

School Law Matters

JULY 25, 2014



A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board Personnel Instruction PPS Business Other: _____

SPECIAL ALERT

New “Parents Bill of Rights for Data Privacy and Security” Must be Included on Each District’s Website and Included in Certain Contracts by July 31, 2014

As we reported in June, the Common Core Implementation Reform Act enacted earlier this year requires school districts and BOCES to publish a “Parents Bill of Rights for Data Privacy and Security” on their websites by July 31, 2014. While we were expecting that the State Education Dept. (SED) would provide regulations and/or guidance on the contents of such a document prior to this implementation date, no such additional information has been forthcoming. Regardless, the law does have a specific deadline (i.e., July 31, 2014). Accordingly, we are recommending to our clients that they comply with the law to the extent possible under the circumstances.

Specifically, the statute states that the Bill of Rights must include the following information:

1. A student’s personally identifiable information cannot be sold or released for any commercial purposes;
2. Parents have the right to inspect and review the complete contents of their child’s education record;
3. State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred;
4. A complete list of all student data elements collected by the State is available for public review; and
5. Parents have the right to have complaints about possible breaches of student data addressed. N.Y. Education Law § 2-d (3)(b).

With respect to Item 4 above, the law directs school districts to include information regarding where the list of data elements can be reviewed online and the mailing address where parents can write to obtain this list. To date, SED has not made a website or mailing address available for inclusion in the Bill of Rights. Accordingly, school officials may wish to modify Item 4 to read: “A complete list of all student data elements collected by the State will be available for public review both online and via regular mail from the State Education Department. The website and mailing addresses will be listed here when they are made available.”

With respect to Item 5 above, the law requires school officials to include the name, phone number, email and mailing address of the person to whom complaints can be made. Thus, school districts and BOCES should designate a specific individual to receive and address these complaints and include that contact information in the Bill of Rights.

You should also note that the new law requires that the Bill of Rights be included with every contract that every school district/BOCES enters into with a third party contractor, where the contractor receives confidential, personally identifiable information from student records (or from the annual professional performance reviews of teachers or principals). Again, SED has not yet issued the regulations needed for school districts to adopt a bill of rights. Nevertheless, if, in performing its duties under the contract, the contractor will have access to personally identifiable student information, we recommend including the following new paragraph in the contract:

Section 2-d of the New York State Education Law requires that a parents bill of rights for data privacy and security must be included with every contract an educational agency enters into with a third party contractor, where the third party contractor receives student data or teacher or principal data. Accordingly, this Agreement is deemed to incorporate by reference the District’s parents bill of rights for data privacy and security. The Contractor agrees to comply with all applicable provisions of Section 2-d of the Education Law, any rules and regulations of the New York State Education Department issued thereunder, and the District’s parents bill of rights for data privacy and security, including any amendments to any of these.

If you have any questions regarding the foregoing or need any assistance with respect to complying with this new law, do not hesitate to contact our office.