

National Association of State Boards of Education

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## ➔ Trends in State Legislation on Student Data Privacy

By Amelia Vance

In a surge of legislative action on student data privacy this year, 47 state legislatures introduced more than 180 bills in total, 16 of which became law by June 9 (see map). In a third of those states, legislators considered and sometimes succeeded in expanding the already-substantial authority of state boards of education in this arena.

This *Policy Update* identifies the ways in which state legislatures have sought en-

hanced protections for student data and expanded the role of state boards in protecting that data. State board members who delve into the 16 new state laws on data collection, use, and disclosure will find best practices to emulate in their states.

### USE OF DATA

Of the 182 bills introduced this session, 111 were aimed at establishing better safeguards for the collection, use, and disclosure of student data. Sixty-four of these bills—including five passed in Arkansas, Georgia, Maryland, Utah, and Virginia—prohibited districts or service providers

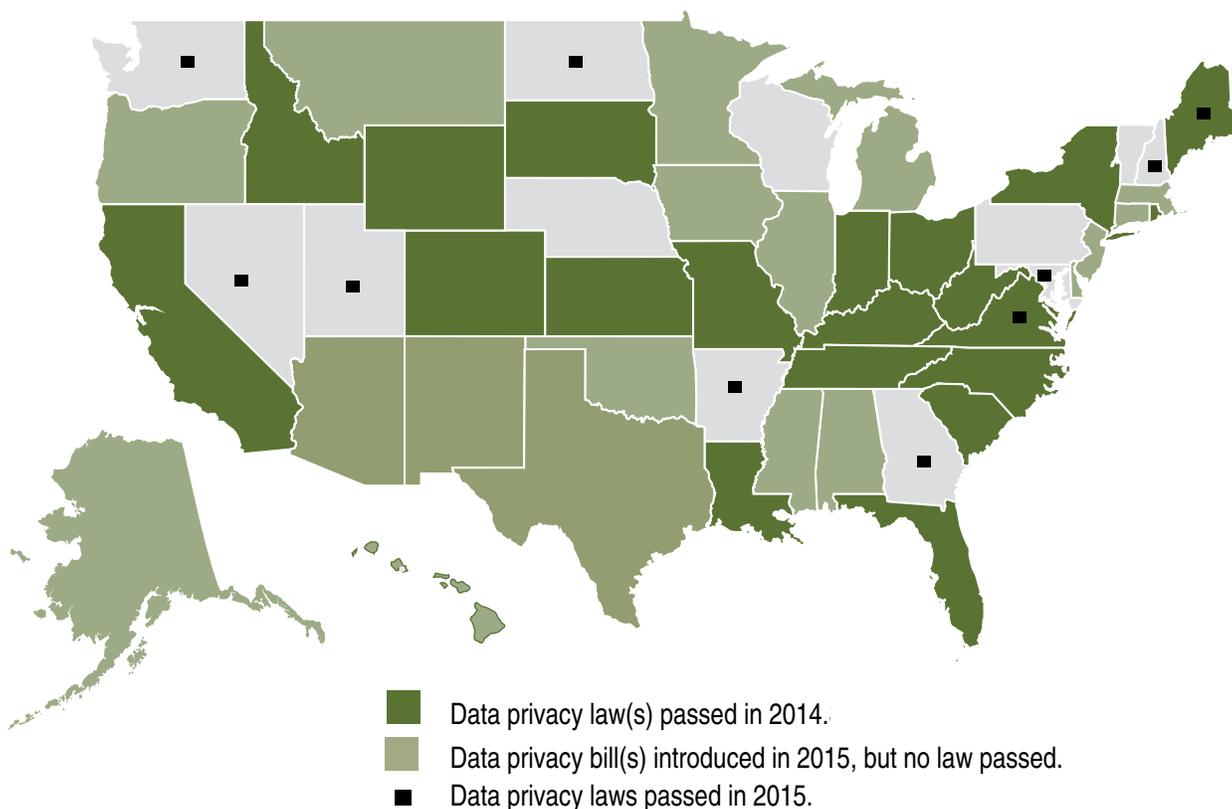
from selling personal student data or using it for commercial purposes such as targeted advertising and invasive data profiling.

Twenty-six bills focused on protecting certain kinds of data, such as sensitive and biometric information. Arkansas, Georgia, and Maryland provide the strongest examples for policymakers seeking to protect student data. Maryland, for example, established protections for a wide variety of student data, including survey and research data on political and religious affiliations, socioeconomic and biometric information, photos and videos, and special education, criminal, and health records.

### OVERSIGHT

Five states introduced legislation creating a chief privacy officer (CPO), who is responsible for creating and managing each

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state's education data privacy work. In the two states that successfully enacted this key provision—Utah and Virginia—CPOs will not only ensure that data are collected and used legally but also will keep parents, policymakers, and the public informed about education data policies and programs. In some states, legislation would give CPOs the authority to create public lists of the types and purposes of education data collection and establish best practices for collection and use.

### TRANSPARENT COLLECTION

Twenty-eight states introduced bills to create public, online lists of data elements they collect and use. Of these, North Dakota and Virginia passed bills that provide useful models for other states aiming for greater transparency. The lists inform parents and students about data practices by including the type of data collected; how it will be used by teachers, administrators, agencies, and vendors; the safeguards protecting the data; and the rights of parents to access and amend that data. Similarly, Alaska and Arizona's bills would require the creation and publication of lists containing data elements, their definitions, and the purpose of collection.

### MONITORING AND ENFORCEMENT

Eight bills create fines for privacy violations. Illinois and Connecticut, for instance, considered penalties for data misuse and breaches as a means of ensuring accountability. In Kansas, the legislature considered monitoring and enforcing school district compliance with statewide rules. The bill would require the Kansas State Board of Education to notify districts of noncompliance, provide steps for districts to come into compliance, and empower the board to impose penalties for continued noncompliance.

Other states' bills require parental notice of breaches. Utah passed a law that requires SBEs and local education agencies to notify parents and guardians if a data breach compromises their student's personally

identifiable information. New Hampshire introduced legislation that required notifying teachers and students whose data are compromised, and the state education agency must release a data security breach report annually.

### EMPOWERING STATE BOARDS

Thirty-seven state boards of education have at least some authority over education data privacy, and states continue to consider expanding those powers. Fifteen states have considered 25 bills this year addressing their state board's role in protecting student data. By doing so, many state legislators recognized that state boards are well placed to protect student privacy: Boards can work directly with parents and educators by holding public hearings and creating committees, and they can respond quickly to changing technologies by developing regulations, guidance, and best practices.

A few states exemplify the role that boards can play. Utah's board passed a resolution in 2013 requesting the legislature protect student and teacher data. This year, the legislature responded by passing a law directing its state board to designate a chief privacy officer, develop an education data funding proposal, and provide recommendations to the legislature on improving student privacy laws. The state board previously developed privacy training materials and ensured compliance of adaptive tests (tests that change based on how a student answers each question, adapting to the learning style and level of each) with the federal Family Educational Rights and Privacy Act.

Georgia's legislature took similarly strong steps in granting broad powers to its state board. It established the board's authority to appoint a chief privacy officer, implement data security plans, and establish policies and procedures for the inspection, amendment, and disclosure of data. Alaska introduced similar legislation, not yet passed, that directs its state board to develop a detailed statewide education data security plan as well as establish clear limits on collection, use, and disclosure of data.

### CONCLUSION

The 16 bills passed by state legislators this year made great strides in resolving questions related to student data privacy without hampering the effective use of online services in the classroom. Legislators in 2015 continued to empower state boards with authority over student privacy, recognizing boards' natural role in ensuring transparency and accountability in education data. Even in those states that did not directly address the role of state boards, the ongoing legislative push reflects the importance that students, parents, educators, and policymakers throughout the country attach to education data privacy.

Of the bills introduced in 2015, 130 seek greater transparency and accountability for education data. Many focus on ensuring that student data cannot be used for commercial purposes. And though 40 state legislatures will adjourn by June 17, 25 will carry over legislation to next year's session—an encouraging sign that all states may soon embrace additional protections for student data.

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### RESOURCES

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Rachel Anderson, "State Student Data Privacy Legislation: What Happened in 2014, and What Is Next?" (Washington, DC: Data Quality Campaign), <http://dataqualitycampaign.org/files/State%20Student%20Data%20Privacy%20Legislation%20Resource.pdf>.