

Board of Regents Update July 2019

At the July 2019 Board of Regents meeting, there were several topics that we think will be useful for school districts to review prior to the start of the 2019-2020 school year.

1. Amendment to §155.17 of the Regulations of the Commissioner of Education Relating to School Safety Plans
Previously, district-wide safety plans were due to be submitted to the Commissioner of Education by October 1, 2019 and building-level safety plans were due by October 15, 2019. This amendment changes this timeline so that both plans are due by October 1, 2019. This change is in effect as an emergency action and will be presented at the October 2019 Board of Regents meeting for a permanent adoption of this timeline.

Additionally, beginning in the 2019-2020 school year, school districts and charter schools that employ or contract with law enforcement or private security personnel to provide school security must establish a written contract or memorandum of understanding ("MOU") that is developed with stakeholder input. This agreement shall define the relationship between the district, school personnel, students, visitors, law enforcement, and the security personnel. This agreement must also define law enforcement or security personnel's roles, responsibilities and involvement within a school and clearly designate the role of school discipline to the school administration. The agreement shall be incorporated into and published as part of the district safety plan.

Implications for Districts

Districts should be aware that the deadline for the building-level plans has been moved up to October 1, 2019 and that the contracts or MOUs are to be included in the district-wide safety plan.

2. Amendment to Section 104.3 of the Regulations of the Commissioner of Education Relating to Assessments and Student Official Transcripts and Permanent Records
This amendment extends the previous Commissioner's Regulations which contained a ban on including scores from State administered standardized English Language Arts or math assessments on a student's official transcript or permanent record for grades 3-8. It also extends the requirement that test results on such assessments sent to parents include a clear and conspicuous notice that such results will not be included in the student's official transcript or permanent record and are being provided to the student and parents for diagnostic purposes only. This amendment is effective immediately.

Implications for Districts

This is not a change from the existing Commissioners Regulations, but it is important to know that this provision, which was previously adopted as a temporary emergency action, will remain in effect as a permanent rule.

3. Amendment to Section 175.5 of the Regulations of the Commissioner of Education Providing for a Waiver for Up to Four School Years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022) for Certain School Districts That Cannot Meet the Minimum Instructional Hours Because of Safety and/or Scheduling Issues
Some districts have raised concerns that, due to safety and/or other scheduling challenges, they are unable to meet the minimum annual instructional hour requirements. This amendment allows such districts to apply to the Commissioner by November 15, 2019 for a single waiver for up to four school years, provided they meet certain requirements. This amendment became effective on July 16, 2019 as an emergency action, and it is anticipated that the amendment will be presented at the October 2019 Board of Regents meeting for permanent adoption.

Implications for Districts

If your district is having significant concerns regarding its ability to meet the minimum instructional hours, you may want to consider seeking a waiver.

4. Proposed Addition of Part 121 to the Regulations of the Commissioner of Education Relating to Strengthening Data Privacy and Security in New York State Educational Agencies to Protect Personally Identifiable Information

Based on feedback received during the public comment period, the Board of Regents P-12 Education Committee is considering revised regulations relating to protecting personally identifiable information ("PII"). If adopted at the October 2019 Board of Regents meeting, the revised regulations will become effective on October 23, 2019. The proposed revisions include the following major changes or points of clarification:

- Districts will have more time to prepare a privacy and security policy. The date educational agencies were required to adopt the Data Privacy and Security Policy was December 1, 2019, but is now July 1, 2020.
- There has been further clarification and consistency in the application of certain terms including "Encryption" and "Commercial and Marketing Purpose."
 - Encryption – means methods of rendering PII unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5.
 - Commercial or Marketing Purpose – means the sale of student data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of student data for advertising purposes, or to develop, improve or market products or services to students.
- Educational agencies may require that complaints must be made in writing. This is important because it avoids the potential for individuals to allege they made oral complaints to districts.
- There has been clarification on the annual training for employees regarding data security and privacy. Training must be provided annually to officers and employees with access to PII. Training should include, but not be limited to, training on the state and federal laws that protect PII and how employees can comply with such laws. Training may be delivered using online training tools and may be included as part of training the educational agency already offers to its workforce.
- The amendments clarify that when a parent or student over the age of 18 requests a service or product from a third-party contractor and provides express consent to the use or disclosure of PII by the third-party contractor for purposes of providing the requested product or service, such use by the third-party contractor shall not be deemed a prohibited marketing or commercial purpose.
- Educational agencies are required to verify that only authorized individuals inspect and review student data.
- Educational agencies must report breaches or unauthorized releases of student or teacher or principal data by third-party contractors to the Chief Privacy Officer appointed by the Commissioner of Education.

The responses to the public comments also clarified that:

- ED does not believe an agency can completely outsource the job of Data Protection Officer, but does not prohibit the use of a third-party, such as BOCES, from providing some of the functions;
- 2-d applies regardless of the kind of agreement, this includes click-wrap agreements;

- the Department will provide a model data security and privacy policy prior to the date that educational agencies must adopt their policies; and
- the regulations will apply to any contracts effective since March 31, 2014.

Implications for Districts

There are several implications, but the most important one is that districts will not have to adopt a Data Privacy and Security Policy until July 1, 2020. Districts should consider requiring complaints to be in writing as a part of this Policy. Districts should be aware of which click-wrap agreements they currently have with third-parties that have access to student, teacher, or principal data because they may not be able to use them in the 2020-2021 school year.

5. ESSA Financial Transparency Requirement

The Board of Regents provided an update regarding the ESSA transparency requirement. Specifically, in early 2020 all school districts and charter schools will be required to submit a financial transparency report for inclusion in their report cards that provides the “per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures of Federal, State, and local funds, disaggregated by source of funds.” A final guidance document on this requirement is expected to be issued by SED shortly.

Implications for Districts

Districts should be aware of the reporting requirements and be sure they are gathering the appropriate financial data.

If you have questions about the topics referenced in this memo, please contact Megan K. Thomas, [Candace J. Gomez](#), or any attorney at Bond with whom you are regularly in contact.



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