

SOPPA Compliance: Recommendations and Frequently Asked Questions to Meet the July 1 Implementation Deadline

Webinar
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SOPPA Compliance: Recommendations and Frequently Asked Questions to Meet the July 1 Implementation Deadline

Presented by: Joe Perkoski, Matt Gardner, Emily Bothfeld, and Chris Gorman

May 19, 2021

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Legislative Background



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Legislative Background

- The *Student Online Personal Protection Act* was first enacted in 2017.
- The Act placed various prohibitions on web operators that collect student information.

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Legislative Background

- Public Act 101-0516, which amends the Student Online Personal Protection Act, was signed into law in August 2019.
- New requirements go into effect on July 1, 2021.

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Scope and Applicability of SOPPA



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Scope and Applicability of SOPPA



To what entities do the new SOPPA requirements apply?

“Operator” means, to the extent that an entity is operating in this capacity, the operator of an internet website online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K through 12 school purposes and was designed and marketed for K through 12 school purposes. 105 ILCS 85/5.

“K through 12 school purposes” means purposes that are directed by or that customarily take place at the direction of a school, teacher, or school district; aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; and are otherwise for the use and benefit of the school. 105 ILCS 85/5.

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Scope and Applicability of SOPPA

Are there any providers of web-based services and platforms to which SOPPA does not apply?



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Scope and Applicability of SOPPA

What type of information is protected under SOPPA?

“Covered information” means personally identifiable information or material (PII) or information that is linked to PII in any media or format that is not publicly available and is any of the following:

- 1) Created by or provided to an operator by a student or the student’s parent/guardian in the course of the student’s or parent/guardian’s use of the operator’s site, service or application (e.g., student work uploaded on an application);
- 2) Created by or provided to an operator by an employee or agent of the District (e.g., student PII entered by district personnel into a student information system); or
- 3) Gathered by an operator through the operation of its site, service, or application (e.g., a username and password or other demographic data connected to a student).

¹⁰⁵ ILCS 85/5.

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Scope and Applicability of SOPPA

Is “covered information” under SOPPA the same as “school student record information” under ISSRA?

“School student record” means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. 105 ILCS 10/2.



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Written Agreements



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Written Agreements

What provisions does SOPPA require be included in a written agreement between a district and operator?



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Written Agreements



What other contract terms in data privacy agreements should school districts be aware of?

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Written Agreements

Are districts required to amend existing operator agreements to incorporate all of the required SOPPA provisions prior to July 1, 2021?

Except for a nonpublic school, for any operator who seeks to receive from a school, school district, or the State Board in any manner any covered information, enter into a written agreement with the school, school district, or State Board before the covered information may be transferred. The written agreement may be created in electronic form and signed with an electronic or digital signature or may be a click wrap agreement that is used with software licenses, downloaded or online applications and transactions for educational technologies, or other technologies in which a user must agree to terms and conditions before using the product or service. **Any written agreement entered into, amended, or renewed must contain all of the following . . . 105 ILCS 85/15(4).**

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Written Agreements

Is there a template that districts and operators can use to meet the new SOPPA requirements for written agreements?



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National Data Privacy Agreement



Student Data Privacy Consortium

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National Data Privacy Agreement

What does the NDPA consist of?

STANDARD CLAUSES
Version 1.0 a

EXHIBIT "A"
DESCRIPTION OF SERVICES

EXHIBIT "B"
SCHEDULE OF DATA

EXHIBIT "C"
DEFINITIONS

EXHIBIT "D"
DIRECTIVE FOR DISPOSITION OF DATA

EXHIBIT "E"
GENERAL OFFER OF PRIVACY TERMS

EXHIBIT "F"
DATA SECURITY REQUIREMENTS

EXHIBIT "G"
SUPPLEMENTAL SDPC (STUDENT DATA PRIVACY CONSORTIUM) STATE TERMS FOR ILLINOIS
Version IL-NDPAv1.0a (Revised March 15, 2021)

EXHIBIT "H"
ADDITIONAL TERMS OR MODIFICATIONS

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National Data
Privacy
Agreement

How do districts
“piggyback” onto an
existing agreement as
a subscribing district?



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National Data
Privacy
Agreement

If our district does not agree with all
of the additional/modified terms in an
originating agreement in the SDPC
database, can we enter into our own
originating agreement with the
operator?

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National Data Privacy Agreement

Some operators are modifying the NDPA terms via track changes within the document, rather than via Exhibit H. Is this acceptable?

EXHIBIT "H"
Additional Terms or Modifications
Version _____

LEA and Provider agree to the following additional terms and modifications:

This is a free text field that the parties can use to add or modify terms in or to the DPA. If there are no additional or modified terms, this field should read "None."

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Questions?



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Policy &
Procedure
Requirements



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Policy &
Procedure
Requirements

Do operator agreements need Board
approval?



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Policy &
Procedure
Requirements

Does SOPPA contain any policy requirements?



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Policy &
Procedure
Requirements

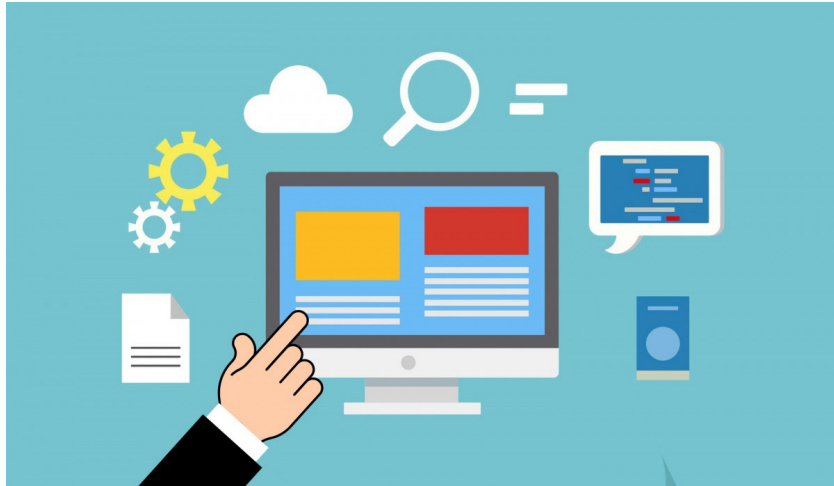
What steps should districts take to prevent employees from entering into operator agreements?



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Website Posting Requirements

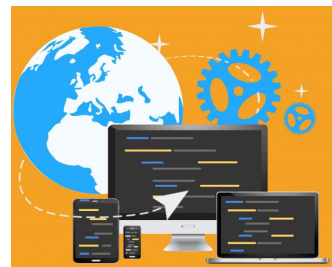


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Website Posting Requirements

What information do districts need to post on their websites as of July 1, 2021?



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Website Posting Requirements

Is there a form or template districts can use to meet the web posting requirements?



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Notice Requirements



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Notice Requirements

What other notice requirements does SOPPA contain?



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Other Requirements



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Other Requirements

What does SOPPA require in terms of security procedures and practices?



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Other Requirements

What are the requirements governing parent requests for copies of their students' covered information?

The parent of a student enrolled in a [public] school has the right to . . . ***[r]equest from a school a paper or electronic copy of the student's covered information, including covered information maintained by an operator or the State Board.*** If a parent requests an electronic copy of the student's covered information under this paragraph, the school must provide an electronic copy of that information, unless the school does not maintain the information in an electronic format and reproducing the information in an electronic format would be unduly burdensome to the school. If a parent requests a paper copy of the student's covered information, the school may charge the parent the reasonable cost for copying the information in an amount not to exceed the amount fixed in a schedule adopted by the State Board, except that no parent may be denied a copy of the information due to the parent's inability to bear the cost of the copying. The State Board must adopt rules on the methodology and frequency of requests under this paragraph. 105 ILCS 85/33(c)(2).

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Other Requirements

What if the district does not have access to the covered information being requested by the parent (i.e., because it is being maintained by the operator)?



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Other Requirements

What are the requirements governing parent requests for corrections to factual inaccuracies in their students' covered information?

The parent of a student enrolled in a [public] school has the right to . . . [r]equest corrections of factual inaccuracies contained in the student's covered information. 105 ILCS 85/33(c)(3).

- A. If the school maintains or possesses the covered information that contains the factual inaccuracy, it must correct the factual inaccuracy and confirm the correction with the parent within 90 calendar days after receiving the parent's request.
- B. If an operator maintains or possesses the covered information, the school must notify the operator of the correction. The operator must correct the factual inaccuracy and confirm the correction with the school within 90 calendar days after receiving the notice. Within 10 business days after receiving confirmation of the correction, the school must confirm the correction with the parent.

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Other Requirements

What if the district disagrees with a parent's claim that their child's covered information is inaccurate?

After receiving a request for corrections **and determining that a factual inaccuracy exists**, a school must . . . 105 ILCS 85/33(c)(3).



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Other Requirements

What are the requirements governing parent requests for deletion of their students' covered information?

A [public] school shall make a request to an operator to delete covered information on behalf of a student's parent if the parent requests from the school that the student's covered information held by the operator be deleted, **so long as the deletion of the covered information is not in violation of State or federal records laws.** 105 ILCS 85/27(g).

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Other Requirements

Does SOPPA contain any training requirements?



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Other Requirements

What are the risks of failing to comply with SOPPA?



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Questions?



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

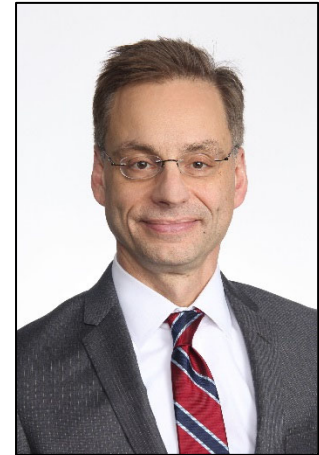
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFD Spring Conference (April 2019)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., The Ohio State University, The Mortiz College of Law

M.A., The Ohio State University

B.A., *with honors*, The Ohio State University

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Western District of Wisconsin

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Associated Colleges of
Illinois, Trustee

Council of School
Attorneys

Federal Bar Association

Illinois Association of
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Emily practices in the area of education law with a focus on student and higher education matters. She counsels school districts and higher education institutions on a variety of issues, including matters related to student discipline, Title IX, free speech, student disability rights, student data privacy and policy development. She has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General and Illinois Department of Human Rights. Emily regularly represents school districts and higher education institutions in state and federal court on civil rights and constitutional claims and breach of contract claims.

Prior to joining Robbins Schwartz, Emily represented students with disabilities in special education matters. Emily attended the George Washington University Law School, where she was a member of the George Washington International Law Review and the GW Law Moot Court Board. Prior to attending law school, Emily taught high school mathematics and science in Hangzhou, China.

RECENT PUBLICATIONS

"Disabled Athlete Can't Support ADA Claims," *Chicago Daily Law Bulletin* (2018)

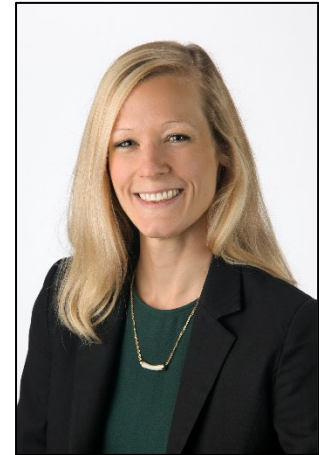
RECENT PRESENTATIONS

Legislative Update: A Review of New (and Proposed) Laws Affecting Illinois Community Colleges' Risk Management Practices, Illinois Community College Chief Financial Officers Fall Conference (October 2019)

A Student's "Right" to a College Education: Due Process Rights in Academic and Non-Academic Discipline, Illinois Community College Chief Student Services Officers' Summer Meeting (June 2019)

Updates and Recent Developments out of the U.S. Department of Education, Chicago Bar Association Education Law Committee Spring Seminar (March 2019)

Legal Hot Topics for Nursing Program Administrators and Faculty, Illinois Organization of Associate Degree Nursing (March 2019)



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Education Law
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Matthew Gardner is a member of the firm's construction, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights and defending defect claims.

Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2020-2021)

RECENT PUBLICATIONS

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

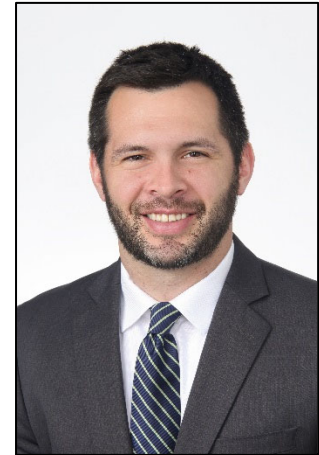
Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"School District and Zoning Exemptions," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

Construction Law 101, National Business Institute (December 2019)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
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U.S. District Court for the
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Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
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ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Purchasing & Bidding Common Problems & Solutions, Illinois ASBO (March 2019)
Construction Contracts: Boilerplate Language Landmines You May Not Know, National Business Institute (February 2019)

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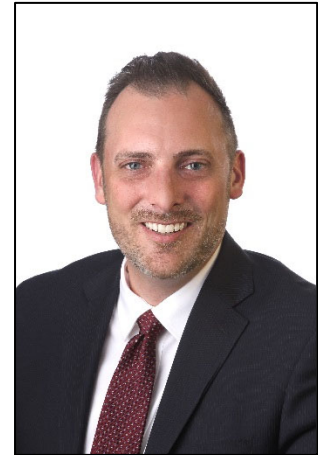
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Chris counsels employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

“The Future of For-Profit Online Charter Schools,” *Labor and Employment Law Quarterly*, American Bar Association (2016)



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J.D., University of
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