

We, the Nassau Association of School Technologists (NASTECH), representing 56 school districts in Nassau County on Long Island, NY, recognize the need to protect the privacy of student data and are fully committed to implementing all reasonable measures to meet this goal. It is our contention, however, that Education Law 2-d as currently written has placed school district leaders in the position of having to severely restrict the use of both proven effective, or new and promising, software applications, apps, and Web-based resources, or overlook the strict enforcement of the compliance requirements. This presents a dilemma that we are sure was not the intent of the law.

We understand that the Commissioner of Education will be appointing a Chief Privacy Officer who will develop a model data security and privacy policy. We further understand that this policy will guide school districts and BOCES as we develop and adopt our own data security and privacy policies. We are drafting this appeal to the incoming Chief Privacy Officer and request that he/she review and revise the more onerous tenants of the existing legislation. It is our belief that this review will serve to strike a better balance between security, privacy, and meeting educational needs in drafting the new regulations.

Firstly, we are concerned about the requirements set forth in Education Law section 2-d(5)(f)(5) specifying that third party contractors use encryption technology to protect data while in motion or in its custody from unauthorized disclosure. This implies using a methodology of technology, specified by the Secretary of United States Department of Health and Human Services, in Public Law 111-5, and sets the bar extremely high. Neither FERPA nor HIPAA require such a high level of data encryption, and many companies do not meet this standard. This effectively limits the choice of education software products available for instruction in our schools.

Secondly, and of primary concern, is that school districts and BOCES are required to adopt a Data Security and Privacy Policy and ensure that each contract with a third party vendor includes a Data Security and Privacy Plan. We strongly advocate for shifting the responsibility for assuring compliance from individual school districts to the State for the following reasons:

- Placing this responsibility on school districts is, in effect, an unfunded mandate as it requires a significant amount of time for salaried staff to manage and track these contracts.
- Requiring districts to manage contracts on an individual basis is an inefficient use of labor hours, as staff are replicating the same task thousands of times across the State for many of the same companies and services.
- Individual school districts do not have the necessary resources or expertise to assure that vendors who do sign the Data Security and Privacy Plan are actually in compliance.
- School district leaders are currently in the untenable position of having to risk being out of compliance with Education Law 2-d, or frustrating staff who must wait for extended periods of time while administrators work on processing a backlog of requests to vet new vendors.

We are requesting that the State establish a statewide Data Security and Privacy Plan, create an umbrella agreement for any vendors that want to sell services to New York State education institutions, and establish a clearinghouse of approved vendors that districts can reference. This solution would be

similar to the [Student Privacy Pledge \(https://studentprivacypledge.org\)](https://studentprivacypledge.org) established by the Future of Privacy Forum and The Software & Information Industry Association.

We recommend that the State consider partnering with existing solutions such as the [TRUST-e \(www.truste.com\)](http://www.truste.com) seal of approval to determine whether vendors meet the necessary data security threshold.

We submit that such a system would improve upon the current legislation in that vendors could be actively monitored and audited for compliance.

In closing, we understand that the NYS Attorney General is in the process of addressing these same data privacy issues for New York State as a whole, and would request that any data privacy requirements established from that office be considered, and potentially supersede, the separate requirements that have been placed on individual school districts through Education Law 2-d.