

National Data Privacy Agreement (NDPA) v2 Review

**We WANT
your input!**



SESSION PRESENTERS



**Mark
Williams**

F3



**Steve
Setzer**

Loop Data



**Jim
Siegl**

Future of
Privacy Forum

AGENDA

- Development and Community Input, Review and Approval Process
- Key NDPA Structure and Content Changes
- Usage Guide
- Rollout and Next Steps
- Questions

Update and Community Review Process

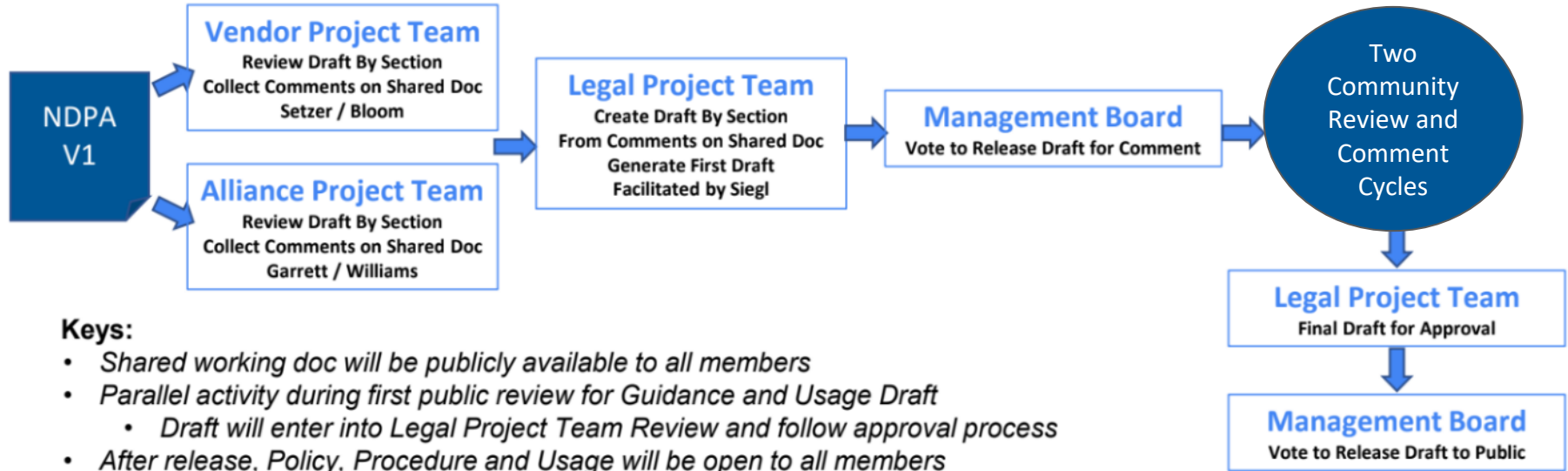
- **Project Teams**

- **Vendor Project Team** and **Alliance Leadership Project Team** are the ongoing entities to receive questions and suggestions for change on the current version of the NDPA.
- **Legal 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. When enough 'changes required' have been gathered, the Legal Project Team will appoint a SubCommittee to review and draft the next version of the NDPA for Community Review.

- **Membership Input and Community Review**

- The final approved version of the next NDPA is reviewed and voted on by the North American Leadership Group (NA-LG) after thorough Community Review
- Any A4L Community member can provide feedback to the Legal Project Team at any time between drafts - ideally through the Vendor or SDPC Alliance Project Teams.

Update and Community Review Process



Keys:

- Shared working doc will be publicly available to all members
- Parallel activity during first public review for Guidance and Usage Draft
 - Draft will enter into Legal Project Team Review and follow approval process
- After release, Policy, Procedure and Usage will be open to all members
- Alliances will re-constitute the Alliance Project Team

NDPA Structure Changes

- Consolidated Location of Contacts and Signatures to the Preamble for the Provider and Originating LEA, (and Exhibit E)
- Standard Clauses: Articles I-V
- Contract Terms: Term & Termination, Priority of Agreements, Entire Agreement, Severability, Governing law, Successors bound, etc.
- Exhibit A: Products and Services
- Exhibit B: Schedule of Student Data (for Multiple Products)
- Exhibit C: Definitions
- Usage Cover Page (Appendix A)
 - Usage 'Cover Page' (Appendix A) is optional. Alliances, school districts and vendors may choose to send it out to the other party to an NDPA for additional guidance.

NDPA Versions and Handling Changes

- **Standard Version:** ALL modifications (red lines, edits, etc.) to the standard clause set in a posted NDPA must be described and included in Exhibit “H” to continue to use the official NDPA moniker. Negotiated modifications to the standard clauses must appear in Exhibit “H”.
- Making Changes to the NDPA v 2: If changes are made to the NDPA, then it must be referred to as either a ‘**Vendor-Specific**’ or ‘**District-Modified**’ NDPA.

Notable Content Changes:

- **Contract Terms, Term and Termination:** The DPA shall stay in effect for as long as the Provider retains the Student Data.
- **Security Audits:** Provider will conduct a security audit or assessment no less than once per year, and upon a Data Breach. Upon 10 days' notice and execution of confidentiality agreement, Provider will provide the LEA with a copy of the audit report, subject to reasonable and appropriate redaction.
- **Data Security:** The Provider shall implement an adequate Cybersecurity Framework that incorporates one or more of the nationally or internationally recognized standards set forth in Exhibit "F". Additionally, Provider may choose to further detail its security programs and measures in Exhibit "F".

Notable Content Changes: No Disclosure

The NDPA consolidated all references related to exceptions to no disclosure into section 4.4.1 and added key provisions for disclosures including

- related to disclosure pursuant to a judicial order to add a requirement to notify the LEA in advance of a compelled disclosure to the Requesting Party
- to protect the safety of users or others, if and only if, an LEA employee who has specifically been authorized to declare a health or safety emergency has done so and all requirements under 34 CFR §§ 99.31(a)(10) and 99.36 (the “FERPA Health and Safety Emergency Exception”) have been fulfilled by the LEA.

USAGE GUIDANCE

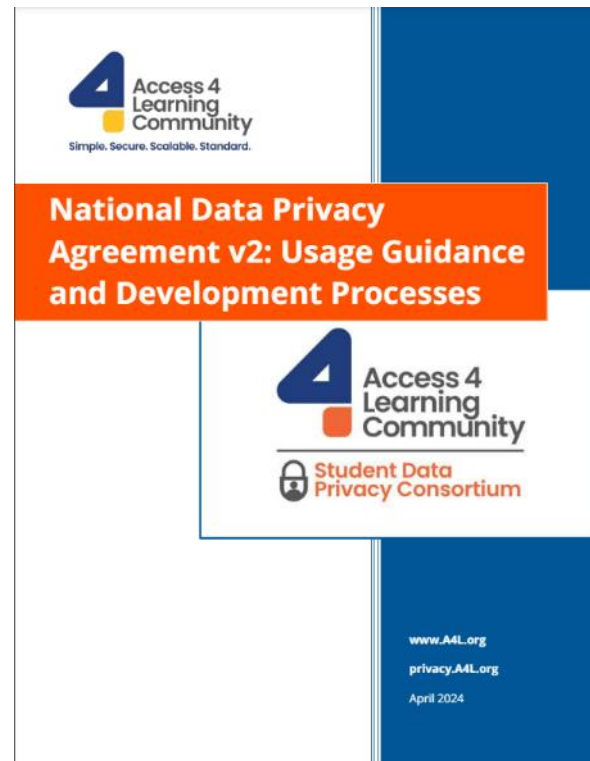


Exhibit A: Products and Services

- Vendor may not make any change to Exhibit “A” via an Addendum, except adding or deleting products or services.
- A template (Appendix B) has been included in the Usage Guide should Vendors need to make changes to Exhibit “A” or Exhibit “B”
- If an Exhibit “E” was signed prior to the changes in Exhibit “A”, those changes will automatically apply to Subscribing LEAs, as well as the Originating LEA, as long as the above process is followed

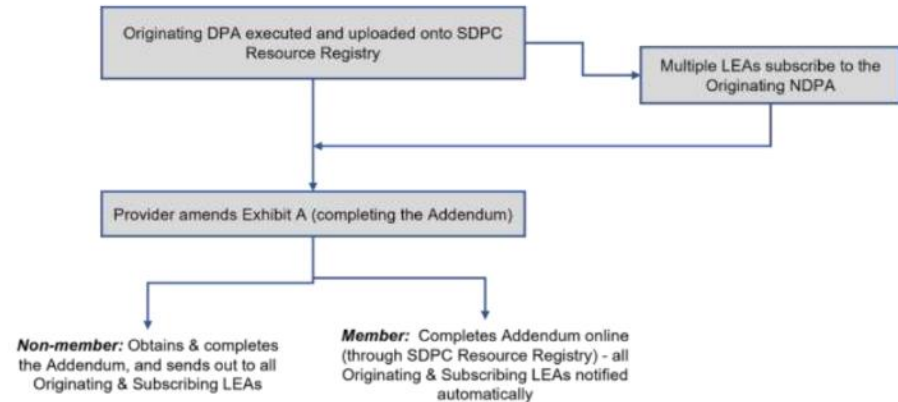


Exhibit B: Schedule of Student Data

- NDPA v2 requires the vendor list the superset of data elements collected or created.
- Vendors may edit Exhibit “B” to name ALL resources in one column to identify data elements.
- Vendors may now include ‘All Products listed in Exhibit “A”’ on Exhibit “B”, so long as the Originating LEA ensures that EACH product listed in Exhibit “A” has the correct data elements assigned in the SDPC Resource Registry as documented in Exhibit “B”.
- No longer will Exhibit “B” be unique for the LEA. LEAs can choose to indicate less data elements being shared with the Vendor through a new Registry enhancement.
- Vendor must notify the LEA of an Addendum modifying the Schedule of Data. The LEA will have thirty (30) days from receipt to object to the Addendum. If no written objection is received it will become incorporated into the DPA between the parties.

Notable Content Changes: Exhibits C & D

Exhibit C (Definitions): New or updated Definitions for:

- Change of Control, Contextual Advertising, De-Identified Data, Data Breach, LEA, Originating LEA, Service Agreement, Subprocessor, Subprocessor Agreement, Subscribing LEA

Exhibit D (Special Instructions for Disposition of Data):

- Exhibit Renamed and clarifying language added
 - *“After this DPA takes effect, if the LEA has special requirements for the disposition of Student Data that are not expressed in 4.6 Disposition of Data, the LEA may fill in this form and deliver it to the Provider.”*
- Additional language added for timing of disposition to include provider’s standard destruction schedule and notification and certification of De-Identification

Exhibit F: Adequate Cyber Security Framework

- Provider must mark one or more frameworks with which it complies.

Key Changes: Exhibits G

- The State Supplement is an optional set of terms that will be generated on an as-needed basis to meet state specific data privacy statute requirements.
- The scope of these State Supplements will be to cite and address 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.
- 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 website to provide the authoritative version of the terms.
- Any changes by LEAs or Providers will be made in amendment form in Exhibit “H”.
- Exhibit “G” must be uniform for all LEAs in an Alliance.

Key Changes: Exhibits H

- Exhibit H is not included in the “Standard NDPA” and is contained in the “District modified”, and “Vendor Specific” versions
- Any changes to Exhibit “G” negotiated between Vendor and LEA, must be identified in Exhibit “H”.
- Exhibit “H” can **also** be used to display simple copies of minimum changes or an entire redline of the DPA.
- Some Alliances may put changes only in Exhibit H, while others will change the body text and copy the change into Exhibit H.

Exhibit H: Examples of Usage

NDPA Standard Agreement:

- Exhibit “H” not included and Exhibit “E” automatically included and active.

Vendor-Specific NDPA:

- Either Exhibit “H” ‘agreed to’ changes approved by Alliance OR
- Alliance has made a policy decision to permit LEA approval of Exhibit “H” ‘agreed to’ changes
- Exhibit “E” permitted; Vendor option to checkbox and sign Exhibit “E”.

District-Modified NDPA:

- Exhibit “H” ‘agreed to’ changes not Alliance-approved or allowed by Alliance policy decision
- Exhibit “E” not permitted.
- Vendor must sign individual Agreements with each District.

NDPA Name Use Conventions

- The SDPC Resource Registry automatically ‘names’ each Agreement as it is uploaded.
- If changes have been made to the NDPA, select ‘Vendor Specific’ or ‘District-Modified’ national model, not Standard Agreement.
- State Alliances must add their state abbreviation, version number (and agreement type if required)
 - (i.e. OH-NDPA-v2, CA-Vendor Specific-NDPA-v2-0, MA-District-Modified-NDPA-v2-0, etc.).
- When modifications agreed upon between Providers and LEAs are included, and such modifications are set forth in Exhibit “H”, the relevant “Vendor Specific” or “District Modified” Agreement must be used.
- Modifications made to the standard clause set that are NOT reflected in the Exhibit “H” nullify the usage of the NDPA moniker.

Cover Page Templates:

- District to Vendor/Provider
- Alliances to Districts
- Vendor Member to Districts

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 A4L Community (which includes 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.

The NDPA is being presented as a community created agreement intended to bring all parties together with respect to student data privacy obligations. The DPA has been developed with such input from industry experts over many years. Having said that, each organization that chooses to use the DPA should ensure that they have received proper approval to adopt this agreement. A4L, or any Alliance leadership is not providing any legal advice to each organization with respect to the adoption of this agreement to meet local requirements.

Usage Key Components:

- **The NDPA V2 is not intended to be modified in any way.** If any modifications are made to the standard clauses, Exhibit "G", or Exhibit "E", then the Vendor-Specific or District-Modified NDPA must be used.
 - **Vendor-Specific NDPA V2** is to be used only when there have been agreed upon edits to the NDPA that are intended and approved by the Alliance leadership or designated representative, for ALL Alliance member districts. All edits to the standard clauses or state specific clauses in Exhibit "G", must also be reflected in Exhibit "H". Appropriate check boxes for Exhibit "G" and/or Exhibit "E" should be completed.
 - **District-Modified NDPA V2** is to be used only when there have been agreed upon edits to the NDPA that are intended to address ONE district's needs. These edits are not intended to apply to other districts and NO Exhibit "E" will be offered. All edits to the standard clauses or state specific clauses in Exhibit "G", must also be reflected in Exhibit "H".

NDPA v 2 Rollout

Questions?