Education Data Legislation Review

2017 State Activity

Executive Summary

Over the past decade, states have made enormous progress in collecting, using, and reporting education data in service of learning—and in implementing the robust privacy and security protections and data governance structures that make data use safe. Now states must build on this success by getting data into the hands of parents and teachers, helping everyone on a student's education journey use data effectively and ethically, and ensuring that publicly reported data answers the public's questions in clear and meaningful ways.

Looking Back: Four Years of Student Data Privacy State Legislation

The Data Quality Campaign (DQC) has tracked state legislation governing student data privacy since 2013; the 2017 state legislative session marked both a continuation of, and a departure from, themes of the past years.

Since 2013, the legislative landscape has changed dramatically: 49 states have introduced 503 bills, and 41 states have passed 94 new laws expressly addressing the privacy and security of education data. In the 2017 legislative session, data privacy continued to be a focus with more than half (93 of 183) of the state bills that were considered on education data addressing the issue. Now, states are increasingly considering legislation about how they collect, use, and report education data in addition to how they safeguard it.

The Role of State Legislation

Legislation is only one of several tools that policymakers can use to make data work for students, but it is unique in its ability to reflect changing statewide priorities and conversations. The legislative process, more than executive action or even rulemaking, encourages various forms of stakeholder engagement and is often publicly informed by a wide and diverse array of legislators, advocates, experts, and citizens. In addition, legislation can be used to codify important decisions, norms, and practices that would otherwise be at the discretion of changing leadership. These unique characteristics make legislation a meaningful way to look at state progress and priorities around the collection, use, and reporting of education data.

State Legislation in 2017

DQC advocates for state action on Four Policy Priorities to Make Data Work for Students. These Priorities articulate how policymakers and leaders at all levels can transform education data from a tool of compliance to one that empowers people and fuels continuous improvement.

The Four Policy Priorities provide a framework for state action and also a useful framework for looking at how state legislation is supporting (or inhibiting) effective data use and protection.

Using this framework, DQC conducted an analysis of state legislation addressing education data in 2017. Following are results of this analysis.

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DATA QUALITY
CAMPAIGN

MEASURE WHAT MATTERS. Be clear about what students must achieve and have the data to ensure that all students are on track to succeed. In this Policy Priority, DQC calls on states to take the following actions:

1. Develop a set of policy and practice questions that will set the priorities for state action and determine the information needed to answer those questions;

2. Link and govern data across all agencies critical to student success, from early childhood and K–12 to postsecondary and the workforce, including other state agencies that support students (e.g., child welfare); and

3. Develop, calculate, and share indicators based on longitudinal data, in addition to measures based on annual statewide assessments, that demonstrate progress toward stated goals.

> In 2017, **36 states** introduced **95 bills** and passed **31 new laws** addressing the collection, linking, and governance of education data.

MAKE DATA USE POSSIBLE. Provide teachers and leaders the flexibility, training, and support they need to answer their questions and take action. In this Policy Priority, DQC calls on states to take the following actions:

1. Use the bully pulpit and allocate resources (people, time, money, and technology) to prioritize using data to inform decisionmaking at the state level;

2. Ensure that leaders responsible for student outcomes have the feedback data they need from other systems to effectively serve students;

3. Support local education agencies (based on their unique capacity and needs) by providing the flexibility to use people, time, money, and technology to prioritize data use to inform action and improve outcomes; and

4. Enact the necessary policies, practices, and conditions to ensure that every educator can use data effectively.

> In 2017, **26 states** introduced **56 bills** and passed **21 new laws** addressing state, district, and educator needs to make data use possible.

BE TRANSPARENT AND EARN TRUST. Ensure that every community understands how its schools and students are doing, why data is valuable, and how it is protected and used. In this Policy Priority, DQC calls on states to take the following actions:

1. Provide the public timely, high-quality, relevant, and easy-to-find data;

2. Communicate the value of data to support student learning; and

3. Communicate the types of data the state collects and how the data is protected.

> In 2017, **28 states** introduced **59 bills** and passed **20 new laws** about publicly reported data on schools and student outcomes.

GUARANTEE ACCESS AND PROTECT PRIVACY. Provide teachers and parents timely information on their students and make sure it is kept safe. In this Policy Priority, DQC calls on states to take the following actions:

1. Ensure that those closest to students have individual access to student-level data that is tailored to their needs and presented in context; and

2. Intentionally design and implement policies and practices to protect the privacy and confidentiality of student and teacher data and ensure that systems are secure.

> In 2017, **38 states** introduced **107 bills** and passed **30 new laws** about how the state provides appropriate access to data for families and educators and protects student data privacy. Of these, 93 bills and 18 new laws explicitly addressed student data privacy.

> **In total in 2017, legislators in 42 states introduced 183 bills and passed 53 news laws that explicitly address how the state collects, manages, uses, reports, and protects data about students and schools.**
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> Please note that many state bills and laws address topics under more than one of the Four Policy Priorities to Make Data Work for Students. These bills are included in counts under every relevant topic, so the numbers presented under each Priority do not add to the 183 total bills introduced.
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> Additionally, legislative examples throughout this paper include both bills (legislation that was introduced but not signed into law) and laws. For a more detailed breakdown of the number and characteristics of the bills and laws from this year's state legislative sessions, please see Appendix A.

Legislation Analysis and Themes from DQC's Four Policy Priorities

Measure What Matters

Over the past decade, states have invested in building secure data systems that allow them to understand student and school progress, measure progress toward education goals, and make real improvements for students. This year, state legislators continued to focus on how they can leverage their state data systems and data governance bodies to ensure that they are collecting the information they need to answer their policy questions and support student learning.

In 2017, 36 states introduced 95 bills and passed 31 new laws addressing the collection, linking, and governance of education data. Through these efforts, legislators addressed a variety of topics: 45 bills focused on new data collections or indicators, 38 bills established governance protocols for data use, and 19 bills dealt with securely linking data systems across the P–20/workforce spectrum. **Altogether, these efforts to measure what matters comprise slightly more than half of the education data state legislation in 2017 and represent almost the same share of the bills as data privacy—the most addressed topic this year.**

Following is a look at a few of the most prominent legislative trends from this year related to the collection, linking, and governance of education data.
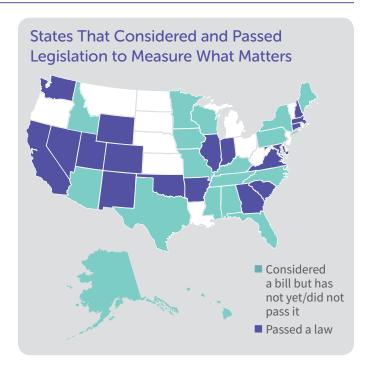
Trend: Collecting the Right Information

This year, state legislators considered 45 bills to change the education data elements their state collects or the indicators their state creates with that data. Legislative examples of this trend include the following:

- **Maryland** passed a law changing the way that data about seclusion and restraint practices for different types of students is reported to the Maryland Department of Education. Districts must now report how these discipline practices are applied to students by characteristics like gender, race, and age and must also revisit their disciplinary practices and how their educators are trained to enact them.

- **Washington** passed a law that requires the state to collect and report new information on paraeducators. The law acknowledges that paraeducators provide most of the instruction in programs designed to reduce the state's opportunity gap and so creates a Paraeducator Board to establish data-informed standards and policies reflective of the unique role these educators play with students in Washington.

Trend: Governing Data Use

As in previous years, states considered several bills addressing education data governance; in 2017 states introduced 38 bills to create and support data governance bodies that provide

States That Considered and Passed Legislation to Measure What Matters

- ■ Considered a bill but has not yet/did not pass it
- ■ Passed a law

a decisionmaking structure for the agencies and offices that collect and use education data. Legislative examples of this trend include the following:

- **Nevada** passed a law to create the P–20W Research Data System Advisory Committee. The committee is charged with developing secure data linkages from early childhood through postsecondary and the workforce and with making decisions about how this data system could be used for research and other collaborative projects across state agencies.

- **Maine** passed a law to create the Maine Educational and Attainment Research Navigation System to maintain and report data on education and workforce outcomes and to create the system's Executive Council charged with its oversight.

Trend: Linking Data Systems to Produce Richer Insights

States can maximize the investments they have made in creating high-quality longitudinal education data systems by using the data from those systems to better understand state education and workforce outcomes. This year state policymakers introduced 19 bills to securely link state data systems to get the information states need to accomplish their education goals. Legislative examples of this trend include the following:

- **Washington** passed a law to establish data linkages between the State Education and Data Center and teacher training programs in the state. The linkages established by

the new state law will allow policymakers to get a richer set of contextualized, comprehensive information that will help them understand best practices in educator preparation.

■ A new law in **Connecticut** will require the Higher Education Coordinating Council to collaborate with the Department of Labor to link state data on employment and earnings to make progress toward a state goal of helping students make informed postsecondary choices.

Looking Ahead

In 2018, state legislators can consider additional ways to measure what matters and effectively link and govern education data. As state legislators continue to think about what data to collect and how to link and use it, they have a responsibility to make sure data collection and use is not a compliance exercise but a tool to answer important questions and inform decisions. Before proposing new data collections, state legislators should work with data governance bodies and stakeholders across the state to ensure that any new data collection or report they propose adds value.

> ★ **BRIGHT SPOT**
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> In 2010, **Maryland** established the Maryland Longitudinal Data System Center, a statewide data system and governance structure to provide timely, accurate education and workforce data that can be used to improve the state's education system and guide decisionmakers at all levels.
>
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> Pivotal Role of Policymakers as Leaders of P–20/Workforce Data Governance

Make Data Use Possible

States are increasingly using their data systems to inform their policy decisions and are now beginning to make data use possible for their districts and educators as well. Since educators and school leaders are uniquely positioned to use data to support student learning, state legislators have the responsibility to ensure that *all* of their districts and teachers have the tools, time, and guidance to get as much value out of data as the state does. Ultimately, these investments help support the success of all of a state's education and data goals by ensuring that those on the ground have what they need to make data work for students.
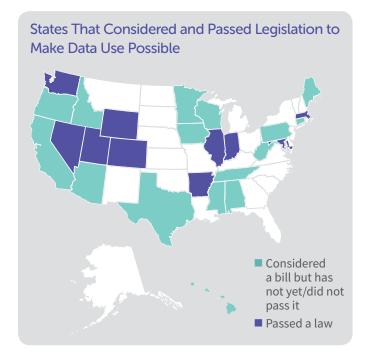
In 2017, state legislators in 26 states introduced 56 bills and passed 21 new laws addressing state, district, and educator needs to make data use possible. Most of these bills addressed themes of informing state decisionmaking (40 bills), while fewer focused on supporting district data use (11 bills) and training educators to use and protect data (9 bills). **As states increasingly use data to inform their own decisions and policies, they can also do more to ensure that their districts and educators are able to do the same.**

Following is a look at a few of the most prominent legislative trends from this year related to using data at the state level and helping districts and educators use data well.

Trend: Informing State Decisionmaking

This year, legislators considered 40 bills designed to use data to inform state policies and other decisions, including those related to program investments and how to best meet state education goals. Legislative examples of this trend include the following:

■ **Maryland** passed a law allowing the Maryland Longitudinal Data System Center to analyze more historical data

States That Considered and Passed Legislation to Make Data Use Possible

■ Considered a bill but has not yet/did not pass it
■ Passed a law

on postsecondary and workforce outcomes to better understand the long-term outcomes of the state's education and workforce investments.

■ A bill in **Maine** would have established a higher education task force charged with reviewing existing collections of education and workforce data to evaluate state progress against specific postsecondary attainment and completion goals. The task force also would have been required to provide specific recommendations for legislators about what policies could accelerate progress toward meeting those goals.

Trend: Supporting District Data Use

Too often, districts bear the brunt of the data reporting burden without getting much access to or value from the data in return. States are beginning to provide the tools and policies educators and school leaders need: 11 bills in 2017 would provide support for district data use. Still, more work remains to ensure that every district has access to the necessary tools and resources to get full value from data. Legislative examples of this trend include the following:

■ A new law in **Wyoming** requires the state superintendent to establish guidance for school districts around student data collection, access, and use.

■ **Utah** passed a law to establish an early warning system that districts can use to help identify high school students at risk of dropping out so that educators can intervene with appropriate support.

Trend: Training Educators to Use and Protect Student Data

For educators to make data work for students, they need training and guidance on data use—both at the start of and throughout their careers. To the extent that state legislation has been used as a tool to provide these critical supports in recent years, the efforts have focused more on privacy and security training than on the more comprehensive data literacy skills educators need to use data effectively and ethically. This important topic was not the focus of much legislative activity this year—only nine bills from this year's legislative session addressed privacy training for teachers, and just seven bills accounted for educator training on data use. Legislative examples of this trend include the following:
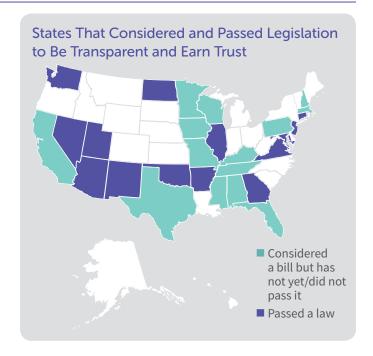
Be Transparent and Earn Trust

States have made significant investments in developing school report cards and other aggregate public data reports. **Legislators must now ensure that these reports and the information contained in them meet the needs of all educators and families** by answering their questions and empowering their decisionmaking with timely, actionable, and understandable high-quality information.

In 2017, state legislators in 28 states introduced 59 bills and passed 20 new laws about how the state reports data about schools. This number is roughly the same as the number of bills states considered on state and district data use topics but only about half the number that were introduced about either data collection or data privacy.

Following is a look at a prominent legislative trend from this year related to how education data is shared with the public.

■ A bill in **Arizona** would have created an Office of Indian Education within the Department of Education. The new office would have been responsible for providing technical assistance and professional development on topics including data literacy to schools serving Native American students.

■ Legislators in **Utah** passed a law focused exclusively on privacy. Utah's new law requires each public school to make sure that every employee with access to student data has been trained on state and federal privacy laws.

Looking Ahead

As state legislators think about how the state can use data to better serve students, they must also ensure that their districts have the tools, training, and resources to do the same. By helping districts use data well, states are maximizing the impact of their data infrastructure investments. In 2018, legislators must do more to provide training and tools to help ensure that educators and their districts are prepared to make data work for students.

★ **BRIGHT SPOT**

In 2016, **Utah** passed a law creating a Digital Teaching and Learning Grant Program. As part of the program, the state board is required to provide a dashboard tool for districts to help them track and report their goals related to student achievement, student learning, and college readiness through digital teaching and learning methods.

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Teacher Data Literacy: It's About Time

States That Considered and Passed Legislation to Be Transparent and Earn Trust

■ Considered a bill but has not yet/did not pass it

■ Passed a law

Trend: Creating New and More Useful Public Reports

Most of the 59 bills this year on publicly reporting education data focused on adding, eliminating, or altering specific data points on state reports without necessarily taking a comprehensive look at how public reports could be better used to inform and empower policymakers and the public. Legislative examples of this trend include the following:

- **Arkansas** enacted a law to revamp the way the state reports data on school discipline—adding new categories of disaggregation, tweaking definitions, and requiring the information to be posted on a public website.

- **Connecticut** passed a law designed to help prospective students make informed career choices by creating a new public report showing how students fare after graduating from different colleges and programs.

Looking Ahead

Public reports about school and state education outcomes are intended for public audiences but are often not designed with

them in mind. As policymakers revisit their public reports in 2018 and continue to legislate what data is made public and how, they can work with stakeholders across their state to make sure their publicly reported data is clear, understandable, and useful.

> ### ★ BRIGHT SPOT
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> In 2009, the **Kentucky** legislature passed a law requiring the state to improve college enrollment while decreasing remediation. In response, the state's P–20 Data Collaborative governance body overhauled the state's high school feedback reports to provide parents and students with timely, actionable public information on college success that could help families make more informed decisions about college.
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> Empowering Parents and Communities through Quality Public Reporting
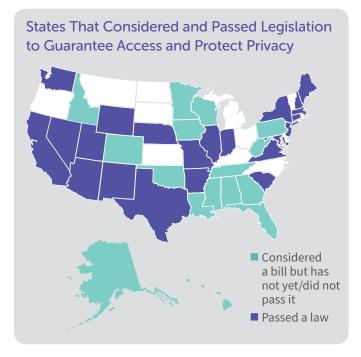
Guarantee Access and Protect Privacy

Student data privacy has been the most prominently addressed legislative issue in recent years—49 states and the District of Columbia have each introduced a student privacy bill in the last four years. This focus on data privacy issues continued in 2017 when 93 bills (more than half of those introduced) and 18 new laws explicitly addressed student data privacy. Even as the focus and approach of the bills have evolved to reflect growing understanding of privacy and technology issues, many of the privacy bills considered in 2017 touched on familiar themes: 32 bills regulated the behavior of online education service providers, 13 bills limited the collection of nonacademic data, and 10 bills established new data breach response protocols. Twenty-seven privacy bills proposed changes to recently passed privacy laws.

While 38 states introduced 107 bills and passed 30 new laws related to data access and privacy in 2017, nearly all were about data privacy; **only six bills and one new law focused on providing parents and educators meaningful access to student data.** Now that many states have established a baseline of privacy protections, legislators must do more to ensure that the people closest to students have the data needed to support student learning.

Following is a look at a few of the most prominent legislative trends from this year related to family and educator access to data and data privacy.

Trend: Empowering Parents and Teachers with Access to Data

Data does not support student learning on its own; the people closest to students, namely parents and educators, must have access to the data they need to help students succeed. Much

States That Considered and Passed Legislation to Guarantee Access and Protect Privacy

- ■ Considered a bill but has not yet/did not pass it
- ■ Passed a law

more work must be done to put data in the hands of those who can support students; in 2017, only six bills were considered to provide parents and educators more access to education data. Legislative examples of this trend include the following:

- **Minnesota** considered a bill to create a "student data backpack" to give parents and educators secure, portable access to their student's data. Minnesota's bill instructs the commissioner of education to establish a Minnesota Student Record Center, which would work with districts to facilitate secure, role-based access for teachers and families.

- **Virginia** passed a law that requires education service providers to give parents access to an electronic copy of their student's personal information.

Trend: Revisiting Familiar Privacy Themes: Service Providers, Nonacademic Data, and Breach Response

Nearly every state has introduced at least one student data privacy bill in the last four years, meaning that states are no longer starting from scratch as they consider new and updated privacy legislation. In many cases, states now have a foundational privacy policy and data governance structure that allows them to build on previous conversations, learn from their counterparts in other states, and revisit familiar themes in their privacy legislation.
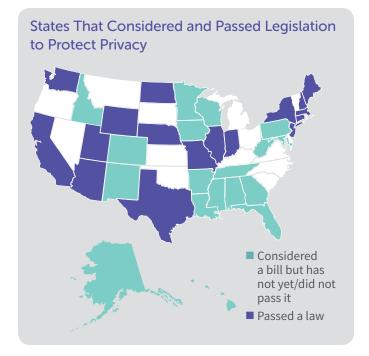
GOVERNING ONLINE EDUCATION SERVICE PROVIDERS
As in the last three legislative sessions, many states sought to regulate the collection and use of data by third-party education service providers. California paved the way for this approach with the passage of the Student Online Personal Information Protection Act (SOPIPA) in 2014, a bill that prohibited education service providers from selling student data or using it to conduct targeted advertising. Legislative examples of this trend include the following:

- In 2017, 32 bills would have governed the behavior of service providers—16 of which were based on SOPIPA. Five of those bills became law in Arizona, Illinois, Maine, Nebraska, and Texas.
  - State legislators in Illinois introduced five separate bills based on SOPIPA, including one focused on higher education.
- Since 2014, 21 states have passed laws based on the SOPIPA model to govern education service providers' use of education data.

NONACADEMIC DATA
Legislators in several states sought to limit the collection or use of biometric information, social-emotional information, or the administration of surveys on "nonacademic" subjects. Depending on how these terms are defined and used, states may face unintended consequences from this legislation. Some states' definitions of biometric data include elements like handwriting and voice recordings; if laws prevent districts from collecting and using this data, schools may be unintentionally prohibited from practices like including work samples in student portfolios or using language labs.

Similarly, bans on district collection of social-emotional information could unintentionally disrupt special education services or limit district programs. As the Every Student Succeeds Act asks states to think about using multiple measures of school quality and student experience, some states may consider the use of student surveys; state legislation that too narrowly prohibits the use of surveys or the collection of

States That Considered and Passed Legislation to Protect Privacy

- Considered a bill but has not yet/did not pass it
- Passed a law

data on students' experiences could complicate these plans. Legislative examples of this trend include the following:

- Thirteen bills this year would have prohibited the collection of certain "nonacademic" information, including eight that specifically mentioned "biometric" data.

DATA BREACH RESPONSE
While most states already have data breach response laws, several bills were considered in 2017 to establish additional education-specific requirements for how quickly families and students will be notified after an education data breach and whether the state will provide identity protection and credit monitoring services to affected students. Legislative examples of this trend include the following:

- While some of the 10 data breach bills this year were introduced in direct response to breaches, such as the legislation introduced this year in Maryland, others reflect proactive efforts by the state to build trust by providing more transparency.

Trend: Updating Previously Passed Privacy Laws

Since 2014, 41 states and the District of Columbia have passed 94 student data privacy laws. As these privacy laws are implemented, state legislators often develop new ideas about how the law could be improved, updated, or better implemented. Altogether, 27 bills were introduced in 2017 to amend recently passed privacy laws. Legislative examples of this trend include the following:

- State legislators in **Connecticut** introduced 15 separate bills to delay the implementation of the privacy law that passed during last year's legislative session. One of those bills passed, delaying the privacy law's effective date to

July 1, 2018. Connecticut state policymakers are working to provide districts with the support and guidance that is needed to comply with the contracting requirements of the state's privacy law.

- In **Louisiana,** state legislators issued the latest in a series of responses to a prohibitive 2014 privacy law by passing a bill that would have allowed out-of-state researchers to access de-identified student data under certain circumstances. Though the bill passed both houses of the legislature, Louisiana's governor vetoed it, saying it did not account for the criminal penalties set forth under the privacy law.

- **Utah** passed a version of SOPIPA in 2016, and this year state legislators enacted a new law that clarifies the 2016 law's application for education service providers that may use data to help students make informed postsecondary choices.

Looking Ahead

Data privacy and access are two sides of the same coin; just as privacy must be a consideration when crafting data use policy, the need for appropriate data access should always be a consideration when crafting data privacy policy. Policymakers in 2018 should think about how they want data to be used and accessed to support learning across the state as they consider any legislation about data or privacy. Policymakers can directly engage educators and families to better understand the data they want as well as their thoughts on data privacy.

⭐ **BRIGHT SPOT**

In 2015, **Georgia** passed a comprehensive data use and privacy law to safeguard students' data without limiting parent and teacher access to the information they need to improve student achievement. The law helps ensure that the state's data system will continue to securely provide district leaders, principals, teachers, and parents with role-based access to the timely, contextual, and useful data they need.

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Roadmap for Teacher Access to Student-Level Longitudinal Data

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Conclusion: What Is Next?

States have used legislation to make significant progress toward the goal of making data work for students. Now they must build on this work to ensure that every parent and teacher has access to the data they need to help students, educators have the training they need to use data effectively in their classrooms, and public data gives stakeholders the information and context they need to understand their schools and inform their decisions. In 2018, state legislators can consider additional ways to make data more useful, actionable, and secure.

DQC looks forward to working with our friends and partners as we continue to track state legislative efforts to help students succeed.

Appendix A

2017 Legislation Index*

What the bill addressed	Number of bills	Number signed into law
PROHIBITIVE VS. GOVERNANCE/GOVERNANCE FOR USE OF STUDENT DATA**		
Prohibitive approach	22	4
Governance or accountability approach	104	37
Both approaches	126	33
PRIVACY		
Expressly governs data privacy or security	93	19
Amends a privacy law passed within the last three years	27	3
PROVISIONS OF CALIFORNIA'S 2014 SOPIPA LAW		
Adopts many of the provisions of California's 2014 SOPIPA law	17	5
PRIVACY PROVISIONS		
Includes data deletion requirements	18	6
Includes penalties for data misuse	6	1
Includes data breach notification	10	2
STAFF TRAINING		
Provides for data privacy or security training	9	2
Provides for data literacy or use training	7	0
NEW RESPONSIBILITIES		
Regulates states or state education agencies	102	32
Regulates school districts (local education agencies)	43	11
ROLE OF SERVICE PROVIDERS		
Addresses data activities of vendors	32	9
Requires criteria or guidelines for contracts with service providers	4	0
RESEARCH		
Governs education research or access to data by researchers	20	9
DEFUNDING OF STATE LONGITUDINAL DATA SYSTEMS		
Seeks to prevent the continued or expanded funding of the state longitudinal data system	4	0
OPT-OUT		
Allows parental opt-out of some type of data collection or sharing	3	0

*Note: The District of Columbia is counted as a state for the purposes of this analysis.

**Student data privacy bills are often based on two main approaches: protecting privacy by limiting data use (a "prohibitive" approach) and protecting privacy by implementing data governance (a "governance" approach). These approaches are not, however, mutually exclusive and often appear within a single bill.

The Data Quality Campaign is a nonprofit policy and advocacy organization leading the effort to bring every part of the education community together to empower educators, families, and policymakers with quality information to make decisions that ensure that students excel. For more information, go to www.dataqualitycampaign.org and follow us on Facebook and Twitter (@EdDataCampaign).