Problems with NYC DOE protection of student privacy

NYC Bar Association

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NYS Ed Law §2-d: student privacy law passed in 2014

- Every school or DOE vendor with access to student personal info (PII) must have contract showing how data will be protected & this section of contract must be posted on district website
- PII must be encrypted at all times at high level of security
- Vendor access to PII must be minimized & data deleted when no longer needed to carry out contracted services
- Parents must be told how to access their children's PII & challenge it if inaccurate
- Student PII cannot be sold or used for marketing or commercial purposes --including to improve products or create new ones
- Parents can file complaints to the district and/or State if their children's data has been improperly disclosed , with responses within 60 days; also notified of breaches within 60 days
- Vendors can be penalized financially if they do not comply with law &/or barred from future contracts
- More complete list of parent rights under the law here.

What's the harm of breaches or disclosing student PII without restrictions?

- Student PII is very valuable for identity theft as most minors do not already have credit ratings
- Their data can also be used for racial profiling, deportation, or other discriminatory actions
- Student PII can be used by ad tech and social media companies for marketing, bombarding them with ads, & even undermining their mental health
- Negative info about a student can affect their future opportunities, including jobs, college admission, medical insurance, etc.
- Student data can also be used to threaten their safety, leading to cyberbullying, deep fakes, sexual harassment, abuse, abduction

Despite Ed Law 2-d, DOE's expansive data sharing & lax oversight has led to repeated breaches

- As of Dec. 2025, DOE has agreements with at least **695 vendors, 70 research groups, and 76 related service providers** with access to student PII, according to ***privacy addendums on DOE site***
- Yet many other DOE vendors w/access to student PII have **no posted privacy agreements**– including some that have suffered breaches
- Example: In Jan. 2022 , Illuminate breach exposed personal data of more than million current and former NYC students, including dates of birth, ethnicity, academic records, special ed and/or free lunch status
- Their privacy agreement was **never posted before the breach** & when it finally was, it hinted that PII was NOT always encrypted; while security audits were offered, no indication that DOE ever asked for them.
- Data breached for thousands of former students who had long left the system and should have had their PII deleted years ago.

State Comptroller found DOE had inadequate breach notification

State Comptroller reported in 2023 that 80% of DOE breach reports lacked enough detail to tell if students and teachers were informed within the legally required 60-day timeline. In more than half, NYC DOE blew past the legal deadline to notify NYSED of the problem.

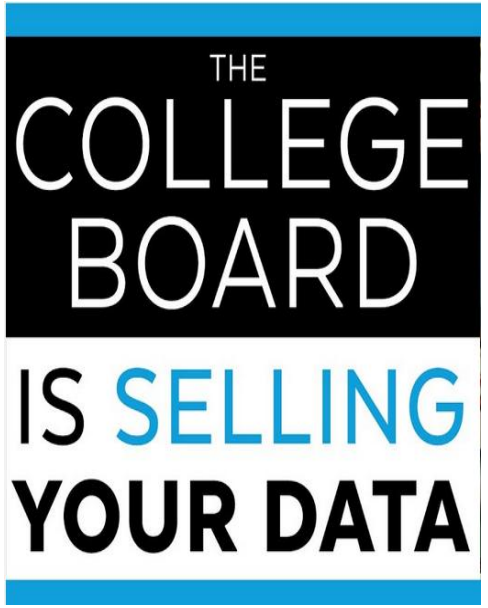
- PowerSchool Student Info System breach occurred in late Dec. 2024, & districts informed by company in early January 2025
- Though DOE denied to reporters any NYC schools had been affected, they told NYSED that at least 4 NYC schools that enroll more than 3,000 students had suffered breach, with thousands former students as well.
- Not until April did these schools finally confirmed to parents that their children's data had been breached, past 60-day deadline .
- Although PowerSchool violated their privacy agreements & hadn't utilized the most basic security protections, DOE still allows schools to use more than 16 other PowerSchool programs that can access sensitive PII

DOE revisions to Chancellor's privacy regs

- Despite need for enhanced privacy protections, Chancellor's regulation A-820 was weakened in May 2025
- The revisions allow DOE & individual schools to disclose a substantial range of sensitive PII w/any non-school vendors they think will help them or students, by calling this "**Directory Information**" with only an extremely fallible parent opt out process to prevent disclosure.
- The only PII specifically exempted from disclosure under these regs are student SSN, test scores, disciplinary data, grades, attendance, demographic info & special education and multilingual status
- Among the personal data that **can be disclosed** without consent include student names, emails, home address, phone #s, photos, participation in honors programs, arts, theater, sports & more

College Board – a known violator of student privacy

- For years, College Board made more than $100 million annually selling student PII to colleges and other organizations, for marketing purposes
- This included student names, addresses, race/ethnicity, grades, income and test score ranges, even though this sale violated the law in NYS and many other states since 2014
- We protested this sale to DOE & NYSED for ten years, until February 2024, NY Attorney General negotiated a consent agreement with College Board & they agreed to stop this practice and pay a fine of $750,000.
- But NYC parents have reported that their children's data is ***still being directly sold by College Board and/or used for targeted advertising – in violation of Ed Law 2D.***
- College Board & Governor have pushed for bills A6383, S3752 that would create a loophole in Ed Law 2D- allowing students to receive targeted ads paid for by colleges and other companies, based on their personal data, including their grades, test scores, race and ethnicity



Expansion of Gen AI further undermines student privacy

- AI companies are desperate to get their hands on data for product improvement and predict a shortage of high-quality data in near future

- DOE is currently encouraging principals and teachers to expand use of AI programs without guardrails, though many data-mine or "scrape" PII to improve their products, in violation of Ed Law 2D regs

- As attorney Daniel Solove points out: "*Scraping violates nearly all of the key principles in privacy laws, including fairness; individual rights and control; transparency; consent; purpose specification and secondary use restrictions; data minimization; onward transfer; and data security. "*

- Open AI admits that their products have "*the potential to be used …to identify private individuals when augmented with outside data*" and that their use could "*reinforce & reproduce specific biases & worldviews, including harmful stereotypical & demeaning associations for certain marginalized groups*."

Many AI products are currently used in NYC schools

- HMH AI programs include Writeable, Amira, and Writable.
- HMH agreement on DOE website links to webpage which states that the data will be used for "product improvement" in violation of Ed Law 2D regs.
- Amira collects student voices, considered sensitive biometric data, about which NYSED says: ***"schools must consider the privacy implications thereof; the impact on civil rights, if any; the effectiveness of the biometric tool; and parental input."***
- MagicSchool has no privacy agreement on DOE website though it produces many AI products in schools, including one that teachers can use to write student IEPS
- MagicSchool's public Privacy Agreement says that it is up to each client to check the privacy practices of its sub-processors, including 5 AI companies

Chancellor appointed Working Group to develop AI guidelines

- AI Working Group appointed in June 2025, yet has been sidelined, having met only a handful of times and hampered because DOE stonewalled our requests for information.
- They have refused to give us a current list of AI products used in schools along w/ their privacy policies, saying they have NDAs with the companies.
- Also refused to give us access to the AI trainings that they say they've provided to more than 80,000 teachers and other school staff
- At the Oct. 2025 PEP meeting, three AI contracts voted down – including EPS/Amira, though program still used in schools anyway.

NYC DOHMH also has privacy issues

- Nov. 2023, NYC Dept of Health & Mental Hygiene signed a three-year $23 Million contract with Talkspace to provide telehealth therapy to NYC teens ages 13-17

- They called this Teenspace and it was heavily promoted online by DOE & by Mayor Adams

- Yet before becoming a patient or securing parental consent, Teenspace website demanded teens provide their names, DOB, address, school & answer highly sensitive mental health questions online.

- US Senators & others had already pointed out weaknesses in Talkspace privacy policy and how it allowed patient info to be used for marketing purposes.

Talkspace Part II

- PCSP, NYCLU and AI for Families wrote series of letters to DOMHM with these concerns and noted that this use of data would be illegal under Ed Law 2D.

- We also discovered when a student visited the Teenspace website, their PII was shared with 15 ad trackers and 34 cookies, including Facebook, Amazon, Meta, Google, and Microsoft among others. Ironically, the DOHMH had sued these very companies for undermining teen mental health for addictive content & predatory practices

- After several months of correspondence, DOHMH reported that they had rewritten their Talkspace contract and ordered that company's privacy policy be revised. They also said that Talkspace had assured them they'd had removed all extraneous trackers and cookies, though we continued to find trackers remaining, for many weeks afterwards.

- In our final exchange with the DOHMH General Counsel and Chief Privacy Officer, we asked that they commission an independent privacy impact assessment for Teenspace mental health services, but the General Counsel said she'd never heard of such a thing.

What should be done to strengthen DOE's contracting & oversight?

- Make all their proposed contracts for vendors that are provided access to PII available upon request at least 30 days before the PEP vote and ensure that no school uses any unapproved products. Currently, DOE doesn't even allow PEP members to see contracts before their vote..

- Ensure that the full privacy policy of every vendor with access to student PII is posted on the DOE website, including specifying what data will be accessed and for what purpose, and that provisions are fully compliant with Ed Law 2D, especially those related to data minimization & a date certain for deletion.

- List each vendor's subcontractors and sub-processors in the agreement, and make these entities explicitly agree to all the provisions required by law.

Reforms to DOE contracting & oversight Part II

- Require that every tech product under consideration provides an independent data security audit, privacy impact assessment, evaluation of potential algorithmic bias, and peer-reviewed evidence showing a positive impact on efficiency and/or student learning

- Make sure that that security audits and privacy impact assessments are done annually and provide them upon request within 30 days

- Consider whether data security should be enhanced by operating all tech products that process student PII within a DOE gated, secure Private Network

To prevent potential harms of AI, Mayor & Chancellor should:

- Enact a two-year moratorium on use of AI until guidelines and regulations established to protect student privacy and mitigate other risks, including racial- and gender-based algorithmic bias, negative impact on the environment, student cheating and weakening of cognitive skills, critical thinking, and creativity.

- Expand the Chancellor's AI Working Group by adding parents, students, classroom teachers and legal experts, and provide them w/information they need to propose rigorous guidelines.

- Schedule series of public hearings throughout five boroughs to hear from parents, students, and teachers their concerns about the use of AI in schools

How can NYCBA help?

- Write a letter to Mayor-to-be Mamdani in support of above proposals.
- Urge Gov. Hochul to sign **Senate Bill S7599A**, to regulate and require disclosure of all automated decision-making tools used by govt agencies including schools and requires their impact assessments.
- Write a Memo of Opposition to A6383, S3752 that would allow College Board to continue monetizing student data
- Help our Parent Coalition for Student Privacy to scrutinize DOE policies and privacy agreements.

QUESTIONS