



New York State
EDUCATION DEPARTMENT

Knowledge › Skill › Opportunity

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Proposing Part 121 of Commissioner's Regulations – Review of Revisions

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Summary of Public Comments

July 31-September 16, 2019

The majority of comments submitted related to §121.9(c) of the proposed rule.

Two primary themes:

- Would weaken the provisions of Education Law § 2-d
- Would impact the practice of higher education institutions to send targeted mailings to students contemplating college without parental consent

Review of Proposed Part 121 Revisions

Section	Language	Action
121.4(a)	Each educational agency must establish and communicate to parents, and eligible students, teachers, principals or other staff of an educational agency , its procedures for them to file complaints about breaches or unauthorized releases of student data and/or teacher or principal data.	Provision revised to add clarifying language
121.4(c)	Following its investigation of a submitted complaint, the educational agency shall provide the parent or eligible student, teacher, principal or any other staff member of the educational agency who filed a complaint with its findings within a reasonable period but no more than 60 calendar days from the receipt of the complaint by the educational agency. Where the educational agency requires additional time, or where the response may compromise security or impede a law enforcement investigation, the educational agency shall provide the parent, or eligible student, teacher, principal or any other staff member of the educational agency who filed a complaint with a written explanation that includes the approximate date when the educational agency anticipates that it will respond to the complaint.	Provision revised to add clarifying language

Review of Proposed Part 121 Revisions (contd.)

Section	Language	Action
121.9(c)	Where a parent or eligible student requests a service or product from a third-party contractor and provides express consent to the use or disclosure of personally identifiable information 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 marketing or commercial purpose prohibited by this Part.	Provision deleted
121.11 (b)	Except as otherwise provided in subdivision (a) each violation of Education Law §2-d by a third-party contractor or its assignee shall be punishable by a civil penalty of up to \$1,000.00; a second violation by the same third party contractor involving the same data shall be punishable by a civil penalty of up to \$5,000; any subsequent violation by the same third party contractor involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law §899-aa (6) (a).	Provision revised to add clarifying language

Review of Proposed Part 121 Revisions (contd.)

Section	Language	Action
121.11(f)	Added clarifying language to explain that the Commissioner would make a “final determination as to whether the breach or unauthorized release of student data or teacher or principal data on the part of the third-party contractor or assignee was inadvertent and done without intent, knowledge, recklessness or gross negligence and whether or not a penalty should be issued.”	Provision revised to add clarifying language

Next Steps

- SED will file a Notice of Revised Rulemaking in the State Register for a 45 day public comment period.
- We anticipate bringing the regulation before the board for adoption in January 2020.

Discussion.



Thank you.