

105th AACRAO ANNUAL MEETING

MARCH 31 – APRIL 3, 2019
LOS ANGELES CONVENTION CENTER ♦ LOS ANGELES, CA



DATA PRIVACY & PROTECTION

UPDATE ON TECHNICAL IMPLEMENTATION

PESC Data Privacy & Protection Task Force

Tuesday April 2, 2019 | 8am PDT

Session ID #6259 | Room #506 L2



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Session Rules of Etiquette

- *Please silence your electronic devices.*
- *Please complete the session evaluation using the AACRAO mobile app.*
- *If you must leave the session early, please do so as discreetly as possible.*
- *Please avoid side conversation during the session.*

Thank you for your cooperation!

PESC Data Privacy & Protection Task Force
Session ID #6259

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Agenda

- 1) Introduce PESC Data Privacy & Protection Task Force
 - 2) Highlight AACRAO & PESC Resources & Efforts
 - 3) Review Key Components of Rules & Regulations
 - 4) Discuss Relationships & Scenarios
 - 5) Propose Solution | Phase 1 Implementation
 - 6) Next Steps & How To Participate
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Outcomes of this session:

- Learn about AACRAO & PESC resources on privacy
 - Understand how major service providers & partners are digitally communicating privacy data
 - Encourage active discussions within institutions & with service providers and vendors
 - Promote access to the Data Privacy & Protection Task Force
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Postsecondary Electronic Standards Council

- Standards-development & standards-setting body
 - Voluntary consensus-based model (*not authoritative*)
 - Founded 1997*
 - AACRAO & PESC History and Partnership
 - Vision of global connectivity & data integrity
-

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How PESC Operates

- Free & Open Groups (Admissions, CanPESC, Data Privacy, JSON)
 - Member-Based Groups (Competencies & Credentials, EdExchange)
 - Goals of PESC Mission (501c3 non-profit):
 - Standardization & PESC Approved Standards (EDI, JSON, PDF, JSON)
 - Identify common industry-shared problems & foster open, transparent collaboration
 - Optimize institution's digital performance
 - Enable sustainable solutions across disparate technologies
-

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Data Privacy & Protection Task Force

- *From PESC Board Retreat June 2018, Task Force launched at Fall 2018 Data Summit San Francisco*
 - Ensure uniform, technical implementation of GDPR
 - Prepare for additional rules (FERPA, California, etc.)
 - Harmonize with policy leaders & practitioners
 - Serve as a free, open & transparent information clearinghouse
 - Propose technology-neutral solutions
-

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MULTIPLE STAKEHOLDERS. ONE VISION.

DATA PRIVACY

DATA PRIVACY & PROTECTION TASK FORCE

Leading the ESTABLISHMENT AND ADOPTION OF TRUSTED, OPEN DATA STANDARDS ACROSS THE EDUCATION DOMAIN

[HOME](#) | [ABOUT US](#) | [GROUPS AND INITIATIVES](#) | [PESC APPROVED STANDARDS](#) | [EDEXCHANGE](#) | [GEO CODE](#) | [EVENTS](#)

Data Privacy &

PROTECTION TASK FORCE

is the authoritative group within PESC ensuring PESC supports all applicable data privacy & protection rules and regulations.

Data Privacy &

PROTECTION TASK FORCE

is an open collaborative group spanning policy, practice & technology serving as an information clearinghouse for the education community focused on technical implementation of data privacy & protection rules and regulations ensuring PESC is prepared for any corresponding standards development and production of PESC APPROVED STANDARDS.

Task Force

DATA

PRIVACY & PROTECTION

Join the DATA PRIVACY & PROTECTION TASK FORCE

Your Full Name *

Enter Your Full Name Here:

ANNOUNCEMENTS, NEWS & EVENTS

NEXT TASK FORCE MEETING

Wednesday April 10, 2019
1pm P/2pm M/3pm G/4pm E/7am A

>> [AUDIO RECORDING](#) <<

[Wednesday January 16, 2019 Meeting](#)

>> [AUDIO RECORDING](#) <<

[Wednesday December 19, 2018 Meeting](#)

Data Privacy & PROTECTION TASK FORCE

was founded at the
Fall 2018 Data Summit
by PESC Members.

Data Privacy & PROTECTION TASK FORCE

is an open forum in which
data and data-related topics

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AACRAO & PESCS Resources

- <https://www.aacrao.org/resources/compliance>
 - <https://www.pesc.org/groups-and-initiatives.html>
 - *Implications of the General Data Protection Regulation: An Interassociational Guide*
<https://www.aacrao.org/signature-initiatives/trending-topics/gdpr/gdpr-interassociational-guide>
 - *GDPR – neatly arranged, easy quick links*
<https://gdpr-info.eu/>
 - *Great Guidance by topic from the UK ICO (UK Data Protection Authority)*
<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>
 - *International Association of Privacy Professionals*
<https://iapp.org/>
-

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GDPR Review & Task Force Focus

- Level set on GDPR
 - Highlights of implementation
 - The role of controller and processor
 - Focus on an exchange mechanism to convey a data privacy status
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GDPR Overview

- Significantly expands personal privacy rights for processing of and free movement of personal data
 - Applies to **personal data**: any information relating to an identified or identifiable natural person physically in the EU (EU data subject) when the data is collected (e.g., name, ID, location data, online ID such as IP addresses, images)
-

GDPR Overview

- Applies to **processing** of personal data by Controllers & Processors not in the EU where the processing is related to:
 - Offering goods or services to EU data subjects or
 - Monitoring EU data subject behavior within the EU
- Applies to **Controllers** and **Processors** established in the EU even if processing of personal data is outside of the EU

There must be a lawful basis for all data processing (e.g., consent, necessary to perform a contract, required by law, “legitimate interests” balanced against impact on individuals)



Definition of Personal Data

1. Any Information

2. Relating to

3. An identified or identifiable

4. Natural Person

What qualifies as information?

When does information relate to a person?

What is identity?
When is someone identifiable?

What is a natural person?

Four Step Test*

(Article 4, Recitals 26-27, 30)

*IAPP

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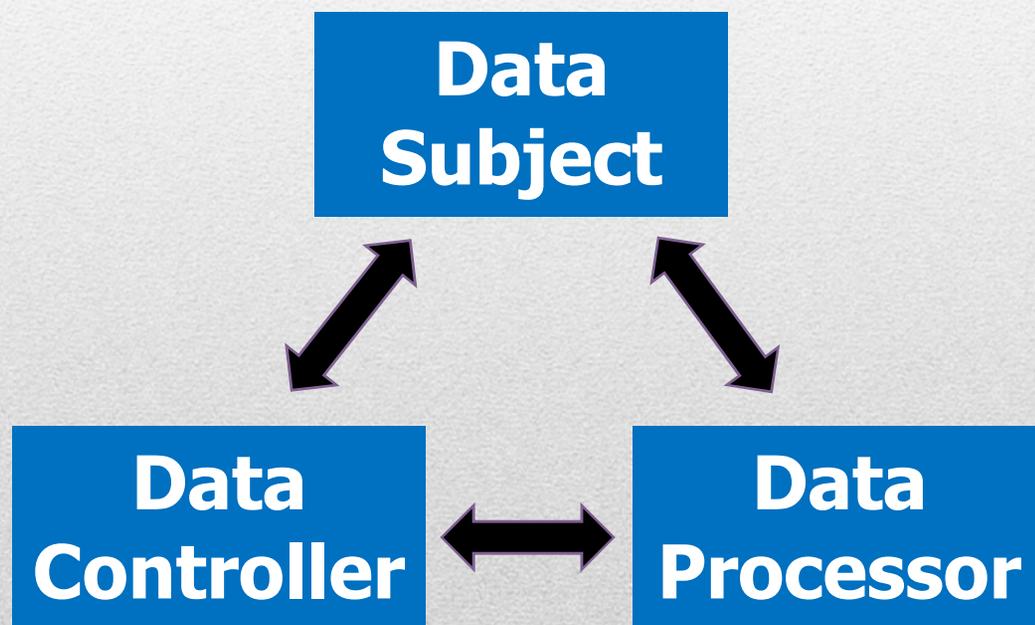
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GDPR: Applies to Processing of Personal Data

Definition of *Processing*:

- any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (**Art. 4**)
-

GDPR Roles, Relationships & Responsibilities



Articles 24-43

- Address responsibilities of Controller and Processor.
- It is important to understand who is a Controller and who is Processor as each has significant obligations

Who is Subject to GDPR?

Controller:

- an entity that, alone or jointly with others, determines the purposes and means of the processing of personal data (Art. 4)

Processor:

- an entity that processes personal data only on behalf of and on the instructions of the controller (e.g., service providers) (Art. 4)
-

Who is Subject to GDPR?

Controller Obligations:

- Comply with all data protection principles
- Processing only if lawful/legal basis
- Appoint Processors by written contract
- Ensure Processor's processing complies with the law

Processor Obligations:

- Processing only on documented instructions of Controller
 - Security measures
 - Implement measures to assist Controller with complying with GDPR
 - Keep records of processing activities
-

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Lawful Processing

Requirement of a Lawful/Legal Basis for All Data Processing:

- Consent
 - Performance of a Contract
 - Comply with Legal Obligations
 - Legitimate Interests
 - Protect Vital Interests
 - Performance of Task Carried Out in Public Interest
-

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Controllers Processing w/ Processors

Data Processing Agreements (DPAs)

- **Processing** instructions from **Controller** to **Processor**
 - Subject matter and duration of the processing
 - Nature and purpose of the processing
 - Confidentiality obligations of all persons who process data
 - Security requirements
-

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Controllers Processing w/ Processors

Data Processing Agreements (DPAs)

- Assist Controller in complying with data subject rights of access and other rights under GDPR
 - Deletion or return of data as requested or end of contract
 - Processor to keep records of processing activities
 - Submit information to Controller to ensure both Controller and Processor meeting their Art. 28 obligations
-

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Recurring Considerations for Compliance

- Territoriality
 - Careful consideration of lawful/legal basis for data processing
 - Categorize GDPR roles
 - Identify Processing Partner
 - Identify students who are EU data subjects & subject to GDPR and record it on the student record for period of time student is an EU data subject.
-

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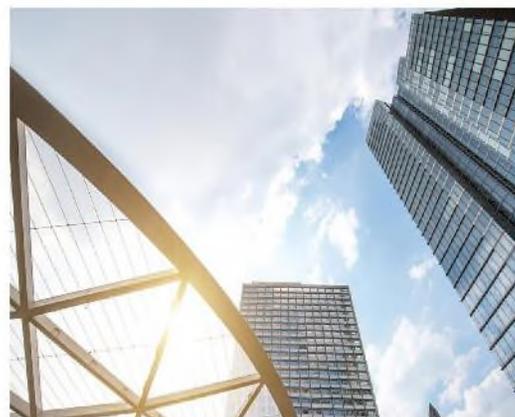
Cases and Scenarios

When do you need/care about transmitting a student's privacy status?

[Implications of the
General Data Protection Regulation](#)
AN INTERASSOCIATION GUIDE May 2018

Implications of the
General Data Protection Regulation
AN INTERASSOCIATION GUIDE

May 2018



Scenario Review

- **Case 1.3**

Prospect data from applications in progress from Common Application

- A student located in the EU begins an application on a third party platform
- Student has selected our institution as one to which they intend to submit an application

By selecting our campus, the student has given permission to the vendor to share their information with colleges and universities for the purpose of receiving recruitment information.

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Scenario Review 1.3 continued

Admissions loads the information to Customer Resource Management (CRM) and Student Information System (SIS).

- We use the student information to drive the recruitment communication stream, with special messages encouraging them to complete and submit their application.
- All recruitment e-mails provide the opportunity for opt-out.

QUESTIONS

- **Is the opt-out option in the recruitment messages sufficient to be the GDPR compliant?**
 - **Does an opt-out require that we delete the student record?**
 - **Does admissions office become the controller upon receipt?**
 - **Do our application vendors need to identify EU students?**
-

Scenario Review

- **Case 2.1**

- ***Enrollment Reporting Services***

- NSC enters into a contract with institution to report your student enrollment to the NSC and, on your behalf, NSC receives and responds to requests from the NSLDS, other lenders and servicers in the federal loan programs, and private lenders seeking to verify enrollment status of participating students, for purposes of ensuring that such enrolled loan recipients have their loans placed in deferment while in school.
- **Role**
 - Institution is a Controller as personal information is collected by the institution
 - NSC is a processor and should comply with processing instructions the institution (Controller) provides to the NSC regarding how to process the personal data submitted to NSC for its services. Institution must identify to NSC which information for processing is personal data on an EU data subject (student subject to GDPR) and when it provides to NSC a request under the GDPR (e.g., opt out)

Scenario Review 2.1 continued

Institutional Responsibility

- Controllers must contractually obligate Processors to adhere to certain standards under GDPR
- The Controller is responsible for adhering to data privacy principles including providing notice consistent with the GDPR requirements, such as
- Description of the purposes of processing
- Description of the entities or categories of entities to which it discloses personal data covered by GDPR
- Institution should identify to NSC which personal information is subject to GDPR

Institutional Action

- Should you record students who are EU data subjects governed by GDPR? Or even bigger than that...do you even want to enroll students who are in the EU?
- Institution could consider the work performed by NSC as “necessary for the purposes of legitimate interest” (or lawful processing)
- Institution could consider the processing necessary for the performance of a contract, but the institution needs to provide a rationale for the processing; thus, an institution would need to conclude that the relationship with the student could not exist without the processing of the data at issue. Could mandatory state reporting fall under that?

Proposed Solution

- **Education records need to have a set of flags to indicate which privacy regulations the education record is subject to.**
 - **SIS providers will have to update their systems to provide school administrators the ability to apply privacy flags to education records.**
 - **SIS providers may implement the storage of privacy flags and methods for updating the flags using any mechanisms they choose. Those details are not in scope of this workgroup's work.**
 - **SIS providers will have to update their systems to add the privacy flags to the output files in accordance with the new standards and any proprietary vendor formats they support. This will also apply to any institutions with homegrown SIS systems.**
-

Proposed Solution

- PESC proposes an XML tag structure for XML data standards:

```
<xs:complexType name="DataPrivacyType">  
  <xs:element name="PrivacyRequirement" type="PrivacyRequirementType" minOccurs="0" maxOccurs="unbounded"/>  
</xs:complexType>
```

```
<xs:complexType name="PrivacyRequirementType">  
  <xs:sequence>  
    <xs:element name="PrivacyRegulationCode" type="PrivacyRegulationCodeType"/>  
    <xs:element name="PrivacyRegulationName" type="xs:string" minOccurs="0">  
      <xs:annotation>  
        <xs:documentation>  
          The text name of the privacy regulation if the PrivacyRegulationCode is "Other"  
        </xs:documentation>  
      </xs:annotation>  
    </xs:element>  
    <xs:element name="PrivacyComplianceIndicator" type="xs:boolean"/>  
  </xs:sequence>  
</xs:complexType>
```

```
<xs:simpleType name="PrivacyRegulationCodeType">  
  <xs:restriction base="xs:string">  
    <xs:enumeration value="California"/>  
    <xs:enumeration value="FERPA"/>  
    <xs:enumeration value="GDPR"/>  
    <xs:enumeration value="Other"/>  
  </xs:restriction>  
</xs:simpleType>
```

Proposed Solution

- PESC sample XML:

```
<DataPrivacy>
  <PrivacyRequirement>
    <PrivacyRequationCode>GDPR</PrivacyRequationCode>
    <PrivacyRegulationName>EU General Data Privacy Regulation</PrivacyRegulationName>
    <PrivacyComplianceIndicator>true</PrivacyComplianceIndicator>
  </PrivacyRequirement>
  <PrivacyRequirement>
    <PrivacyRequationCode>California</PrivacyRequationCode>
    <PrivacyRegulationName>California Consumer Privacy Act</PrivacyRegulationName>
    <PrivacyComplianceIndicator>true</PrivacyComplianceIndicator>
  </PrivacyRequirement>
  <PrivacyRequirement>
    <PrivacyRequationCode>FERPA</PrivacyRequationCode>
    <PrivacyRegulationName>Family Education Rights and Privacy Act</PrivacyRegulationName>
    <PrivacyComplianceIndicator>true</PrivacyComplianceIndicator>
  </PrivacyRequirement>
</DataPrivacy>
```

Proposed Solution

- PESC proposes using the NTE segment for EDI transactions:

NTE Note/Special Instruction

To transmit information in a free-form format, if necessary, for comment or special instruction

01 [363](#) Note Reference Code
02 [352](#) Description

0 ID 3/3
M AN 1/80

- **Where:**
 - **Element 363 Note Reference Code = “OTH” (Other Instructions)**
 - **Element 352 Description contains the privacy flags**
-

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Phase 1 Proposed Solution

- **Processors who have their own file proprietary file formats will have to evaluate the best method to accommodate current privacy policy flags, as well as allow the expansion of new privacy policy flags into the future.**
-

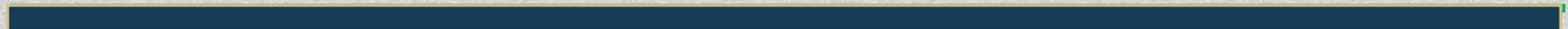
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Questions?

- Questions & Open Discussion



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Thank You!

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