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Data Security & Privacy for School Districts: Policy Guide and Legal Requirements

**2018 Bradley F. Kidder
Education Law Conference**

October 3, 2018

POWERPOINT ATTACHMENTS

CHAPTER 252
HB 1612 - FINAL VERSION

6Mar2018... 0754h
04/19/2018 1459s

2018 SESSION

18-2480
06/05

HOUSE BILL **1612**

AN ACT relative to data security in schools.

SPONSORS: Rep. Cordelli, Carr. 4; Rep. T. Wolf, Hills. 7; Rep. Kurk, Hills. 2; Rep. Ladd, Graf. 4; Rep. V. Sullivan, Hills. 16; Rep. Ferreira, Hills. 28; Rep. Seidel, Hills. 28

COMMITTEE: Education

AMENDED ANALYSIS

This bill requires each local education agency to develop a data security plan.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 252
HB 1612 - FINAL VERSION

6Mar2018... 0754h
04/19/2018 1459s

18-2480
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to data security in schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 252:1 New Paragraph; Student and Teacher Information Protection; Data Inventory
2 Security Plan. Amend RSA 189:66 by inserting after paragraph IV the following new
3 paragraph:

4 V. The department shall establish minimum standards for privacy and security of
5 student and employee data, based on best practices, for local education agencies. Each
6 local education agency shall develop a data and privacy governance plan which shall be
7 presented to the school board for review and approval by June 30, 2019. The plan shall
8 be updated annually and presented to the school board. The plan shall include:

9 (a) An inventory of all software applications, digital tools, and extensions.
10 The inventory shall include users of the applications, the provider, purpose, publisher,
11 privacy statement, and terms of use.

12 (b) A review of all software applications, digital tools, and extensions and an
13 assurance that they meet or exceed standards set by the department.

14 (c) Policies and procedures for access to data and protection of privacy for
15 students and staff including acceptable use policy for applications, digital tools, and
16 extensions.

17 (d) A response plan for any breach of information.

18 (e) A requirement for a service provider to meet or exceed standards for data
19 protection and privacy.

20 252:2 Student and Teacher Information Protection; Data Inventory Security Plan.
21 Amend the introductory paragraph of RSA 189:66, IV to read as follows:

22 IV. The department ***and each local education agency*** shall make publicly
23 available students' and parents' rights under the Family Educational Rights and Privacy
24 Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:

252:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 12, 2018
Effective Date: August 11, 2018

DATA GOVERNANCE AND SECURITY

Category: Priority/Required by Law

Related Policies EHAA, EHB, GBEBD, GBEF, IHBH, JICJ, JICL, JICM, KD, & KDC

ADOPTION NOTE: *Although NHSBA recommends that districts review all NHSBA sample policies prior to adoption, highlights indicate areas which Boards should review and change to reflect local personnel titles, policy references, etc..*

To accomplish the District's mission and comply with the law, the District must collect, create and store information. Accurately maintaining and protecting this data is important for efficient District operations, compliance with laws mandating confidentiality, and maintaining the trust of the District's stakeholders. All persons who have access to District data are required to follow state and federal law, District policies and procedures, and other rules created to protect the information.

The provisions of this policy shall supersede and take precedence over any contrary provisions of any other policy adopted prior to the date of this policy.

A. Definitions

Confidential Data/Information – Information that the District is prohibited by law, policy or contract from disclosing or that the District may disclose only in limited circumstances. Confidential data includes, but is not limited to, personally identifiable information regarding students and employees.

Critical Data/Information – Information that is determined to be essential to District operations and that must be accurately and securely maintained to avoid disruption to District operations. Critical data is not necessarily confidential.

B. Data and Privacy Governance Plan - Administrative Procedures.

1. Data Governance Plan. The Superintendent, in consultation with the District Information Security Officer ("ISO") (see paragraph C, below) shall create a Data and Privacy Governance Plan ("Data Governance Plan"), to be presented to the Board no later than June 30, 2019. Thereafter, the Superintendent, in consultation with the ISO, shall update the Data Governance Plan for presentation to the Board no later than June 30 each year.

The Data Governance Plan shall include:

- (a) An inventory of all software applications, digital tools, and extensions. The inventory shall include users of the applications, the provider, purpose, publisher, privacy statement, and terms of use;
- (b) A review of all software applications, digital tools, and extensions and an assurance that they meet or exceed minimum standards set by the New Hampshire Department of Education;
- (c) Policies and procedures for access to data and protection of privacy for students and staff including acceptable use policy for applications, digital tools, and extensions;

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- (d) A response plan for any breach of information; and
 - (e) A requirement for a service provider to meet or exceed standards for data protection and privacy.
2. Administrative Procedures. The Superintendent, in consultation with the ISO, is directed to review, modify and create, where necessary, administrative procedures on collecting, securing, and correctly disposing of District data, and as otherwise necessary to implement this policy and the Data Governance Plan. Such procedures will generally be included in the annual Data Governance Plan.

C. Information Security Officer.

The [] Director of Technology is hereby designated as the District's Information Security Officer (ISO) and reports directly to the Superintendent or designee. The ISO is responsible for implementing and enforcing the District's security policies and administrative procedures applicable to digital and other electronic data, and suggesting changes to these policies, the Data Governance Plan, and procedures to better protect the confidentiality and security of District data. The ISO will work with the both District and building level administrators and Data managers (paragraph E, below) to advocate for resources, including training, to best secure the District's data.

The [] assistant director of technology is the District's alternate ISO and will assume the responsibilities of the ISO when the ISO is not available.

D. Responsibility and Data Stewardship.

All District employees, volunteers and agents are responsible for accurately collecting, maintaining and securing District data including, but not limited to, Confidential and/or Critical Data/Information.

E. Data Managers.

All District administrators are data managers for all data collected, maintained, used and disseminated under their supervision as well as data they have been assigned to manage in the District's data inventory. Data managers will monitor employee access to the information to ensure that confidential information is accessed only by employees who need the information to provide services to the District and that confidential and critical information is modified only by authorized employees. Data managers will assist the ISO in enforcing District policies and procedures regarding data management.

F. Confidential and Critical Information.

The District will collect, create or store confidential information only when the Superintendent or designee determines it is necessary, and in accordance with applicable law. The District will provide access to confidential information to appropriately trained District employees and volunteers only when the District determines that such access is necessary for the performance of their duties. The District will disclose confidential information only to authorized District contractors or agents who need access to the information to provide services to the District and who agree not to disclose the information to any other party except as allowed by law and authorized by the District.

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District employees, contractors and agents will notify the ISO or designee immediately if there is reason to believe confidential information has been disclosed to an unauthorized person or any information has been compromised, whether intentionally or otherwise. The ISO or designee will investigate immediately and take any action necessary to secure the information, issue all required legal notices and prevent future incidents. When necessary, the Superintendent, ISO or designee is authorized to secure resources to assist the District in promptly and appropriately addressing a security breach.

Likewise, the District will take steps to ensure that critical information is secure and is not inappropriately altered, deleted, destroyed or rendered inaccessible. Access to critical information will only be provided to authorized individuals in a manner that keeps the information secure.

All District staff, volunteers, contractors and agents who are granted access to critical or confidential information/data are required to keep the information secure and are prohibited from disclosing or assisting in the unauthorized disclosure of such confidential or critical data/information. All individuals using confidential and critical data/information will strictly observe all administrative procedures, policies and other protections put into place by the District including, but not limited to, maintaining information in locked rooms or drawers, limiting access to electronic files, updating and maintaining the confidentiality of password protections, encrypting and redacting information, and disposing of information no longer needed in a confidential and secure manner.

G. Using Online Services and Applications.

District staff members are encouraged to research and utilize online services or applications to engage students and further the District's education mission. District employees, however, are prohibited from installing or using applications, programs or other software, or online system/website, that either stores, collects or shares confidential or critical data/information, until the ISO approves the vendor and the software or service used. Before approving the use or purchase of any such software or online service, the ISO or designee shall verify that it meets the requirements of the law, Board policy, and the Data Governance Plan, and that it appropriately protects confidential and critical data/information. This prior approval is also required whether or not the software or online service is obtained or used without charge.

H. Training.

The ISO will provide appropriate training to employees who have access to confidential or critical information to prevent unauthorized disclosures or breaches in security. All school employees will receive annual training in the confidentiality of student records, and the requirements of this policy and related procedures and rules.

I. Data Retention and Deletion.

The ISO or designee shall establish a retention schedule for the regular archiving and deletion of data stored on District technology resources. The retention schedule should comply with, and be incorporated [by reference] into the schedule of records established under Policy [EHB and administrative procedure EHB-R], including but not limited to, provisions relating to Litigation and Right to Know holds as described in Policy [EHB].

DATA GOVERNANCE AND SECURITY**J. Consequences**

Employees who fail to follow the law or District policies or procedures regarding data governance and security (including failing to report) may be disciplined, up to and including termination. Volunteers may be excluded from providing services to the District. The District will end business relationships with any contractor who fails to follow the law, District policies or procedures, or the confidentiality provisions of any contract. In addition, the District reserves the right to seek all other legal remedies, including criminal and civil action and seeking discipline of an employee's teaching certificate.

The District may suspend all access to data or use of District technology resources pending an investigation. Violations may result in temporary, long-term or permanent suspension of user privileges. The District will cooperate with law enforcement in investigating any unlawful actions. The Superintendent or designee has the authority to sign any criminal complaint on behalf of the District.

Any attempted violation of District policies, procedures or other rules will result in the same consequences, regardless of the success of the attempt.

District Policy History:

First reading: _____

Second reading/adopted: _____

District revision history:**Legal References:**

*15 U.S.C. §§ 6501-6506 * Children's Online Privacy Protection Act (COPPA)*

*20 U.S.C. § 1232g * Family Educational Rights and Privacy Act (FERPA)*

*20 U.S.C. § 1232h * Protection of Pupil Rights Amendment (PPRA)*

*20 U.S.C. § 1400-1417 * Individuals with Disabilities Education Act (IDEA)*

*20 U.S.C. § 7926 * Elementary and Secondary Education Act (ESSA)*

*RSA 189:65 * Definitions*

*RSA 186:66 * Student Information Protection and Privacy*

*RSA 189:67 * Limits on Disclosure of Information*

*RSA 189:68 * Student Privacy*

*RSA 189:68-a * Student Online Personal Information*

*RSA 359-C:19-21 * Right to Privacy/Notice of Security Breach*

Legal References Disclaimer: *These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

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When adopting this sample or variation of the same, a district should not include the NHSBA history or NHSBA policy notes. The district should, to the extent possible, include its own adoption/revision history.

NHSBA history: New policy – September 2018

NHSBA note, September 2018, this policy was created to reflect, in part, the requirements of RSA 189:66, V (NH Laws 2018 Chapter 252 (HB 1612)). HB 1612 also requires NHDOE to establish minimum standards for privacy and security. As of September 18, 2018, those standards have yet to be finalized. NHSBA expects that those standards will require further modifications to this policy as well as companion administrative procedures and other existing NHSBA sample policies. Additionally, because a sampling review of the existing technology policies for various district reveal wide variations from current NHSBA samples (see "Related policies" reference at the top of this sample policy EHAB). Districts adopting this sample, therefore, are advised to closely review their current technology policies for provisions which may be in conflict with provisions of this sample EHAB.

w/p-update/2018 Fall/EHAB 2018-F (BK) - Data Governance & Security

DISCLAIMER: This sample policy is copyrighted to the New Hampshire School Boards Association and is intended for the sole and exclusive use of NHSBA Policy Service Subscribers. This sample is provided for general information only and as a resource to assist subscribing Districts with policy development. **School Districts and boards of education should consult with legal counsel and revise all sample policies and regulations to address local facts and circumstances prior to adoption.** NHSBA continually makes revisions based on school Districts' needs and local, state and federal laws, regulations and court decisions, and other relevant education activity.

SAMPLE PROGRAM INVENTORY WITH PRIVACY STATEMENT & TERMS OF USE

Standards for new online resources and a vetting process when evaluating new App/Online Tools for potential adoption. Only online apps/tools that are appropriate to meet the instructional goals, are well designed and meet the legal requirements to protect student privacy and data are approved for use by students. More detail information on the vetting process can be found on the Staff link above. In some cases, parents may receive a separate request from their teacher for permission to use an approved online application or tool with their student. Whenever possible, a student's school google account is used to access the online tool to limit personally identifiable information provided to the 3rd party.

Licensed Software

Used by:	Name of Service/Software	Description	Publisher Website	Privacy Statement	Terms of Use
Grades 7-12	Adobe Creative Suite	Software suite of graphic design, video editing, and web development applications	http://www.adobe.com	Installed locally	http://www.adobe.com/legal/terms.html
District Employees Only	AESOP	Substitute and Absence Management System	https://www.aesoponline.com	http://www.frontlineseducation.com/Pages/Privacy_Policy.html	
District Employees Only	AIMS Web	Special Education Reporting Tool	https://aimsweb.pearson.com/		
District Employees Only	AppliTrack	Human Resource Employment Application System	http://www.applitrack.com/sau25/online	http://www.frontlineseducation.com/Pages/Privacy_Policy.html	
District	Bookshare	Used by students with visual disabilities - An Accessible Online Library for people with print disabilities	https://www.bookshare.org/cms/privacy	https://www.bookshare.org/cms/privacy	https://www.bookshare.org/cms/privacy
Grades 1-8 Life Skills at BHS	Brain Pop/BrainPop Jr.	Online interactive curriculum content	https://www.brainpop.com/	https://www.brainpop.com/about/privacy_policy/	https://www.brainpop.com/about/terms_of_use/
Grades 1-4	Clever	Single sign on platform	www.clever.com	https://clever.com/about/privacy-policy	https://clever.com/about/terms_of_use
District	Destiny	Library Automation and Resources	http://destiny.sau25.net	hosted internally	http://destiny.sau25.net/backoffice/service/presentation/authorform.do?showLicense=true
Grades K-4	DIBELS	Reading and Math Assessment Tool	https://dibels.net/		
Grades 1-8	Discovery Education	Online interactive curriculum content	http://www.discovereducation.com/about/terms-of-use#DEFINITION%20of%20Privacy%20Policy%20071615.pdf	http://www.discovereducation.com/about/terms-of-use#DEFINITION%20of%20Privacy%20Policy%20071615.pdf	http://www.discovereducation.com/about/terms-of-use#DEFINITION%20of%20Privacy%20Policy%20071615.pdf
District	Filemaker Pro (RWL, Intersession)	Custom database software for Real World Learning Hours Tracking, Intersession Sign-ups	Custom BSD solution	hosted internally	
Grades 3-4	Fitnessgram	Fitness assessment and reporting	https://myhealthzone.fitnessgram.net/	https://ci.webauthor.com/vault/2440/webfiles/CI_FG_Privacy%20Policy_FINAL_Aug2016.pdf	http://www.fitnessgram.net/terms-of-use.html
Grades 1-12	Filipgrid	Collaborative video discussion board (we have paid teacher licenses)	https://info.filipgrid.com/	https://legal.filipgrid.com/privacy.html	https://legal.filipgrid.com/terms-of-use.html
PWS Gr 1	Fluency Tutor for Google	Online running record and comprehension assessment tracker	https://www.texthelp.com/en-us/product	https://www.lexhelp.com/en-us/privacy-policy	
Grade 7	GoAnimate4School	Video Creation Tool	https://goanimate4schools.com/	https://goanimate4schools.com/privacy-policy	https://goanimate4schools.com/terms-of-use
District	Google	G Suite for Education Platform - includes Docs, Sheets, Slides, Classroom, Sites	https://sites.google.com/a/bestfordhsk12/	https://www.google.com/edu/trust/	https://www.google.com/apps/intl/en/terms/education_terms.html
District Employees Only	Infinite Visions	District Financial Software System	http://www.ivlntech.com/solutions-prod	hosted internally	
PWS/MEM/RBS (IEP)	Keyboarding for Kids	Keyboarding Software	http://www.keyboardingonline.com/privacy.php	http://www.keyboardingonline.com/privacy.php	http://www.keyboardingonline.com/privacy.php
Grade 4 PWS	Kidblog	Online blogging platform built for students	http://kidblog.org	http://kidblog.org/home/privacy-policy	http://kidblog.org/home/terms-of-service/
Intensive Needs RBS/MIS/RAL	Kids A-Z	Online Reading Resource	https://www.kidsa-z.com	http://help.learningsa-z.com/customer/portal/articles/1649236-privacy	https://www.kidsa-z.com/customer/portal/articles/1649236-privacy
PWS Reading Support	LexiaCore5	Reading program	http://www.lexialearning.com/	http://lexialearning.com/privacy/lexia-a-privacy-policy/	http://lexialearning.com/privacy/lexia-a-privacy-policy/

SAMPLE PROGRAM INVENTORY WITH PRIVACY STATEMENT & TERMS OF USE

Chrome Extensions

Used by: District	Name of Chrome Extension	Description	Website	Privacy Statement	Terms of Use
Grades 3-6	Alice Keeler Webcam Record	Records 30 seconds using webcam	https://chrome.google.com/webstore/detail/airsecuretest/hbfbmidaalalhfaiannmodkiloeng	http://www.air.org/	N/A
Teachers	Check Mark	This extension is meant to help save teachers time with providing feedback to their students in a Google Doc by inserting canned responses to a document without having to spend a lot of time typing.	https://chrome.google.com/webstore/detail/ice-keeler-webcam-recor/likchdmiefjpcipmiabiokcaedooaa	N/A	N/A
MEM/PWS	Co Writer	Used by identified students that need additional support	http://donjohnston.com/cowriter/	https://cowriter.com/	https://cowriter.com/
District	Destiny Discover	Allows retrieval of resources linked to the District's Destiny Library Automation System	https://chrome.google.com/webstore/detail/destiny-discover-beta/eebnmbhdmfhfhgoklhaklkodqhbla	https://www.follettlearning.com/privacy-policy	
MIS	EasyBib Toolbar	Bibliography tool	https://chrome.google.com/webstore/detail/easybib-toolbar/hmfdimoneajeidddemahbjijimngai	http://www.cheag.com/privacy-policy	http://www.cheag.com/terms-of-use
BHS/RAL	EquatIO	Teacher licenses bought, students would use free version	https://www.equatio.com/	https://www.equatio.com/en-us/products/equatio/	
District/Teachers Only	Flubaroo	Allows teachers to grade answers in a form students have completed	http://www.flubaroo.com/		
District/Teachers Only	Google Cast for Education	Teachers use to connect student chromebooks to classroom projector	https://chrome.google.com/webstore/detail/google-cast-for-education/bnmqbeehtmiinmimpeibeeifghbhllea	https://www.google.com/intl/en/policies	https://www.google.com/intl/en/policies
Staff	GSuite Training	G Suite Training is a Chrome extension that offers simple and interactive training lessons to get you up and running fast with G Suite	https://chrome.google.com/webstore/detail/g-suite-training/dkkloemkmldebmiiamdiolobffnlih	https://www.google.com/intl/en/policies/privacy/	
BHS	Guitar Chord Tools	Help with writing chords in a Google Doc. This is an add-on for Google Doc.	https://chrome.google.com/webstore/detail/guitar-chord-tools	N/A	N/A
District	Lightspeed User Agent	District web filtering agent			
MIS	One-Click Timer	Timer app			
BHS	Rhyme Finder	Help with finding words that rhyme when trying to create music. This is an add-on for Google Doc.	https://chrome.google.com/webstore/detail/rhymefinder	http://www.dominanforever.com/rhymefinder	N/A
Grades 5-12, PWS (Teachers)	Screencastify	Create Screencast Videos - saves to Drive and/or YouTube	https://www.screencastify.com/	https://www.screencastify.com/privacy	https://www.screencastify.com/terms
BHS	Vex Tab Music Notation	Help with music notation in Google Documents. This is an add-on for Google Doc.	http://www.vexflow.com/vextab/		