

In Brief

2021 AMENDMENTS TO THE STUDENT ONLINE PERSONAL PROTECTION ACT

January 21, 2021

With school districts utilizing more software and remote learning tools than ever before due to the COVID-19 pandemic, there is an increased need to ensure student data and personally identifiable student information is protected. While the Student Online Personal Protection Act (“SOPPA”) has always intended to protect student data, recent amendments to SOPPA through P.A. 101-516 (effective July 1, 2021) require school districts to take further action to protect students’ confidential information by July 1, 2021.

One of the most significant changes under SOPPA is the new requirement that Illinois school districts are prohibited from providing any personally identifiable student information, referred to as “covered information” under the Act, to any entity or individual (an “operator”) without entering into a written agreement with the operator. There are limited exceptions to this requirement. For instance, a school or school district may provide covered information to a student’s parent/guardian, to school personnel, to the Illinois State Board of Education, or to other entities as required by law.

While many school districts already maintain a practice of entering into written agreements with various software and other remote learning companies, the SOPPA amendments impose additional requirements with respect to any such agreements entered into after July 1, 2021. First, school districts must adopt a policy designating the school employees who are authorized to enter into written agreements with third-party operators. Second, written agreements with third-party operators must contain a number of provisions, including:

- a. The categories of covered information to be provided to the operator;
- b. A statement of the product or service that the operator is providing to the district;
- c. A statement that the operator will implement and maintain reasonable security procedures and practices that meet or exceed industry standards designed to protect covered information from unauthorized access, destruction, modification, or disclosure;
- d. A statement that the operator is acting as a school official under the Family Educational Rights and Privacy Act (“FERPA”);
- e. A description of how the district and operator will allocate costs for investigating and remediating a data breach attributable to the operator (including costs for notifying parents and regulatory agencies, credit monitoring, legal fees and audit costs, or any other damages that the district incurs);
- f. A statement that the operator must delete or transfer to the district all covered information that is no longer needed for the purposes of the agreement; and
- g. A statement that the written agreement will be published on the district’s website.

Third, the amendments require school districts to post and maintain on their websites the written agreements and other information concerning the third-party operators that receive or have access to covered information. This information, along with a copy of each operator agreement, must be posted to the school district’s website no later than 10 business days after entering into

an operator agreement. School districts must also update the information on their website no later than 30 days following the start of each fiscal year and each calendar year.

Finally, the SOPPA amendments address important non-contractual issues, such as parental notification in the event of a data breach and parameters regarding parental control over student data.

The updates to SOPPA will affect school districts' online or mobile service agreements beginning July 1, 2021. To ensure that your school district is prepared for the new requirements to take effect, we recommend taking the following steps in the coming months:

- 1) **Designate at least one employee to oversee your district's compliance with SOPPA's requirements.** This can be the same employee who serves as your district's director of technology or records custodian, or it can be another employee. In addition, depending on the size of your school district, consider designating more than one individual to oversee compliance with SOPPA.
- 2) **Conduct an inventory of all third-party operators currently receiving covered information.** This may require a district-wide inquiry to all staff members who work with students to ensure that all programs and applications being used by individual staff members are included in the inventory.
- 3) **Gather and review the district's existing operator agreements to determine what additional provisions may be needed.** Pay particular attention to the types of information being shared, provisions governing data security and breach procedures, and provisions governing re-disclosure by the operator to third parties or affiliates. For school districts that are looking for a standardized data privacy agreement to use as a starting point, Robbins Schwartz prepared an Illinois-specific addendum for a national data privacy agreement that complies with SOPPA and other student privacy laws, which is available through the Illinois Student Privacy Alliance. Please visit <https://itcillinois.org/services/dataprivacy/> or contact your Robbins Schwartz attorney for further details.
- 4) **Review existing policies and procedures governing electronic student records and data to determine what, if any, updates are necessary.** Remember: The SOPPA amendments require school districts to adopt a policy designating which employees are authorized to enter into written agreements with operators. For school districts that subscribe to IASB PRESS Policy Services, see PRESS Policy 7:345, *Use of Educational Technologies; Student Data Privacy and Security*.
- 5) **Prepare required documents for parent/guardian breach notification and notification concerning third-party operators.** PRESS has developed model parent/guardian notifications to accompany Policy 7:345, which Robbins Schwartz has reviewed and can provide feedback upon request.
- 6) **Create a designated page on your district's website to house all of SOPPA's required information concerning third-party operators and operator agreements.**

We look forward to assisting your school district in preparing for implementation of the SOPPA amendments as July 1, 2021 approaches. Please contact your Robbins Schwartz attorney with any questions.