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State Superintendent of Schools

Student Data Privacy Council

August 13, 2020
WebEx Virtual Meeting

Meeting Minutes

Council Members in Attendance: Dr. Carol A. Williamson (Chairperson), Mr. Thomas Chapman, Ms. Chrystie Crawford-Smick, Mr. Michael Garman, Mr. Theodore Hartman, Ms. Ann Kellogg, Ms. Michele McNeil, Mr. Baron Rodriguez, Ms. Tonya Sweat, Ms. Amelia Vance, and Ms. Allison Vannoy

MSDE Staff in Attendance: Ms. Molly Abend, Ms. Val Emrich, Ms. Chandra Haislet, Ms. Jacqueline LaFiandra, Mr. Shane J. McCormick, Ms. Laia Tideman

Members Absent: Mr. Ryan Cowder, Dr. Jeffrey Lawson, Mr. Michael Lore (on behalf of The Honorable Senator Susan C. Lee), Mr. Derek Wheeler (on behalf of Mr. Chip Stewart), and The Honorable Delegate Jheanelle Wilkins

The meeting was called to order at 9:03 a.m. when a quorum was established.

Welcome & Approval of Meeting Minutes

Dr. Carol Williamson, chairperson, welcomed the members; the members reviewed the minutes from the meeting on July 9, 2020. A motion to approve the minutes as presented was made by Mr. Baron Rodriguez and seconded by Ms. Tonya Sweat. A roll call of the members was made to approve the minutes.

Roll Call: 10 Yes, 0 No, 0 Abstention. Members Absent from the Vote: Ms. Allison Vannoy. The motion carried.

Council Discussion on Invited Operator Presentations

Ms. Val Emrich, MSDE staff, facilitated a discussion with the members regarding the presentations by invited operators during the July meeting. The members were asked to address three specific questions in response to the presentations: what the members had gained from the presentations, whether the operators are doing what they are required to under the law, and whether there were additional items the council should consider regarding operators. Ms. Tonya Sweat stated that from her perspective the operators were aware of existing data privacy laws and had similar questions regarding definitions and interpretation under current laws that the members have previously discussed.

Mr. Baron Rodriguez expressed, in response to a question posed to the operators regarding training conducted by operators with their staff and with local school systems, that training has been a persistent issue. Mr. Theodore Hartman concurred with Mr. Rodriguez regarding the lack of training. The members discussed questions regarding the primary authority for contracting with operators within the local school systems, such as whether decisions should be made by central administration or be reserved for procurement offices, information technology offices, etc.

The members discussed issues with operators reaching out and marketing directly to teachers, specifically regarding free services or services with trial periods, and the administrative and legal issues with such practices. Ms. Amelia Vance recommended the adoption of a prohibition under the law regarding operators reaching out directly to teachers for marketing purposes.

Dr. Williamson summarized the opinions expressed by the members of a need to include a provision in the law mandating a central vetting approval process for entering contracts and requirements for local school systems to create further step-by-step procedures. Ms. Allison Vannoy concurred that some level of training for teachers with regards to compliance under the law when teachers are contacted or approached by vendors would be beneficial. Ms. Vannoy also recommended implementing professional development courses regarding data privacy that could be counted towards required educator professional development.

Review of Council's Mission, Charges, & Relevant Definitions

Dr. Williamson reviewed with the members the mission of the council, the areas that the council was charged to look into and key issues in the *Student Data Privacy Act of 2015* that the members had identified previously. The members identified the following key issues: clarity, compliance and transparency, responsibility of operators, professional development, continuance of the council, and the digital divide. Ms. Laia Tiderman, MSDE staff, directed the members to the key issues and the relevant definitions documents provided in the meeting handouts.

The members were directed first to the relevant definitions discussed previously; the definitions were for the following terms: covered information, operator, persistent unique identifier, preK-12 school purpose, and targeted advertising. The members were asked for feedback regarding the definitions for each term and their comfort level with adopting the definitions as presented. The members unanimously expressed their approval with adoption.

Ms. Jacqueline LaFiandra, MSDE staff, asked for clarification on language under the definition of an operator with regards to application with organizations engaged with institutions under the *Family Educational Rights and Privacy Act of 1974* (FERPA). The members agreed to amend the language regarding the operator definition.

A motion to adopt the definitions as amended was made by Mr. Hartman and seconded by Ms. Sweat. The motion carried.

Review of Issues in the Student Data Privacy Act of 2015

The members discussed the issue of a lack of clarity in definitions under the *Student Data Privacy Act of 2015*, who must comply with the requirements of the legislation and what they must do. The members had identified the issue as a high priority and felt it was an issue because it left ambiguity for operators and local school systems to implement requirements of the legislation. The members discussed in detail issues with defining the term reasonableness.

Mr. Hartman noted that many operators already have company provisions regarding reasonableness and minimum personally identifiable information (PII) that is collected. The members identified as a solution revising meaning in the Annotated Code of Maryland, Education Article §4-131 to align with the definitions developed and approved by the council.

The members discussed the issue of lack of enforcement in the legislation, the ability to ensure compliance with the legislation, and what party or parties would serve as an enforcer. The members had identified the issue as a high priority, and felt it was an issue because it left responsibility to local school systems to ensure compliance. The members discussed potential parties that could serve as an enforcer; Ms. LaFiandra noted that the council can be as broad in its potential recommendations as it wishes, but that it does not have to recommend specific parties or individuals to address issues. The members agreed to make a general recommendation regarding identification of an enforcer.

The members discussed issues with transparency requirements for an operator in disclosing an instance of unauthorized access, use, or disclosure. The members discussed the applicability of existing State and federal laws regarding breach notifications with regards to the issue and its recommendations. The members discussed adopting a recommendation to have operators have a minimum set of information in notifications that they must provide in the event of a breach.

The members reviewed the issue on transparency on who is compliant or not compliant with the legislation. The members had identified the issue as a medium priority because of the belief that compliance should come before transparency. Ms. Tiderman specified that the issue was in relation to compliance issues outside of a breach. The members agreed to include as part of its recommendation's public notification of a violation of the statute. Ms. Ann Kellogg recommended the creation of a separate group to review such issues. Ms. Sweat recommended the creation of an enforcement mechanism to ensure that operators are compliant.

The members discussed the issue of operator's responsibility to train local school system staff on the security and privacy features of their product. The members had additional questions regarding whether operators sufficiently train their own staff on privacy laws. The members had identified the issue as medium to high priority. The members felt it was an issue because of concerns with operators' staff being in direct contact with teachers, and concerns with ensuring that technology protects student data.

Ms. Tiderman summarized that based on discussions during previous meetings and the information shared by operators during the July meeting, the issue of operator's responsibility to

train their staff was no longer a pressing issue. The members agreed the more pressing concern was ensuring that operators train staff that are in direct contact with teachers, and that operators should offer support in ensuring that software is configured to protect student data.

The members discussed whether such provisions need to be explicitly stated in the law. Ms. Tideman asked the members whether they considered the issue to still be of a medium to high priority. The members did not arrive at a conclusion; the council staff would review the issue further.

The members discussed the issue of the purpose of the council if it continues. The members had identified the issue as a medium priority and had identified it as an issue because of a push to have an advisory board to address issues regarding enforcement and compliance, and how to address changes in student data privacy protection. Mr. Hartman expressed an interest in keeping the council as a standing group that is reconvened periodically because technology is always changing which necessitates laws needing to be reviewed and changed.

The members agreed to adopt as part of its recommendations to continue to meet periodically; Dr. Williamson stated that the members would eventually need to specify the frequency of which it would meet. The members also agreed that the council would review the impact of changing technology, review enforcement mechanisms, and identify issues of noncompliance. The members agreed that the council should produce, periodically, a report of its findings for documentation purposes.

The members discussed the issue of ensuring equitable access to all students, specifically addressing a digital divide. The members had identified the digital divide as an issue due to some local school systems, specifically smaller systems, having fewer or limited resources compared to larger systems to address issues regarding student data privacy. Dr. Williamson shared with the members that issues regarding the digital divide and ensuring equitable access has been one of the primary objectives of the Digital Learning Advisory Committee.

Ms. Sweat summarized that having a general knowledge of access issues is beneficial to the council, but that the issue was no longer relevant to the scope of this council. The members mutually agreed that equitable access and addressing the digital divide was no longer within the scope of the council.

Priorities of the Council

Dr. Williamson reviewed the priorities of the council with the members. Ms. Tideman provided an overview of the timeline of upcoming meetings and council activities with the members. A draft report would be provided during the September meeting, with the October meeting focusing on revisions from the draft report. The November meeting would include a final review, and the December meeting would include a report review and discussion.

The members were informed that the September meeting had been moved to September 17 and that the meeting would be held virtually.

Adjournment

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