



EXECUTIVE DEPUTY COMMISSIONER
(518) 473-8381
E-mail: Sharon.Cates-Williams@nysed.gov

November 7, 2023

Nadine Morrell
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Dear Ms. Morrell:

Pursuant to Section 170 of the Executive Law, the Commissioner of the New York State Education Department (NYSED) respectfully submits an overview of the steps that were taken to implement the recommendations contained within the Office of the State Comptroller's (OSC) report "Privacy and Security of Student Data, Report 2021-S-29" (the Audit Report). OSC recommendations as found in the report are in italics.

1. *Develop and implement controls to monitor school districts' compliance with Part 121.*

Neither Education Law §2-d nor Part 121 of the regulations of the Commissioner of Education require the NYSED Privacy Office to monitor educational agencies for compliance. As well "[n]either the Regents nor SED is responsible for the day-to-day operation of the schools."¹ "[S]chool districts are independent bodies vested by the State with considerable power."² Thus, while monitoring is often an effective compliance tool, the obligation to ensure the privacy and security of student data rests with each educational agency.

However, NYSED's Privacy Office has taken the following actions since the Audit Report was issued:

- a) After a data incident report is filed with the Privacy Office, ensure that a date by which parents and eligible students were notified of the breach or data incident is included. If it is not, a note is made in the data incident excel spreadsheet and the educational agency is contacted every ten days until the Privacy Office is assured that parents and eligible students were informed of the incident as is required by Section 121.4 (c) of the regulations of the Commissioner.
- b) Monitored one hundred and twenty (120) educational agencies for compliance with the Family Education Rights Privacy Act (FERPA); Education Law Section 2-d and Part 121 of the regulations of the Commissioner of Education. Educational agencies were notified by memorandum dated July 19, 2023, of the upcoming monitoring and what information NYSED's Privacy Office sought on educational agencies' websites. Nine school districts were listed in that memo as having compliant example websites. Beginning in September 2023, a diverse sampling of educational agencies located throughout the State was monitored, including at

¹ *Campaign for Fiscal Equity, Inc. v. State*, 100 NY2d 893, 904 (2003).

² *Paynter v. State*, 270 AD2d 819, 820 (4th Dept 2000).

least one large city school district, school district's with less than 500 students and several charter schools. The Privacy Office is currently working on notifying all monitored educational agencies of their findings. Any educational agencies that are deficient will be asked to address those deficiencies and respond to the Privacy Office by a date certain.

2. *Continue to work on completing a full data and asset classification of all current Department systems and data.*

NYSED had already undertaken a data inventory and classification project when the Audit Report was issued. Working with NYSTEC, NYSED was able to develop an efficient data classification program. To date, four NYSED program areas have completed or are in the process of completing their data asset classification and inventory.

NYSED has invested in an application that will be used as the central repository for inventory to enhance the management and identification of systems.

NYSED is working on an implementation plan to roll out the agency-wide Data Classification Program to all of the program areas in the month of January 2024.

NYSED will continue to do the following:

- Build upon the partial inventories that have been established.
- Work with all Department program offices to identify the data assets stored in systems to be properly classified.

3. *Implement the recommendations detailed in the preliminary report to strengthen technical controls over the selected systems reviewed.*

As stated in NYSED's response to the preliminary findings and the draft audit report findings issued February 24, 2023, NYSED agrees with all of the audit findings pertaining to technical controls and has completed implementation of the actions NYSED has stated it would undertake.

NYSED appreciates the opportunity to advise the Office of the State Comptroller as to what steps were taken to implement the recommendations contained in the Audit Report.

If you have any additional questions or need additional clarification, please contact Louise DeCandia at Louise.DeCandia@nysed.gov.

Yours truly,


Sharon Cates-Williams

c: Commissioner Rosa
Daniel Morton-Bentley
Louise DeCandia
Michael St. John
Marlowe Cochran
James Kampf
Jeanne Day