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WORK SMARTER NOT HARDER:

How New York Leveraged Existing Education Services Infrastructure to Comply with New Privacy Laws

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Introduction

Though concerns for student data privacy date back to the passage of FERPA in 1974, it has become a central issue as schools have increasingly incorporated education technology into the K-12 learning experience. Effective data use allows parents to track and support their children's progress, helps teachers improve their instruction and tailor it more accurately to students' needs, and helps school and district leaders to make managerial decisions, allocate resources, and communicate with the public. Effectively leveraging technology and student data can improve outcomes for students, but this requires state policymakers to address relevant student privacy issues. Since 2014, state policymakers have worked diligently to address student data privacy concerns — as of 2022, 42 states and Washington, D.C. have passed some form of student privacy law.¹ However, more than carefully crafted legislation is needed to protect student privacy; state policymakers must also provide state boards of education, schools, teachers, and other stakeholders with the resources, expertise, and support to put those policies into practice. Putting the pieces together to protect student privacy can be challenging.

Based on independent research and analysis, as well as interviews with key stakeholders, this report

presents important insights from those who are implementing student data protection efforts on the ground in New York. New York is a leader in many regards when it comes to K-12 education (student, teacher, and principal)² privacy, and FPF has identified some of the practical steps that the state has taken to establish sustainable, ongoing education privacy practices across districts. FPF shares this analysis so that other state policymakers can learn from New York's efforts to date.

This case study explores how New York leveraged its existing infrastructure to put policy into practice. Upon the implementation of New York's Education Law 2-D and subsequent regulations (Section 121), the state utilized its existing regional shared service-provider infrastructure—the state's Boards of Educational Cooperative Educational Services (BOCES) and Research Information Centers (RICS)—to support compliance at a regional level. While New York State has an extensive education privacy legal landscape that extends beyond its regional service provider model, Ed Law 2-D, and the Regulations, this report focuses on these policies and services to demonstrate how states can effectively employ a regional service-provider model to facilitate a culture of privacy within its education systems.

Overview of New York's Education Infrastructure

A short summary of New York's key players on the ground and main student data privacy policies provides helpful context for FPF's analysis of best practices for student data privacy.

Who are the relevant actors in New York's student privacy system?

- » **ESA:** Educational Service Agency, which is an intermediate level between local school districts and the state education agency. In New York, the BOCES are considered an ESA.
- » **BOCES:** Boards of Cooperative Educational Services, which provide shared educational services to school districts.
- » **RICs:** Regional Information Centers, which are organized under the BOCES. Typically one RIC might serve several BOCES.

An Educational Service Agency (ESA) is defined as “a regional public multiservice agency that is authorized by state law to develop, manage, and provide services or programs to local education agencies, such as public school districts.”³ New York's use of the BOCES and RICs demonstrates how states can use an ESA model to advance education privacy goals throughout the state.

Boards of Cooperative Educational Services (BOCES)

In 1948, the New York State Legislature established Boards of Cooperative Educational Services (BOCES) “for the purpose of carrying out a program of shared educational services in the schools of the supervisory

district...”⁴ A BOCES provides shared educational programs and services to districts to address relevant educational needs in a cost-effective way. A BOCES may provide any educational service that is requested by two or more school districts and approved by the Commissioner of Education.⁵

Currently, there are 37 BOCES that incorporate all but five of New York's 721 school districts.⁶ The number of districts within a BOCES varies widely. Some BOCES contain only nine districts, while the Nassau BOCES is the largest and serves 56 districts.⁷

BOCES have the following responsibilities:

- » To determine and respond to the educational needs of the geographic area served by the Board and to work with school districts to consider and develop cooperative programs based on their findings.
- » To provide services to each participating school district and to be accountable to both the district and the State for the efficient delivery of those services.
- » To develop clear operating policies under which requested and approved services will be provided to those districts which select them with the most prudent use of resources.
- » To develop appropriate housing and equipment proposals and to encourage necessary voter approval.
- » To cooperate with one or more other BOCES for the delivery of requested services when it is appropriate in terms of economy, effectiveness, or efficiency.⁸

BOCES services fall into three classes: instructional services, instructional support services, and non-instructional services.⁹ When two or more school districts decide that they have similar needs that can be met by a shared program, they enter into a cooperative agreement to establish a shared service for one year between a BOCES and two or more districts. Services are provided in response to established needs and must be shared in order to be cost-efficient and effective.¹⁰

NOTE:

Not all New York school districts use the BOCES and RICs. The BOCES are not available to Buffalo, New York City, Rochester, Syracuse or Yonkers¹¹. It's also important to note that education privacy and data security make up only one initiative to which the BOCES and RICs contribute.

Regional Information Centers (RICs)

Regional Information Centers (RICs) are organized under the BOCES. There are currently 12 RICs in New York, and they serve several BOCES in a region. RICs are non-profit organizations designed to serve school districts by providing instructional and administrative services such as technology platform design, personnel training, and software selection.¹²

Education Law 2-D and Section 121 of the Regulations

The BOCES and RICs are tools leveraged in implementing New York's core student privacy policies: Education Law 2-D and Section 121 of the Regulations. New York Education Law Section 2-D¹³—which governs the unauthorized release of personally identifiable information—takes a comprehensive approach to education privacy. Among other things, Section 2-D establishes the position of Chief Privacy Officer for the NYSED,¹⁴ identifies specific credentials of the CPO¹⁵ as well as the officer's responsibilities and powers,¹⁶ establishes requirements for NYSED officials to solicit feedback from stakeholders¹⁷ and experts,¹⁸ and limits the purposes for which the educational agencies—which include schools, districts, BOCES, and departments¹⁹—may collect student data.²⁰ Section 2-D governs multiple student privacy and data governance activities, and its comprehensiveness makes understanding the student privacy landscape in New York easier to understand among policymakers, third parties, educators, parents, and students.

After the enactment of Section 2-D²¹ in 2014, Section 121 of the Regulations of the Commissioner of Education²² was adopted by the Board of Regents.²³ The regulations supplement 2-D by imposing additional education privacy requirements and clarifying provisions in 2-D.²⁴

For example, 2-D requires the CPO to promulgate “regulations establishing standards for educational agency data security and privacy policies.”²⁵ Section 121.5(a) of the Regulations does this by identifying the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST CSF) “as the standard for data security and privacy for educational agencies.”²⁶ As such, schools and districts of all sizes across the state are expected to adhere to NIST CSF standards when handling student data. Another robust requirement under the Regulations is the requirement that each third-party contractor have a data security and privacy plan, aligned with the NIST CSF, that includes how all state, federal, and local data security and privacy requirements will be implemented, a copy of the Parents' Bill of Rights, and a requirement that any employee with access to PII will receive training on relevant New York and federal laws.²⁷

New York Education Law Section 2-D Unauthorized Release of Personally Identifiable Information:

This section provides an overview of the chief privacy officer's role handling personally identifiable information, along with an overview of the rights that parents have regarding data privacy and security. Responsibilities and expectations are provided for data collection, data security, breach of personally identifiable information and enforcement of policies.

Part 121 of the Regulations of the Commissioner of Education Strengthening Data Privacy and Security in NY State Educational Agencies to Protect Personally Identifiable Information: Outlines the transparency and restriction measures for data collection, the bill of rights for data privacy, and how to handle complaints and breaches. The role and responsibilities of the Third Parties for handling data privacy are described a well.

What can we learn from New York?

BOCES and RICs eased the compliance burden for school districts implementing new student privacy requirements

After the passage of New York’s education privacy law, Education Law 2-D, districts were subject to new student privacy requirements. Rather than recreate the wheel, the state used its already existing ESA model—made up of the BOCES and the RICs—to help school districts comply with the new requirements.

While Ed Law 2-D and Section 121 of the Regulations create clear and substantive student privacy requirements in New York, compliance with the policies would be difficult without adequate guidance and resources. Large school districts may have the personnel and compliance tools to implement the various requirements from 2-D and 121, but compliance might be more challenging for smaller districts without access to the same resources. After the passage of these policies, New York leveraged its existing ESA model to help fill some of these gaps. Since then, the BOCES and RICs have become integral in helping districts put policy into practice and comply with 2-D and Section 121.

For example, RIC One’s Data Privacy and Security Service (DPSS) supports over 78% of the school districts in New York State²⁸ and helps with district compliance with Education Law 2-D, and Part 121 of Regulations. One of the items created to help assist districts was the Data Privacy Inventory Tool (DPIT), which compiles a list of district software and provides a means for sharing a District’s Parents’ Bill of Rights, supplemental information, and compliance with components of the NIST Cybersecurity Framework.²⁹ Ensuring compliance with the NIST CSF could be challenging for a school without significant resources and personnel on staff, so resources like those offered by DPSS are extremely valuable.

As explained by one Director of Technology at a BOCES, “RICs might be the starting point. The RIC might say ‘here’s the new policy or change in policy.’ The BOCES will then help districts in implementing those changes.” Breaking up compliance into a process with bite-size pieces makes compliance more manageable for school districts and helps school districts achieve beyond what they could do on their own. For example, to help explain Section 2-D, RIC One published an Education Law 2-D Project Management Tool to help educational agencies develop timelines and processes to ensure compliance with the policy.³⁰ RIC One is a collaboration of the twelve RICs in New York, and today acts as a Data Privacy and Security Service (DPSS).³¹ It began in 2014 to provide three services: RIC One API, RIC One Login, and RIC One DPSS, but today consists only of DPSS.³² RIC One has also provided fact sheets and informational resources regarding data privacy considerations for remote work³³ and Data Protection & Continuity of Learning report with recommendations for districts, schools, teachers, and families for using educational tools.³⁴

What are some benefits of student privacy personnel at the regional level?

- » Capacity for technical assistance
- » Finding and developing resources
- » Assessing, evaluating, and reporting programs and practices

BOCES and RICs provide ongoing support to build a culture of privacy within the state

The RICs and BOCES contribute to New York's culture of education privacy by providing resources to districts. The RICs and BOCES format allows for a sharing of responsibilities with regard to implementing new policies and rolling out new initiatives. This makes for more efficient and effective compliance with education privacy laws. As a Director of Technology at a BOCES explained, "Education Law 2-D is a big law, and being able to break it up into smaller bits and share the load stands to help with implementation."

Moreover, the RICs and BOCES help prevent efforts from being duplicated. For example, the WSWHE BOCES' Green Light resource helps vet edtech products and identify products compliant with Ed Law 2-D and Section 121.³⁵ This eliminates the need for each district to individually vet vendors that the BOCES have already reviewed.

Focusing resources at a regional level provides for a level of flexibility from region to region. As explained by a Superintendent of one of the RICs, the RICs implement services based on what the needs of the districts and region are at the time. As explained

by one interviewee, the RIC Directors are closely aligned and meet on a regular cadence. While a regional model allows for flexibility in deciding the best way to implement policies, knowledge-sharing and "troubleshooting" among the RIC Directors allows for sharing best practices and lessons learned between regions.

Not only do the BOCES and RICs directly support compliance, but by easing the burden placed on school districts, staff at the school district have more time to build a culture of privacy within their district. In speaking with one district's Data Protection Officer, they shared that their school district "used to be in the wild wild west" and it has taken 4-5 years to get to a point where they felt that the district was in a strong place. The DPO now spends time doing one-on-one trainings with teachers, as well as working with teachers to help them use the types of technologies and apps they would like to implement in the classroom. This is in part because there has been a standardization of tools because of the BOCES and RICs, and the DPO can spend less time vetting apps and more time providing professional development and directly interfacing with teachers in the district.

Conclusion

States can take different avenues when implementing student privacy initiatives. For example, in the Utah case study, we observed a more centralized approach where resources are largely held by the SEA and funneled through the state in the form of state staff support.³⁶ California employs another model through its user group approach. In California, education privacy professionals can join California IT in Education (CITE), a membership organization that provides resources and support to IT professionals working in schools.³⁷ Another avenue is facilitation through a cooperative. The Education Cooperative (TEC) Student Data Privacy Alliance, for example, is a multi-state cooperative that serves states in New England (Massachusetts, New Hampshire, Rhode Island, Vermont, and Maine).³⁸ Districts in New England can enroll in the cooperative to receive services when negotiating privacy agreements with edtech vendors.³⁹

While the RICs and BOCES can help prevent efforts from being duplicated, a one-size-fits-all model where resources are largely concentrated at the state level, such as in Utah, may not work for a state as large as New York. An important takeaway of both this case study and the Utah case study should not be that states should duplicate what either Utah or New York have done, but rather that there are multiple approaches to student privacy.

The needs and existing infrastructure of each state should be taken into account while following core shared principles such as providing resources and sharing responsibilities among multiple responsible parties. In New York, the state leveraged its existing ESA model to help districts ensure compliance with new education privacy policies. While the BOCES and RICs predate Ed Law 2-D and Section 121 of the Regulations, the resources and services that the ESA has long provided to districts made the BOCES and RICs well-situated to help districts make useful progress on the new policies.

As states continue to grapple with student privacy issues, FPF has identified New York as an important model for student privacy best practices. Not only has the state thoughtfully passed student privacy legislation, but the state has also implemented the law in a practical way. Similarly, states looking to implement an ESA model to comply with their state's education privacy laws or implement best practices can turn to New York's use of the BOCES and RICs as an example. While New York's approach to student privacy is by no means the only approach, the state demonstrates how legislatures and educational agencies can pass meaningful and effective student privacy policies and implement such policies using existing resources, systems, and infrastructure within its education systems.

Endnotes

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