

National Association of State Boards of Education

➔ Trends in Student Data Privacy Bills in 2016

By Amelia Vance

State legislatures in 2016 are continuing to consider and pass new student data privacy legislation. Eleven states introduced 19 bills based on models crafted by the American Civil Liberties Union (ACLU), and new laws in Colorado and Connecticut include significant new language and protections, some of which states may want to emulate and some avoid. Notably, more than 50 bills expand the role of state boards of education (SBEs).

In all, 38 states have considered 112 new bills on student privacy as well as 73 bills carried over from the previous session. Eighteen of these had become law as of May 24. Most bills introduced in 2016 were based on legislation from previous years, mainly California's Student Online Personal Informa-

tion Protection Act (SOPIPA), which directly regulates third parties.

STUDENT DATA PROTECTION

Legislation on data privacy governance accounted for 73 of the measures, including 27 based on SOPIPA that became law in six states.¹ New laws in Colorado (HB1423, awaiting the governor's signature) and Connecticut (HB5469) go beyond SOPIPA in that they distinguish between contracts schools sign with third parties—like a cloud service provider that stores student records—and products where there is no negotiated contract.

Colorado's and Connecticut's laws also include some of the most stringent restrictions and requirements since 2013. For example, Connecticut requires local education agencies (LEAs) to electronically notify parents every time districts sign a new contract. This provision could be a burden for LEAs that

typically sign hundreds of contracts every year and a nuisance to parents, who could be flooded with notices without gaining transparency on data use. It is possible that the provision could be satisfied through notices posted on LEA websites, but the law leaves this unclear.

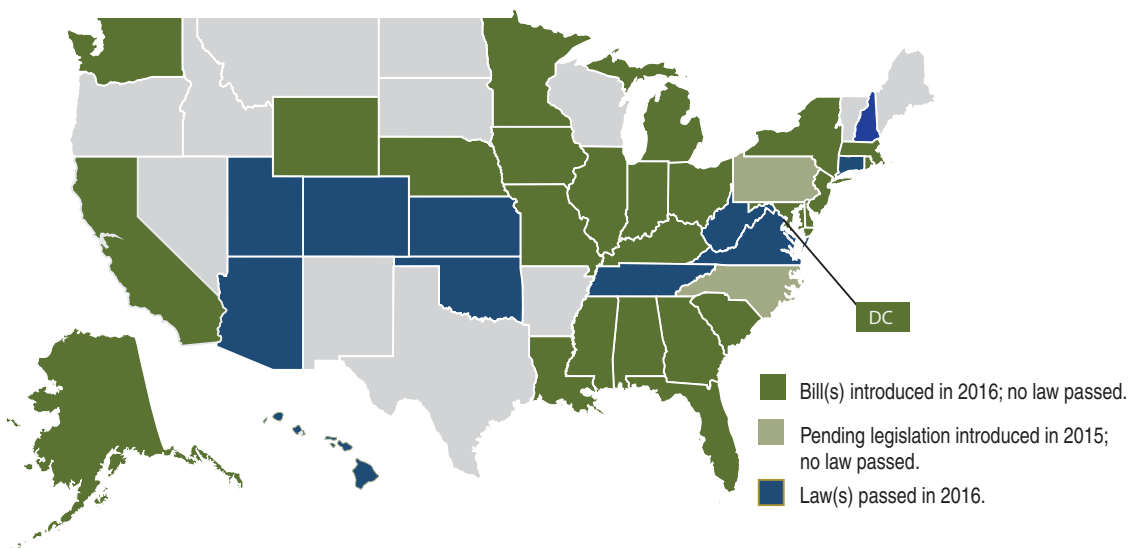
Colorado's law also imposes burdens on state and local education agencies. It requires SEAs to develop and annually review a model privacy policy for LEAs that each district must adopt. Districts also must develop policies for dealing with misuse of data or breaches by contractors and hearing procedures for when parents allege their LEA has violated the law.

Both laws mention training. Less than 10 of the more than 400 bills introduced since 2014 mention training, but Colorado's law explicitly requires that the state education agency help districts with it and provide model policies. State boards will want to watch the implementation of both laws closely, as they may become models for bills elsewhere.

Fifteen states considered bills that would require consent from students or parents whenever service providers collect student information directly from students or before disclosing student data. These bills also address the need to inform parents and students about their data rights, including limitations on collection that they can invoke to protect sensitive information. Other notable laws include Hawaii's SB2607 and Kansas's HB2008, versions of SOPIPA that clarify some ambiguous language in the original law.

Several bills addressed statewide longitudinal data systems (SLDS), such as a New Hampshire law that creates a commission to

Legislatures in 38 States Considered Student Data Privacy Laws in 2016



study its system. A new West Virginia law creates an SLDS and includes student privacy provisions modeled after Oklahoma's 2013 Student DATA Act.

States are also beginning to address privacy protections for early childhood student data. A California bill expands SOPIPA to include preschool students, one in New Jersey requires development of an SLDS that maintains individuals' data from preschool until entry into the workforce, and Alabama recognizes early education privacy in a bill creating an SLDS.

OTHER STUDENT PRIVACY LEGISLATION

Most 2016 bills focused on protecting student data, but a significant number addressed student privacy more generally. In addition to regulating third parties holding student data, the ACLU model bills covered student one-to-one devices, bring-your-own-device programs, and student social media accounts.

These bills attempt to address the potential discrepancy between privacy available on devices students bring from home and more limited protections afforded by devices schools provide and monitor. "Privacy protections are something that should be afforded to all students regardless of their economic circumstances," said the ACLU's Chad Marlow. "[One-to-one device] programs, on the one hand, create an amazing and wonderful educational opportunity for kids. On the other hand, it can create a situation in which kids have to choose between getting a device and advancing their education and protecting their privacy."

Some in education, privacy organizations, and industry have raised concerns about the ACLU-inspired bills. The Future of Privacy Forum noted that the bills opened the door to litigation against teachers or parent volunteers and included overly broad definitions that could limit valuable technology or data use in schools. In response, the ACLU is creating a "2.0" version of its model legislation, which state boards can expect to see in 2017 sessions.

Other bills introduced in 2016, though not aimed at education, could affect student

privacy. A New Jersey bill prohibits unauthorized photography or videotaping of a child. A Michigan bill requires school districts to implement and adopt policies regarding communications between students and teachers, a contentious topic that, in previous years, has been challenged as limiting teachers' right to free speech.

LEARNING FROM 2015

Implementation of some laws passed in 2015 revealed unintended consequences. New Hampshire, for example, required that teachers and teacher candidates get written approval from the school board, parent, and any other teachers before video recording the classroom, even for the purpose of aiding special-education students. Since most teacher certification programs require candidates to submit video recordings, this law proved restrictive. This month, New Hampshire passed HB1372, which would amend the 2015 law to allow a child with a disability to use audio- or video-recording devices in class. HB1372 did not, however, remedy the certification problem.

A 2015 Texas law, SB507, requires districts to make audio-video recordings of special-education classrooms if a parent, school board member, or school staff member requests it. The bill came in the wake of high-profile incidents of abuse of special-education children. The recordings must be maintained for at least six months and are released to specified people upon request. SB507 included some privacy protections: Parents and school staff must be notified in writing, and areas where students may change clothes are off-limits. However, parents cannot opt their child out of being recorded, and the legislature did not appropriate funds to cover the cost of buying, installing, and maintaining recording equipment. Implementation begins with the 2016–17 school year.

ROLE OF STATE BOARDS

Fifty-four bills considered in 2016 mention state boards, with many requiring state boards to ensure compliance with privacy rules and address violations.² Five states require state boards to participate in state privacy or data commissions,³ and at least 10 bills require them to promulgate rules and regulations, as well as model policies.

Other roles given to state boards this year were the responsibilities to maintain records, regulate access, be notified of any privacy rule violations, or implement policies related to student data privacy or implementation of a privacy bill.

Some bills attempted to restrict SBE access to student data. A Michigan bill prohibits disclosure to the SBE of information in a student record, despite the fact that the SBE already did not have such access. Bills from Mississippi, West Virginia, and Arizona would prohibit the SBE from sharing information with certain entities, including the US Department of Education.

CONCLUSION

2016 saw almost as many student data privacy bills in play as in 2015, and it is likely that more states will end up passing a law this year than last.⁴ New language from the ACLU model bills, Colorado, and Connecticut could inspire similar bills in other states or cause accidental consequences that will need to be fixed in subsequent sessions.

Legislatures continue to acknowledge the key role of state boards of education in this arena. State boards will want to keep an eye on new developments and lessons—particularly in the 14 state legislative sessions that are still pending for 2016—as they seek balance between protecting student privacy and allowing the effective use of data and technology in education.

Amelia Vance is NASBE's director of education data and technology.

NOTES

1. Six passed, in Colorado, Connecticut, Hawaii, Kansas, Virginia, and Tennessee. See Amelia Vance, "Data Privacy Laws Follow Lead of Oklahoma and California," *State Education Standard* 16, no. 2 (May 2016).
2. Six passed, in Arizona, Colorado, Connecticut, Oklahoma, Utah, and West Virginia. Bills in Arizona, Illinois, and Kansas required notification of noncompliance with privacy rules while in Colorado, Connecticut, and Michigan SBEs must ensure compliance with student privacy requirements.
3. In Alabama, Arizona, Maryland, Utah, and Washington.
4. Rachel Anderson, "Student Data Privacy Legislation: What Happened in 2015, and What Is Next," (Washington, DC: Data Quality Campaign, September 2015), <http://dataqualitycampaign.org/resource/student-data-privacy-legislation-happened-2015-next/>.