertise to ask more critical questions compared to smaller systems. Ms. Milikh restated a need for clarity on what are reasonable safeguards regarding data protection, again noting that larger systems have more robust safeguards in place.

Operator Panel Presentations: Tech4Learning

Mr. Dallas Jones, Chief Technology Officer, presented on behalf of Tech4Learning. Mr. Jones reviewed the services provided by Tech4Learning, specifically services related to the software Wixie. Mr. Jones reviewed some of the LSSs within the State of Maryland that Tech4Learning contracts with and stated that the company aims to collect the minimal amount of PII necessary. The members received additional information on Tech4Learning's privacy policies and usage of student data.

Dr. Williamson asked for clarification on Tech4Learning's experience with privacy laws in other states and on the level of training offered. Mr. Jones stated that internal staff have a minimal level of interaction with the data that is collected; Mr. Jones noted a common training issue is with students sharing passwords. Ms. Sweat asked for clarification on the concerns from a privacy standpoint with shared passwords. Mr. Jones stated that shared passwords can allow for students to access another student's account and change information or compromise the integrity of another student's work.

Further Discussion with Operators

Dr. Williamson asked the operators their knowledge of the *Student Data Privacy Act of 2015* and aspects of the legislation that have been helpful or not helpful. Ms. Levi-Kluska shared that the legislation was one of the easier laws to understand and work with. Mr. Jones highlighted that the legislation provides clear language on what data is covered. Ms. Tideman asked the presenters to what extent operators monitor these types of laws as they go through the legislative process, the level of advocacy from operators to change language and components of legislation,

and what would constitute a red flag for operators to work with a LSS. Mr. Jones stated that changes to laws are monitored but the level of advocacy varies.

Ms. Tiderman asked for clarification regarding the cost of a third-party audit. Ms. Levi-Kluska stated that the costs of the audit are covered by the operator. Mr. Rodriguez clarified that language regarding who shall cover the cost is provided by the Maryland State Department of Education (MSDE) and the Department of Information Technology (DoIT).

Dr. Williamson asked about components of the *Student Data Privacy Act of 2015* which were sought after but were not incorporated into the final legislation. Mr. Hartman clarified specific companies raised issues with the definition of targeted advertising, adaptive technology, and what defines an operator. The members discussed concerns over the lack of language in the legislation regarding training, specifically regarding protecting PII. Mr. Jones reviewed components of training at Tech4Learning but acknowledged that further training regarding PII could be added. Ms. Milikh stated that training would need to be sensitive to training already offered by the LSSs.

Adjournment

Dr. Williamson expressed thanks and appreciation to the presenters for their attendance and participation. The members were informed that the next meeting on August 13, 2020, will be held virtually from 9:00 a.m. to 11:00 a.m. were provided an overview of the topics that would be discussed.

The meeting was adjourned at 10:51 a.m.