National Data Privacy Agreement: Development and Usage Processes

Student Data Privacy Consortium
The National Data Privacy Agreement Model Background

I. The National Data Privacy Agreement

The Student Data Privacy Consortium (SDPC) is a unique collaborative of schools, districts, regional, territories and state agencies, policy-makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns. The Consortium leverages the work done by numerous partner organizations but focuses on those issues being faced by “on-the-ground” practitioners.

The SDPC’s first project was to use a common Data Privacy Agreement (DPA) clause set but after a great amount of growth and feedback, schools and states indicated they needed their own state-specific version of the DPA for larger adoption. Three years later the conversation came full circle with 13 states using very similar DPAs with enough commonality that a national DPA Project Team was formed. This group explored the viability of developing a draft that could be used by any school/district across the US. Two years later, the Community released the first version of the National Data Privacy Agreement (NDPA).

The NDPA has been developed with extensive review and comments from districts, state organizations, marketplace providers and their legal representatives. The document is designed to address common student data privacy concerns to streamline the educational application contracting processes for schools/districts who do not have the legal or fiscal resources and vendors who previously had to sign “one off” contracts with each of the over 13,000 US school districts. While the NDPA allows for any state specific legislative requirements, the majority of the privacy expectations are standardized and may be used in addition to a Service Agreement (e.g. vendor Terms of Service (TOS) Agreements). In the event there is conflict between the DPA and any other Service Agreement with respect to student data, this DPA shall supersede all other agreements written or oral.

SDPC’s NDPA Policy, Procedures and Usage (PPU) Project Team has the charge to:

- Continue to develop continuity in the NDPA usage across Alliances/Country,
- Establish clear, transparent and open change management processes to the NDPA,
- Identify streamlining opportunities for usage of the NDPA.

This document has been developed to protect the integrity of the NDPA, as well as the usage, change and approve Community expectations adopted by the members of the Student Data Privacy Consortium (SDPC).
The National Data Privacy Agreement Model Usage

II. V1 Usage Guidelines

A. Usage Cover Page (Appendix A)

While the National DPA has been developed to simplify the privacy expectations between end users and marketplace providers, appropriate usage of the Agreement is key. The optional NDPA cover letter to this National Data Privacy Agreement Development and Usage Processes (Appendix A) starts with a set of guiding principles and usage expectations established by Alliance leaders across the country. Realize that the NDPA is a living document that requires it to be “locked down” (ideally a locked but fillable document) until the next release determined by the Project Team and the SDPC leadership. Again, usage of the Cover Page is optional for each Alliance.

B. Overview

Do not alter the document in any way, such as adding redlines, or otherwise attempt to modify the material terms (clauses) of the Agreement, without the knowledge and consent of both parties. Failure to comply with these guidelines will result in the deletion of the Agreement and notification to all users of the SDPC Resource Registry.

C. Redlines

Put simply, NO modifications (red lines, edits, etc.) to the standard clause set is admissible in a posted NDPA to continue to use the official NDPA moniker. Negotiated modifications to the standard clauses may only be captured through the use of Exhibit G and/or Exhibit H. Each Alliance will collect and post redline submissions to the SDPC Community site for reference prior to the next set of version changes to the NDPA. If redlines are used, then the Agreement cannot be deemed as the state Alliance NDPA.

D. Name Use Conventions

The first version of the NDPA (NDPA v1.0) is expected to be used by state Alliances by adding their state abbreviation, draft number and agreement type when required (i.e. OH-NDPA-v1, CA-NDPA-v1.0 Vendor Specific, MA-NDPA-v1.0 District Modified, etc.). This allows for any state and local specific requirements to be identified by users in that draft. NO modifications (red lines, edits, etc.), unless done through Exhibit G and Exhibit H, to the standard clause set is admissible to continue to use the official NDPA moniker.
E. General Offer of Privacy Terms (Exhibit E)

Exhibit E, or the General Offer of Privacy Terms, continues use in the NDPA from previous state specific DPAs. Exhibit E provides the same privacy protections found in the NDPA between an originating LEA to any other LEA in the Alliance, for the term of the original NDPA, who accepts the Provider’s signature on the Exhibit (“piggyback” agreement).

F. Supplemental State Specific Requirements (Exhibit G)

The State Supplement is an optional set of terms that will be generated on an as-needed basis by the State Alliances. The scope of these State Supplements will be to address the requirements of any state specific data privacy statutes and their requirements to the extent that they require terms in addition to, or different from, the National Standard Clauses. Exhibit G terms should be limited to those mandated by specific laws or regulations. Exhibit G additions will supplement or replace the referenced standard NDPA clause(s). The State supplements will be written in a manner such that they will not be edited/updated by individual parties and will be posted on the SDPC Resource Registry website to provide the authoritative version of the terms. It is expected the State Alliance Leadership will provide Exhibit G requirements to NDPA Policy, Procedure and Usage Project Team.

G. Vendor Specific and District Modified (Exhibit H)

The only other area of possible NDPA modification, and may or may not be included by State Alliances while still using its official NDPA naming convention, is in the optional Exhibit H. Exhibit H allows for “non-state mandated” changes by Alliances, LEAs or Providers. When such modifications are agreed upon between Providers and LEAs are included, and such modifications are set forth in Exhibit H, the new title of the NDPA must include “Vendor Specific” or “District Modified” and be uploaded as such to the Registry. Except as agreed to in Exhibit H, modifications made to the standard clause set outside of the Exhibit H nullifies the usage of the NDPA moniker.

H. Signatures

The collection of signatures on the NDPA will be determined by each Alliance or LEA leadership. Alliances may accept various forms of e-signatures while others require handwritten signatures on agreements.
I. Posting Conventions
Alliance NDPA templates will be posted to the SDPC Resource Registry upon approval of state Alliance’s established policies and procedures. Access to the templates will be determined by the Alliance leadership in that state. Every effort will be made to make templates as similar as possible with appropriate branding and formatting.

J. Adoption
State Alliances may establish guidelines for their members to review and adopt the most recent version of the NDPA. In most cases, schools may adopt the NDPA on their own schedule such as the immediately upon version release or during the next contract renewal period with a marketplace provider.

National Data Privacy Agreement Development and Approval Process

III. Revisions

A. Project Team Role
The NDPA Policy, Procedure and Usage (P, P and U) Project Team is the ongoing approved entity to manage the NDPA draft development and policy and procedures surrounding its usage. This group is made up of all Community membership types with work minutes and outputs accessible via the Community site for review. The Project Team is the “collection point” for the Community in requesting NDPA modifications to the Agreement.

Team Goals:
- To continue to develop continuity in the NDPA usage across the Alliances/Country,
- To establish clear, transparent and open change management processes to the NDPA,
- To standardize, identify and streamline opportunities for usage of the NDPA.

B. Management Board Role
As with all SDPC activities, the Membership elected SDPC Management Board reviews the work of the Project Team and has the duty to approve or not approve work deliverables as well as schedule and oversee the membership review and approval processes.
C. Naming Conventions
The SDPC Management Board, in conjunction with the NDPA Policy, Procedure and Usage Project Team, is charged with developing the standard naming convention for future drafts produced by the SDPC Community. It is expected that major agreed upon revisions (i.e. numerous new or modified clauses, exhibits or additional guidance) will utilize major release version numbers v1.0, v2.0, v3.0, etc. This will be driven when significant changes are made to the draft. Minor agreed upon revisions of the draft (typos, minor word agreement, small Exhibit modifications, etc.) will utilize the minor revision edits of v1.1, v1.2, v2.1, v2.2, etc.

D. Membership Input and Community Review
There will be various “input” modification opportunities into subsequent NDPA releases. The Community is notified that a Community Review is underway of the current draft. Any SDPC Community member can provide feedback to the Project Team at any time between drafts as the most recent release of the NDPA is termed the “Public Review” of the draft.

The Project Team could determine there be multiple Community Reviews of the draft under discussion. All comments are gathered and considered for the next version with a final list of all suggestions and inclusion or non-inclusion is provided to the Community. The Project Team then submits a draft to the SDPC Management Board for approval. Should a NDPA Draft release be rejected, the NDPA Policy, Procedure and Usage Project Team will work with the SDPC Management Board to address any issues raised. Once this is completed, it can be submitted again for the full review process.

E. Approval Process
The final approved version of the next SDPC NDPA is reviewed and voted on by the SDPC Management Board after thorough Community Review. As seen in all successful collaborative communities, a general consensus is strived for, but not all parties may have their edits included in the release.
Suggested NDPA Revisions identified

Suggested Revision Summary to NDPA PPU Project Team

Summary of Changes and Decisions to Community

Draft NDPA version published for Community Member Review/Comment

Project Team review

Changes Summarized and Determined

Edits made to current NDPA version

Comments/feedback reviewed and edits made to draft NDPA version (if required)

Proposed Draft NDPA sent to SDPC MB for approval

SDPC MB review

Rationale/eds provided by SDPC MB

Updated NDPA version published

Approved/rejected

rejected

approved
Appendix A - Optional National Data Privacy Agreement Development and Usage Process Cover Page

Data Privacy Leader,

The following usage guidelines are in place to protect the integrity of the National Data Privacy Agreement (NDPA), as well as the expectations of the process adopted by the members of the Student Data Privacy Consortium (SDPC). Failure to comply with these guidelines will result in the deletion of an Agreement and notification to all users of the SDPC Resource Registry.

Usage Key Components:

- Do not alter the document in any way, such as by adding redlines, or otherwise attempt to modify the material terms (clauses) of the Agreement except as set forth below.
  - Changes to the standard terms of the NDPA may be made in two places: Exhibit G (state specific changes) and the optional Exhibit H (vendor and district agreed upon changes).
  - Exhibit E (General Offer of Privacy Terms) is valid with State Alliance Standard NDPA (no changes or changes in Exhibit G), Vendor Specific and District Modified Agreements (Modified through Exhibit H)
  - NDPA Naming Conventions Options when posting:
    - State abbrev-NDPA-v1.0 (with or without Exhibit E) = no changes to clauses and edits in Exhibit G (Example MA-NDPA-V1 (with Exhibit E))
    - State abbrev-NDPA-v1.0 Vendor Specific (with or without Exhibit E) or State abbrev-NDPA District Modified-v1.0 (with or without Exhibit E) = no changes to clauses and all vendor specific and district edits in Exhibit H

- If the LEA and Provider agree to modify the Agreement clauses without utilizing described Exhibits, the Agreement will be deemed District Modified Agreement and not the Alliance NDPA. The LEA is responsible for uploading the final document to the SDPC database that clearly identifies it as a District Modified Agreement.