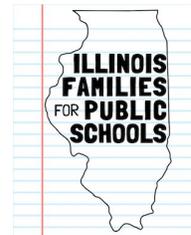


Illinois Families for Public Schools
332 S Michigan Ave
Lower Level Suite i252
Chicago IL 60604



January 26, 2021

Chicago Board of Education
1 N Dearborn ST, Suite 950
Chicago IL 60602

To the Chicago Board of Education:

Re: Policy on Student Online Personal Protection to be voted on at the January 27, 2021 meeting of the Chicago Board of Education

We are pleased that you have revised the proposed policy for compliance with the new requirements of PA-101-516 since the version initially you released for public comment in October 2020.

Thank you for taking our input and suggestions on that draft policy into consideration in your revisions. We feel that this has resulted in a significant improvement in the policy.

In particular, we greatly appreciate the addition under subitem IV(b)3, which now reads (underline showing new wording): “Teachers and staff are prohibited from entering into agreements for any software or requiring students to do so.”

We hope the inclusion of this wording will end the deeply problematic practice in Chicago Public Schools of compelling minors to enter contracts with third parties in order to receive the free and appropriate public education to which they are entitled by federal law. And it should provide significant justification for the Board to ensure, as intended under PA-101-516, that *any* transfer of students’ covered information to operators for school purposes take place under a written agreement between the operator and the school district. Although we remain concerned that operators may attempt to find a loophole to this by compelling *parents’* of students to enter such contracts, as an initial step, we are satisfied with this modification.

Despite improvements, there remain some important items that the revised policy language does not address sufficiently. We outline these in detail below.

It is possible that the guidelines referred to in this policy may address some of the issues included below, and we are eager to have access to the guidelines in order to ascertain if this is the case. If the guidelines are not in fact sufficient, we urge the Chicago Board of Education to seek to amend this policy in the near future, preferably before July 1, 2021, the PA-101-516 effective date.

Finally, we would also like to caution the Board that, if this policy has in any way been written conditional on the hopes of further amendment to the Student Online Personal Protection Act (SOPPA), such hopes may be misplaced. PA-101-516, unlike the original version of SOPPA (PA 100-315), was extensively negotiated in 2019—with parents, privacy experts, teachers, school management organizations representing the entire state of Illinois and nearly countless lobbyists from the tech industry all included. The bill language underwent six amendments before passing with large majorities in both chambers of the Illinois General Assembly. Any desire to further amend PA-101-516 should be examined with that history in mind.

Prohibiting the exchange of data for any consideration, monetary or otherwise

Section III(b) lists operator prohibitions including a prohibition on “[s]elling or renting a student’s information.” As mentioned in our letter to the Board on 11/2/2021, the clear intent of both PA 101-516 and its predecessor was to prevent operators from profiting off their access to student data.

Despite our previous request that the Board do so, *sell* or *rent* is not defined in this policy. We continue to hope that the Board, whether through individual contract provisions, guidelines, or a further revision of this policy, will ensure that operators do not exploit their access to our children’s personal information for commercial purposes.

In particular, because some third-parties insist that licensing data does not count as selling or renting, we fear that the spirit of SOPPA continues to be ignored and, arguably, the letter of the law as well. Operators simply should not be allowed to provide covered information itself or access to covered information to any third party in exchange for a monetary or other consideration—no matter what verb they choose to use to describe this practice.

Data deletion duties of schools and operators

As we pointed out in our letter on 11/2/2021, PA-101-516 Sec 15.2 states that operators have the duty to:

"[d]elete, within a reasonable time period, a student's covered information if the school or school district requests deletion of covered information under the control of the school or school district, unless a student or his or her parent consents to the maintenance of the covered information."

In addition, under Sec 27(g), schools have the duty to fulfill requests from parents to have their children’s covered information deleted by communicating those requests to operators:

“A school shall make a request, pursuant to paragraph (2) of Section 15, 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.”

This operator duty should be included as a subitem under III(a) like the other duties from Sec. 15, and it remains unclear to us why the Board has chosen to exclude it.

We remain hopeful that the Board, whether through individual contract provisions, the guidelines mentioned above, or, ideally, a further revision of this policy, will ensure that operators commit to fulfilling this duty and that, moreover, the right to request such deletion is communicated clearly to parents.

Furthermore, as mentioned in our previous letter, although it is not required under PA-101-516, we continue to urge the Board to consider implementing, as an update to this policy or a separate initiative, a requirement that operators agree to and carry out an annual deletion of non-longitudinal data (*cf.* this documentation from [Riverside \(IL\) District 36](#) and [Montgomery County \(MD\) Public Schools](#).)

Validation of software

As we stated in our 11/2/2021 letter, the Information Security department should evaluate software not only for whether the operator maintains reasonable security procedures and practices, but also whether the software complies with all privacy practices that PA-101-516 or other state or federal laws require or prohibit.

This would include verification of what covered information is being collected; whether and how it is stored; if it will be used for purposes other than pre-K through 12 school purposes; and whether parents will be able to exercise their rights to inspect, correct and request copies or deletions of covered information.

As the language of Item IV(a)3b does not require this, we continue to ask for inclusion of this either in the amendment of this policy, in guidelines for operator contracts, and/or in each contract with an operator as a provision.

Parents' right to know

Very large amounts of extremely sensitive information about our children are being collected and stored for school purposes beyond classroom instruction. PA 101-516 is *not* simply about data that children provide or generate in the course of instruction or classwork. The law applies to *any* covered information whether it is the student, the parent or an employee or agent of the school providing that data or whether it is “[g]athered by an operator through the operation of its software” (105 ILCS 85/5)

Unfortunately, as written subitem VI(c)2 says merely that “Parents have the right to know which authorized software are being used in the classroom...” The Board should broaden this language to clarify that parents have the right to know how their children’s data is being collected, stored and processed *no matter* whether it is for the purpose of classroom instruction or another preK through 12 school purpose, as follows:

[Parents have the right to know which authorized software are being used in the classroom to collect, store and process their child’s covered information and to consent to the use of authorized software.](#)

Parents’ right to consent

In the October 2, 2020 version of the proposed policy, subitem VI(c)2 read: “Parents have the right to know which authorized software are being used in the classroom and to consent to the use of authorized software.” In the current version, this sentence now reads: “Parents have the right to know which authorized software are being used in the classroom and when outlined in the guidelines consent to the use of authorized software.”

Without details on under what conditions the guidelines say parental consent will be required, we are concerned about the addition of this clause. Although the Family Educational Rights and Privacy Act was greatly weakened by the US Department of Education issuing regulations allowing third parties to count as school officials for the purposes of exceptions to written consent from parents for disclosing student data, it remains the case that written parental consent for disclosing the data of students under the age of 18 is a best practice from a privacy standpoint.

District-level auditing of authorized software

Subitem VI(a)1 places the locus of responsibility at the school level for auditing whether unauthorized or prohibited software are in use: “The principal must ensure teachers and staff are using authorized software.” As we stated in our 11/2/2021 letter, we recommend that the Board create a district-level procedure to audit this and, to facilitate such an audit, require that the school maintain its own inventory of what software is in use by school personnel. This will have the added benefit of helping to keep parents informed about how their child’s covered information is used. While we would prefer that this were stated explicitly in this policy, our concerns could be partially appeased if this were stated in written guidelines issued to schools.

Thank you for your consideration of these comments. We look forward to continued work with the Board to further strengthen the policies regulating how student data is secured and protected in CPS.

Submitted,

Cassie Creswell, director
on behalf of Illinois Families for Public Schools