

Business and Non-Instructional Operations

Student Data Protection and Privacy

CREC's contracting practices comply with all laws and regulations pertaining to the protection and use of student records.

All contracts for software, web-based learning, mobile applications, cloud-based storage and services and other electronic methods that provide access to student information, student records, or student-generated content to the contractor, shall adhere to the legal privacy and contractual standards for the creation, ownership, use, or handling of such student data.

The Executive Director or designee shall create administrative regulations regarding student data protection and privacy in accordance with this policy.

cf. 5125 - Student Records

Legal Reference: Connecticut General Statutes

10-234aa et seq., as amended by P.A. 17-200, An Act Making Revisions to the Student Data Privacy Act.

Federal Statutes

Family Educational Rights and Privacy Act of 1974 (20 U.S.C.1232g).

Policy adopted: March 21, 2018

CAPITOL REGION EDUCATION COUNCIL
Hartford, Connecticut

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I. Definitions

"**Contractor**" means an operator or consultant that is in possession of or has access to student information, student records or student-generated content as a result of the operator's or consultant's or a third party's contract with CREC.

"**Operator**" means any person who operates a website, online service, or mobile application with actual knowledge that such website, online service, or mobile application is used for school purposes and was designed and marketed for school purposes; and who collects, maintains or uses student information.

"**Consultant**" means a professional who provides non-instructional services, including, but not limited to, administrative, planning, analysis, statistical or research services pursuant to a contract with CREC or a sub-contract with a professional who has a contract with CREC.

"**Student information**" means personally identifiable information or material of a student, in any media or format that is not publicly available and is:

- a. Created or provided to an operator by a student, or his/her parent or legal guardian, in the course of using the operator's website, online service, or mobile application for school purposes; or
- b. Created or provided by an employee or agent of CREC to an operator for school purposes; or
- c. Gathered by an operator through the operation of its website, online service, or mobile application and identifies a student, including but not limited to, information in the student's records or email account, first or last name, home address, telephone number, date of birth, email address, discipline records, test results, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious affiliations, text messages, documents, student identifiers, search activity, photographs, voice recordings, survey responses, or behavioral assessments.

"**Student records**" means any information directly related to a student that is maintained by CREC or any information acquired from a student through the use of educational software assigned to the student by a teacher or other CREC employee. "Student records" does not include de-identified

student information allowed under the contract to be used by the contractor to a) improve educational products for adaptive learning purposes and customize student learning; b) demonstrate the effectiveness of the contractor's products in the marketing of such products; or c) develop and improve the contractor's products and services.

"Student-generated content" means any materials created by a student, including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files, or photographs, but not student responses to a standardized assessment.

"Directory Information" means one or more of the following items: student's name, address, participation in officially recognized activities and sports, grade levels, weight and height of members of athletic teams, dates of attendance, and degrees and awards received.

"School purposes" means purposes that customarily take place at the direction of a teacher, or the CREC Council or aid in the administration of school activities, including, but not limited to, instruction in the classroom, administrative activities and collaboration among students, school personnel, or their parents/legal guardians.

"Student" means a Connecticut resident enrolled in a preschool program participating in the state-wide public school information system; or enrolled in grades K to 12, inclusive, in a CREC school; or receiving special education and related services under an individualized education program; or who is otherwise the responsibility of CREC.

"Targeted advertising" means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student-generated content, or inferred over time from the usage by such student of the operator's website, online service or mobile application, or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. It does not include any advertising to a student on a website that the student accesses at the time or in response to a student's response or request for information or feedback.

"De-identified student information" means any student information that has been altered to prevent the identification of an individual student.

"Persistent unique identifier" means a unique piece of information that can be used to recognize a user over time and across different websites, online services or mobile applications and is acquired as a result of student's use of an operator's website, online service or mobile application.

II. Contracts

Beginning July 1, 2018, anytime CREC shares with or provides access by a contractor to student information, student records or student-generated content (collectively "student data"), it shall enter into a written contract with the contractor that provides:

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1. A statement that student data are not the property of, or under the control of the contractor.
2. A description of the means by which CREC or the sending LEA may request the deletion of any student data in the possession of the contractor that is not (A) otherwise prohibited from deletion or required to be retained under state or federal law, or (B) stored as a copy as part of a disaster recovery storage system and is inaccessible to the public, and unable to be used in the normal course of business by the contractor; however, CREC or the sending LEA may request the deletion of such student data if it has been used by the contractor to repopulate accessible data following a disaster recovery.
3. A statement that the contractor shall not use student data for any purposes other than those authorized pursuant to the contract.
4. A description of the procedures by which a student, his/her parent, or legal guardian may review personally identifiable information contained in the student's records, student information or student-generated content and correct any erroneous information.
5. A statement that the contractor shall take actions designed to ensure the security and confidentiality of student data.
6. A description of the procedures that a contractor will follow to notify CREC of a breach of security after the contractor discovers that any student data under the contractor's control has been subject to unauthorized release, disclosure or acquisition. Such procedures shall include:
 - a) in cases of a breach involving student information (other than directory information), the contractor must notify CREC no later than five (5) calendar days from discovery of the breach by the contractor or its subcontractor, whichever is earlier; except that in the event urgent notice may be required due to the possible imminent misuse of student data, the contractor must notify CREC without unreasonable delay, and in no case later than two (2) calendar days; and during the notification period, the contractor may either conduct an investigation to determine the nature and scope of the breach and the identity of the students whose information was compromised, or restore the reasonable integrity of the contractor's data system.
 - b) in cases of a breach involving directory information, student records, or student-generated content, the contractor must notify CREC without unreasonable delay, and in no case later than ten (10) days from discovery of the breach; and during the 10-day period, the contractor may either conduct an investigation to determine the nature and scope of the breach and the identity of the students whose information was compromised, or restore the reasonable integrity of the contractor's data system.
 - c) in cases of a breach involving student information (other than directory information), an operator that is in possession of or maintains such information as a result of a student's

use of the operator's website, online service or mobile application, must notify, without unreasonable delay, but not more than five (5) days after such discovery, the student or his/her parents or guardians of such breach; and during the 5-day period the operator may either conduct an investigation to determine the nature and scope of the breach and the identity of the students whose information was compromised, or restore the reasonable integrity of the operator's data system.

- (d) in cases of breach involving directory information, student records, or student-generated content, notify, without unreasonable delay, but not more than ten (10) days after such discovery, the student or his/her parents or guardians of such breach; and during the 10-day the operator may either conduct an investigation to determine the nature and scope of the breach and the identity of the students whose information was compromised, or restore the reasonable integrity of the operator's data system.
7. A statement that student data shall not be retained or available to the contractor upon expiration of the contract between the contractor and CREC, except a student or his/her parent or legal guardian may choose to independently establish or maintain an electronic account with the contractor after the expiration of such contract for the purpose of storing student-generated content.
 8. A statement that the contractor and CREC shall ensure compliance with the Family Educational Rights and Privacy Act of 1974 (FERPA).
 9. A statement that Connecticut laws shall govern the rights and duties of all parties to the contract.
 10. A statement that if any provision of the contract or the application of the contract is held invalid by a court of competent jurisdiction, the invalidity will not affect other provisions or applications of the contract which can be given effect without the invalid provision or application.
 11. A statement that all student-generated content shall be the property of the student or his/her parent or legal guardian.
 12. A requirement the contractor must implement and maintain security procedures and practices designed to protect student data from unauthorized access, destruction, use, modification or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, (1) use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5, as amended from time to time, (2) maintain technical safeguards as it relates to the possession of student records in a manner consistent with the provisions of 45 CFR 164. 312, as amended from time to time, and (3) otherwise meet or exceed industry standards.

13. A requirement that the contractor must delete any student data within a reasonable period of time if a student or parent/legal guardian who has the right to control such student data requires its deletion, unless (A) state or federal law prohibits such deletion or otherwise the retention of such student data, or (B) such student data is stored as a copy as part of a disaster recovery storage system and is inaccessible to the public, and unable to be used in the normal course of business by the contractor; however, the student or parent/guardian may request the deletion of such student data if it has been used by the contractor to repopulate accessible data following a disaster recovery.
14. A provision prohibiting the contractor from using personally identifiable information contained in student data for targeted advertising.
15. A provision prohibiting the contractor from entering into a sub-contract without the express written consent of CREC and a statement that the provisions in paragraphs 1-13, above, will be included in any sub-contract.
16. A statement that the operator is prohibited from:
 - a) engaging in targeted advertising on the its website, online service or mobile application;
 - b) engaging in targeted advertising on any other website, online service or mobile application if such advertising is based on any student data or persistent unique identifiers that the operator has acquired because of the use of its website, online service or mobile application for school purposes;
 - c) collecting or storing student data or persistent unique identifiers for anything other than furthering school purposes;
 - d) selling, renting, or trading student data, unless the sale is part of the purchase, merger, or acquisition of an operator by a successor operator and the operator and the successor operator continue to be subject to the contract provisions regarding student data.
 - e) disclosing student data, unless the disclosure is made (A) in furtherance of school purposes of the website, online service or mobile application, provided the recipient of the data uses it to improve the operability and functionality of the website, online service or mobile application, and has implemented and maintained the security procedures and practices required of contractors; (B) to ensure compliance with federal or state law or regulations or pursuant to a court order; (C) in response to a judicial order; (D) to protect the safety or integrity of users or others, or the security of the website, online service or mobile application; (E) to an entity hired by the operator to provide services for the operator's website, online service or mobile application, provided the operator contractually (i) prohibits the entity from using student data for any purpose other than providing the contracted service to, or on behalf of, the operator, (ii) prohibits the entity from disclosing student data provided by the operator to subsequent third parties, and (iii) requires the entity to implement

and maintain the security procedures and practices required of contractors; or (F) for a school purpose or other educational or employment purpose requested by a student or his/her parent or legal guardian, provided such student data is not used or disclosed for any other purpose.

An operator may use student information (1) to maintain, support, improve, evaluate or diagnose its website, online service or mobile application, (2) for adaptive learning purposes or customized student learning, (3) to provide recommendation engines for content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party, or (4) to respond to a request for information or feedback from a student, provided such response is not determined in whole or in part by payment or other consideration from a third party.

An operator may use de-identified or aggregated student information (1) to develop or improve its website, online service or mobile application, or other websites, online services or mobile applications owned by the operator, or (2) to demonstrate or market the effectiveness of its website, online service or mobile application.

An operator may share de-identified or aggregated student information for the improvement and development of websites, online services or mobile applications designed for school purposes.

Any contract entered into on and after July 1, 2018, that does not include the provisions in paragraphs 1-10, above shall be void, provided CREC has given reasonable notice to the contractor and the contractor has failed within a reasonable time to amend the contract to include the required provisions.

CREC is not required to enter into a contract complying with the above requirements if the use of an internet website, online service or mobile application operated by a contractor is unique and necessary to implement a student's IEP or Section 504 Plan and such contractor is unable to comply with the provisions of this regulation, provided that:

- (A) such website, online service or mobile application complies with FERPA and HIPAA;
- (B) CREC has made a reasonable effort to a) enter into a contract with such contractor for the use of such website, online service or mobile application; and b) find an equivalent website, online service or mobile application;
- (C) the contractor complies with the requirements of paragraph 16, above;
- (D) the student's parent /legal guardian, and, in the case of a student with an IEP, a member of the planning and placement team, sign an agreement that (1) acknowledges that the parent/ legal guardian is aware that such internet website, online service or mobile application is unable to enter into a contract complying with the provisions of this regulation, and (2) authorizes the use of such internet website, online service or mobile application.

Upon request, CREC shall provide the student's parent/legal guardian with the evidence of compliance with paragraph B, above.

CREC shall annually submit a report to the Commission for Educational Technology providing a list of all internet websites, online services or mobile applications that are being used and with which CREC does not have a contract complying with the provisions of this regulation.

III. Notices to Students and Parents/Guardians

CREC shall maintain and update, as necessary, information relating to all contracts entered into pursuant to this regulation. Not later than five business days after executing a contract pursuant to this regulation, CREC shall post notice of such contract on its website. The notice shall include the contract and: (1) state that the contract has been executed and the date on which the contract was executed; (2) provide a brief description of the contract and its purpose; and (3) state what student data may be collected as a result of the contract.

Upon notice of a breach of security by a contractor, CREC shall, within two business days, notify the students and the parents/legal guardians of the students whose student data was involved in such breach. CREC shall also post notice of the breach on its website.

Regulation approved: February 21, 2018
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