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State Superintendent of Schools

Student Data Privacy Council Meeting

September 17, 2020
WebEx Virtual Meeting

Meeting Minutes

Council Members in Attendance: Dr. Carol A. Williamson (Chairperson), Mr. Thomas Chapman, Ms. Chrystie Crawford-Smick, Mr. Ryan Cowder, Ms. Mary Pat Fannon (on behalf of Dr. Jeffrey Lawson), Mr. Michael Garman, Mr. Theodore Hartman, The Honorable Delegate Dana Jones, Ms. Ann Kellogg, Mr. Michael Lore (on behalf of the Honorable Senator Susan C. Lee), Ms. Michelle McNeil, Mr. Baron Rodriguez, Ms. Tonya Sweat, and Ms. Amelia Vance

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

Members Absent: Ms. Allison Vannoy, Mr. Derek Wheeler (on behalf of Mr. Chip Stewart)

The meeting was called to order at 11:02 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 August 13, 2020. A motion to approve the minutes as presented was made by Ms. Ann Kellogg and seconded by Mr. Theodore Hartman. A roll call of the members was made to approve the minutes.

Roll Call: 11 Yes, 0 No, 0 Abstention. Members Absent from the Vote: Mr. Michael Lore (on behalf of the Honorable Senator Susan C. Lee), Ms. Tonya Sweat, and Ms. Amelia Vance. The motion carried.

Review of the Scope and Findings of the Council

Ms. Laia Tiderman, MSDE staff, reviewed with the members the charge of the council and the activities that have taken place since the council's first meeting in October 2019. The council was charged with reviewing four areas, the first charge being to study the development and implementation of the *Student Data Privacy Act of 2015*. The members were reminded of presentations and discussions regarding what has been done in response to the law and what local school systems are doing, including the presenters and topics discussed.

Dr. Williamson recognized the Honorable Delegate Dana Jones and her addition to the council as the appointed member of the Maryland House of Delegates in place of the Honorable Delegate Jheanelle Wilkins. Dr. Williamson asked the members to reflect on what they have gained from the information that has been presented and from the activities of the council. Mr. Michael Garman reflected on the differences in processes and procedures within the local school systems between larger and smaller systems, and the presentation on consortiums and partnerships. Ms. Chrystie Crawford-Smick concurred with Mr. Garman and reflected on her experiences in Harford County compared to other local school systems. Ms. Kellogg reflected on the need for all-encompassing training and transparency.

Ms. Tonya Sweat, as a representative of the Maryland PTA, reflected on the perspective of parents and the lack of knowledge that many parents have regarding issues related to student data privacy and data privacy laws. Ms. Michelle McNeil reflected on the benefit of hearing about the challenges and complexities that local school systems, specifically smaller local school systems, face with regards to student data privacy and operating under the law. Ms. Tiderman concluded the overview of the study of development and implementation of the legislation by highlighting the meetings and presentations that spoke to the operator's perspective, which included presentations by council members Ms. McNeil and Mr. Baron Rodriguez.

Ms. Tiderman highlighted the council's second charge to review and analyze similar laws and best practices in other states. The council was tasked to consider what other states are doing and whether Maryland's law is current and comprehensive. Mr. Hartman reflected on his perspective of working on the original *Student Data Privacy Act of 2015*, and comparing what has occurred in the State of Maryland to what other states are doing.

Ms. Sweat reflected on the value of learning about similar laws in other states, and identifying what other states are and are not doing as well as the State of Maryland. The members were asked to reflect on the robustness of Maryland's current law, given that the legislation was passed in 2015. Mr. Baron Rodriguez stated that a gap still exists on how to regulate operators that are able to directly market and sell products to teachers at events such as conferences and tech conventions.

Ms. Tiderman highlighted the council's third charge to review and analyze developments in technologies as they relate to student data privacy, and highlighted the presentations and topics that were discussed. These presentations included a discussion of emerging technologies and implications for student data privacy during the COVID-19 pandemic. Ms. Sweat discussed her personal experiences receiving emails from vendors and operators regarding purchasing products and services, and the likelihood that teachers in local school systems are receiving similar solicitations, and what considerations the council can make towards this issue. Mr. Thomas Chapman concurred with the concerns raised by Ms. Sweat.

Ms. Sweat followed up by noting that many students are attending school virtually, both through personal and school-issued devices, which raises additional questions. Mr. Chapman clarified that questions regarding proper use of school system issued devices does not fall under the scope

of the council but of the Student Data Governance Workgroup, which is responsible for developing and publishing shared governance and guidance.

The members and staff discussed questions regarding issues of professional development and training, which the members had discussed during previous meetings. Ms. Tiderman summarized that the council had concluded that professional development and training was an issue but could not determine where it would fit under the council's scope.

Review and Discussion of Proposed Recommendations

Ms. Tiderman highlighted the council's final charge to make recommendations on statutory and regulatory changes to the *Student Data Privacy Act of 2015* based on the council's findings, and to make a recommendation on repealing the termination date of the council. A repeal of the council's termination date would allow for the council to continue meeting to review and assess issues regarding student data privacy. The members were directed to the draft of the council's proposed recommendations. The first recommendation was to revise the definitions in the Annotated Code of Maryland to align to the council developed and approved definitions.

Mr. Hartman highlighted that the revisions would be aimed at clarifying who the legislation applies to and ensure that the appropriate entities included are subjected to the legislation. Ms. Amelia Vance provided additional context and explanation to clarifying the definitions in the legislation. The members were asked if they had any additional changes or amendments to the definition; no additional changes or amendments were made.

The members were directed to the council's second recommendation regarding compliance as a means to establish a mechanism to ensure operator's compliance with the *Student Data Privacy Act of 2015*. Ms. Jacqueline LaFiandra, MSDE staff, spoke regarding the potential usage of the *Maryland Personal Information Protection Act (PIPA)* as a compliance mechanism. Ms. LaFiandra noted that PIPA is enforced through the *Consumer Protection Act*, and highlighted the positives and negatives of using PIPA as a compliance mechanism, noting that the act is focused more on regulating unfair and deceptive trade practices. Ms. LaFiandra briefly discussed components that would and would not be covered under the law.

Ms. Tiderman asked the members for their feedback on the compliance mechanism and how the council should address the issue. Dr. Williamson asked for clarification on how it is known when an operator is out of compliance; Ms. Tiderman stated that under the current law there would be no way to know an operator was out of compliance. The members had expressed concerns with adequate notification of non-compliance during previous meetings.

The members discussed potential solutions to the compliance issue and ensuring protections under the law. Other solutions suggested included installing authority to a central administrative figure, such as the Maryland Inspector General of Education or State Chief Privacy Officer, and the creation of a formal complaint process before local school boards. Ms. Vance discussed protections under other state laws regarding enforcement and compliance, such as those found in the State of New York and the State of Colorado. Ms. Vance further discussed protections under

federal law, but noted that these protections had specific applications and were focused on specific areas.

The members discussed further compliance issues and changing language in the legislation regarding provisions that operator's under the law shall have to comply with. The members concluded that language should be added regarding breach notification; Ms. Tiderman recommended such revisions should be included under language in the legislation regarding transparency. The members expressed approval with adopting the addition of language requiring that operators, as defined under the law, shall implement and maintain reasonable security procedures and practices, including a breach notification plan. A revision requiring public notification of violations of the statute was also proposed.

The members discussed a further tie-in with the *Consumer Protections Act* and language regarding breach notifications. Ms. Vance highlighted the State of Colorado as the closest state to having language in its legislation regarding public notifications. Ms. LaFiandra clarified for the members that language regarding data breaches for data covered under that law, but that such protections do not pertain to education records. Ms. LaFiandra stated that covering education data would have to be covered under the *Student Data Privacy Act of 2015*.

The members reviewed the recommendations regarding the termination date of the council to allow for the continuation of the council to periodically meet to continue its activities. The members were asked whether the two recommendations should be combined or remain separate; the members expressed no opinion regarding the recommendations. The members reviewed the recommendations regarding the charge of the council should it continue and the report of the council's findings and recommendations.

Mr. Lore expressed an interest in expanding the scope of the council, such as using the council as a clearinghouse to address parent's concerns and to address questions regarding available education products. The members were reminded that some of the aspects being proposed to fall under the council are already under the scope of the Student Data Governance Workgroup. Ms. Sweat recommended adopting an appendix highlighting aspects that did not fall under the scope of the work of the council.

Adjournment

Ms. Tiderman summarized that the charge of the council moving forward and the recommendation regarding transparency were outstanding issues to which the members would need to return. The members were encouraged to submit comments and suggestions prior to the next meeting. The members were reminded that the next meeting would be held October 8, 2020

The meeting was adjourned at 10:59 a.m.