

Education Data Legislation Review

2018 State Activity

OCTOBER 2018

2018 is the fifth year that state policymakers have taken concerted legislative action on education data use and privacy issues. Across the country this year, 42 states considered 300 bills and 25 states passed 59 new laws governing the collection, linking, use, access, and protection of education data.¹

With the passage of the Every Student Succeeds Act (ESSA) in 2015, much of the responsibility around education measures, outcomes, and priorities returned to state leaders. ESSA asks states to innovate and use evidence to inform the policies and practices that support education equity and excellence. As states implement the law this year, their legislation is clearly reflecting these new responsibilities and opportunities for flexibility. Interestingly, this mile-marking year's education data legislation is defined by both ESSA-powered innovation and a return to the more foundational data linking and governance activities that underlie states' abilities to achieve these more complex and innovative goals.

ESSA Prompts Innovation—and a Renewed Focus on Strong Systems

Under ESSA, states are charged with designing accountability measures, reporting new and disaggregated outcomes for different student populations, and using evidence to select the best programs and interventions for their communities. With every state's accountability plan now approved by the US Department of Education, state lawmakers' role in ensuring the law's success is greater than ever. States have committed to their new goals and priorities, and now state legislators have a unique responsibility to help operationalize the state's priorities and methods, align staff and data system resources to ensure that the state can measure its progress and meet its goals, and push state policies and practices past compliance to support continuous improvement across the state.

Correspondingly, many of this year's education data bills focused on understanding and supporting vulnerable student populations,

creating more useful public reports on school quality and student learning, incorporating the use of research and evidence into decisionmaking processes, and governing and protecting data as it is used to improve learning.

As states consider these increasingly sophisticated education data reporting and use opportunities and seek to understand how their students move throughout the education pipeline and into the workforce, they are simultaneously turning to the systems-building work that first began more than a decade ago. Dynamic and evolving data systems are vital to education policy and data use; far from signifying a simplification or regression of state data work, this return to basics highlights the diversity of states' education priorities and the critical role of more connected, robust, and secure data systems in meeting their goals.

¹ 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 300 total bills introduced.

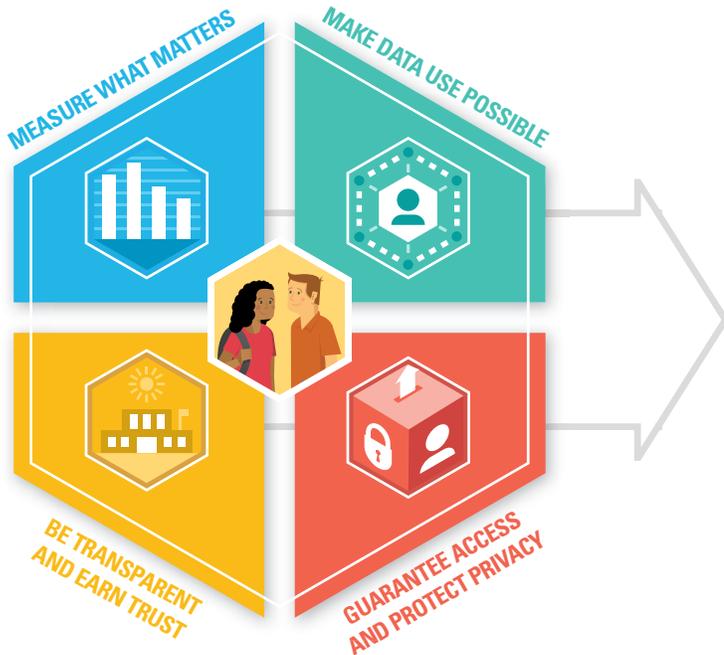
Four Policy Priorities to Make Data Work for Students

The Data Quality Campaign (DQC) advocates Four Policy Priorities that state leaders must adopt to make data work for students. State legislation can be understood through these Four Priorities.

- 1. Measure What Matters:** Be clear about what students must achieve and have the data to ensure that all students are on track to succeed.
- 2. Make Data Use Possible:** Provide teachers and leaders the flexibility, training, and support they need to answer their questions and take action.
- 3. 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.

- 4. Guarantee Access and Protect Privacy:** Provide teachers and parents timely information on their students and make sure it is kept safe.

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 for looking at how state legislation is supporting (or inhibiting) effective data use and protection. Using this framework, following is a look at some of the biggest findings and trends from education data legislation this year.



Legislation Analysis and Themes from DQC's Four Policy Priorities

Measure What Matters

When states measure what matters, they ensure that policymakers and education leaders can look across all of the systems that serve students and have the data they need to make informed decisions and improve learning.

State policymakers can use legislation to measure what matters by passing legislation that

- establishes or expands and funds cross-agency data linkages;
- requires the creation of new indicators that help illuminate students' pathways and respond to state-specific policy questions; and
- creates, empowers, and funds data governance bodies with the authority to work across state agencies and make decisions about how data is collected, connected, and used to answer the state's policy questions.

In 2018, 37 states considered 167 bills and 24 states passed 38 new laws to measure what matters by legislating the education indicators the states collect or calculate and how the states connect and govern that data to ensure that it supports student learning.

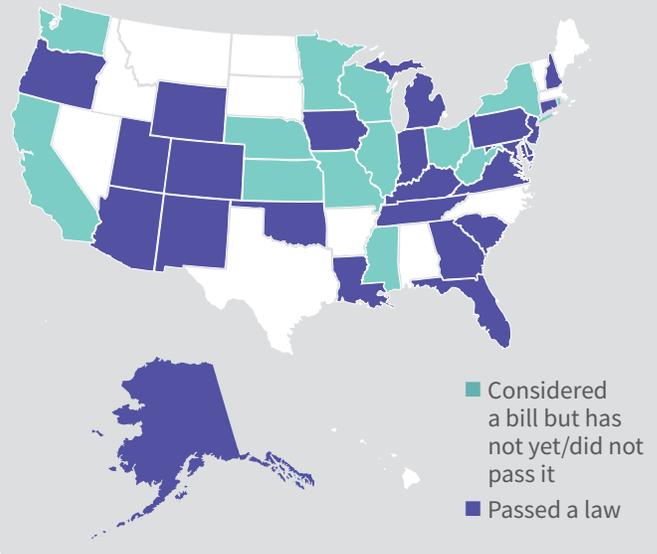
More than 10 years after the first State Longitudinal Data System (SLDS) grants were given out by the US Department of Education to support states in creating their own longitudinal data systems, it is easy to think this system-building work must be complete. But while states have made extraordinary progress in linking and governing their data in the past decade, this work is very much ongoing today as states ask ever-more complex policy questions and see the value in securely connecting data across systems and sectors to answer those questions.

This year's state legislation to measure what matters focused heavily on data linkages and governance structures. These systems are the foundation that underlies states' ability to answer complex questions about how different students move through the education pipeline and enter the workforce.

TREND *Building data systems to support students throughout their education*

Three states (**California, Nebraska, and New Jersey**) considered bills this year that would create wholly new or expanded SLDSs. These systems would replace existing, less comprehensive ones and better link data among sectors and across the education and workforce pipeline.

States That Considered and Passed Legislation to Measure What Matters



- **California** considered a bill that would establish a new SLDS with student data from kindergarten enrollment to workforce entry.

TREND *Securely linking data across sectors to inform state conversations*

In addition to the bills seeking to create new data systems, nine states passed 10 new laws creating either a specific data linkage or a cross-agency data-sharing activity.

- Two of these laws focus on data-sharing efforts to support students in foster care, a highly mobile and vulnerable population identified for additional monitoring and supports under ESSA.
 - **Colorado** passed a law that requires the state Department of Education and the Department of Human Services to create a data-sharing agreement to ensure that data about students in foster care is used for program improvement, research, and state accountability.
 - **Indiana** passed legislation that requires the state board to collaborate with the state departments of Education and Child Services to report on outcomes for students in foster care and create a remediation plan to support these students.
 - In addition to the laws passed in these two states, **Massachusetts** and **Washington** also considered legislation on using data to support students in foster care.

- Two of these new data-sharing laws facilitate the sharing of data for school safety purposes, a pressing concern in schools across the country.
 - In response to the shooting at Marjory Stoneman Douglas High School, **Florida** created the Office of Safe Schools within its Department of Education. The office will coordinate a centralized data repository integrating data from social media sources, the Department of Children and Families, law enforcement, the Department of Juvenile Justice, and local law enforcement.

- **Maryland** passed a law requiring collaboration among local school systems, law enforcement agencies, state and local agencies, community organizations, parents, and other stakeholders to, among other activities, collect and report on school safety data as well as establish a clearinghouse of evidence-based strategies on school safety.
- Four other states (**California, Kentucky, Minnesota, and Pennsylvania**) also considered legislation related to collecting, accessing, or reporting education data related to school safety.

Make Data Use Possible

When states make data use possible, they break down barriers to districts’ use of meaningful, timely, and accurate data about their schools—as well as provide the trainings, supports, and resources to use this data effectively and ethically.

State policymakers can use legislation to make data use possible in each of their districts by passing legislation that

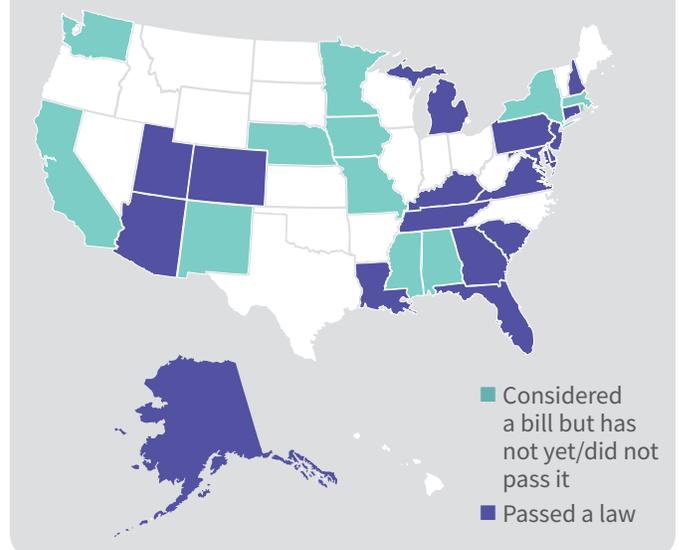
- requires the state to provide each district with real-time access to its data in the state system;
- creates tools such as early warning systems that help districts use their data to take action;
- charges the state with providing guidance to districts about how to use, govern, and safeguard education data;
- provides trainings for teachers and school leaders on using education data effectively and ethically; and
- creates policies that give educators time in the day and supports such as data coaches to make data use part of their ongoing practice.

In 2018, 30 states considered 120 bills and 18 states passed 27 new laws that make data use possible.

Since 2014, states have passed 34 laws charging local education agencies with new data privacy, governance, management, or communication responsibilities. But for local education leaders to meet these new responsibilities and truly use data to support students, they need state policies that break down barriers to use such as training on effective and ethical data use and tools and resources to put that data to work. Of the 24 states that have passed laws since 2014 giving local education agencies new data roles, 12 passed new laws this year to provide supports that can help make data use possible.

This year’s legislation to make data use possible focused both on getting districts and schools better data and on providing the supports they need to use that data well.

States That Considered and Passed Legislation to Make Data Use Possible



TREND *Providing districts and schools the data they need for decisionmaking*

Ten states passed laws that require the state to provide or report new data to school districts.

- **Michigan** passed a law funding the voluntary integration of local districts’ data systems into the Michigan data hub network. This connected data network will provide more actionable data for policymakers and researchers and improve data security and governance across the state.
- **Louisiana** charged the Board of Regents with providing each local education agency with information on its high school graduates’ postsecondary outcomes to help develop policies designed to improve student achievement.

TREND *Creating data-use supports and resources*

Eleven states passed laws this year to make data use possible by providing data leadership, guidance, and supports.

- **Maryland** passed a law charging the state with developing best practices for local school boards on a number of topics including data privacy, data security, breach notification, researcher access, professional development on data governance, and more. The state Department of Education is also charged with helping local data governance staff implement these best practices.
- **Utah** created a new state-level research collaborative. ULEAD—Utah Leading through Effective, Actionable, and Dynamic Education—will promote and facilitate collaborative research across districts, create a clearinghouse of research on successful practices, and help the state remove barriers to effective education research.
- To help local leaders implement data best practices and guidance, **Virginia** passed a law to create a chief data officer position responsible for data storage, security, privacy, de-identification, and access; compliance; and interagency sharing of best practices.

TREND *Training educators to use and protect data*

- In an increase from 2017, states introduced 24 bills this year to provide educators or school leaders with training on data privacy (12 bills), data use (11 bills), or both (1 bill).
- Like several of the data training bills considered this year, the only law passed regarding data training addresses data use for a specific program rather than as a core teaching skill. As part of a larger effort to promote evidence-based teaching practices for students with dyslexia, **Kentucky will require** training for teachers on using evidence and evaluating dyslexic students' improvement over time.
 - A bill in **Massachusetts** would have addressed training on both data privacy and data use. The state considered legislation that would have required it to provide school resource officers with training on school safety data collection, analysis, sharing, and privacy.

Be Transparent and Earn Trust

When states are transparent and work to earn trust, educators and families have meaningful information on their schools' performance and can feel confident in how education data is being used and protected.

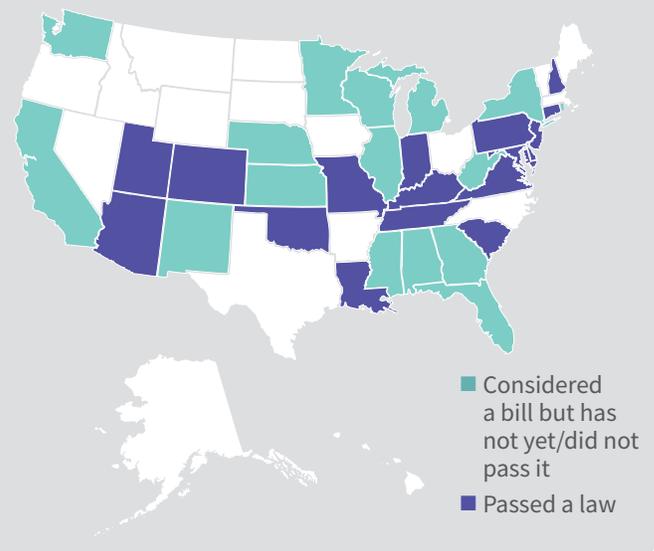
In 2018, 33 states considered 102 bills and 17 states passed 22 new laws to be transparent and earn trust by better reporting data and communicating about the state's use of data to support student learning.

State policymakers can use legislation to be transparent and earn trust by passing legislation that

- improves the quality of publicly available data by requiring more thorough, disaggregated, timely, and actionable public reports;
- invests in innovative ways to get aggregated and de-identified data to the public such as open data initiatives; and
- requires clear information for the public on what data the state collects, who has access to it and for what purposes, how it is protected, and how it is used to support learning.

While only 15 bills this year explicitly cite ESSA as their impetus, numerous state bills address new responsibilities, opportunities, and focus areas from the law. Most notably given ESSA's new public reporting requirements, states introduced 94 bills and passed 21

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



laws that would add new indicators or uses for state report cards and other public reports. Still, most of these bills represent discrete additions to an existing report rather than wholesale redesigns of publicly available education data.

This year, state legislation that aligned with this principle focused on how public reports can highlight outcomes for different student populations, especially those who are vulnerable or traditionally underserved such as students in foster care or those experiencing homelessness.

TREND *Adding new information to public reports*

Several states added to their public reports new indicators that better capture the diversity of student pathways and represent current areas of policy interest.

- Three states (**Delaware, Maryland, and New Jersey**) passed legislation to include data on discipline or school conduct on public reports, with four additional states (**Florida, Illinois, New York, and Tennessee**) considering legislation on this topic.
 - **Delaware's law** requires the state to create a public report on student discipline in all schools.
 - **Maryland's existing** school discipline data reports must be disaggregated by race, ethnicity, gender, disability status, and free or reduced-price lunch status. The law also requires reporting of data about alternative school discipline practices.
 - **New Jersey's law** requires the state to include data about disciplinary suspensions on school report cards.
- Some states passed new laws to report more student outcomes after high school or postsecondary school.

- **Colorado** and **Wyoming** added military enrollment to the postsecondary pathways on which the states collect and report data.
- **Virginia** passed a **law** requiring the state to collect and publicly report on graduate outcomes for each of the state institutes of higher education.
- Another **Virginia law** requires the state to publicly report postgraduate outcomes of students who are eligible for the state's Tuition Assistance Grant Program.

TREND *Being transparent about what data is collected*

Being transparent and earning trust also entail communicating clearly about what data the state collects and how it is used. Picking up on a trend first seen in 2014, five states considered legislation this year to create public data inventories with information on the collection, use, and/or protection of the education data the state collects.

- One of these states, **New Hampshire**, passed **legislation** requiring districts to create a public data inventory with information on the student data elements that are collected.

Guarantee Access and Protect Privacy

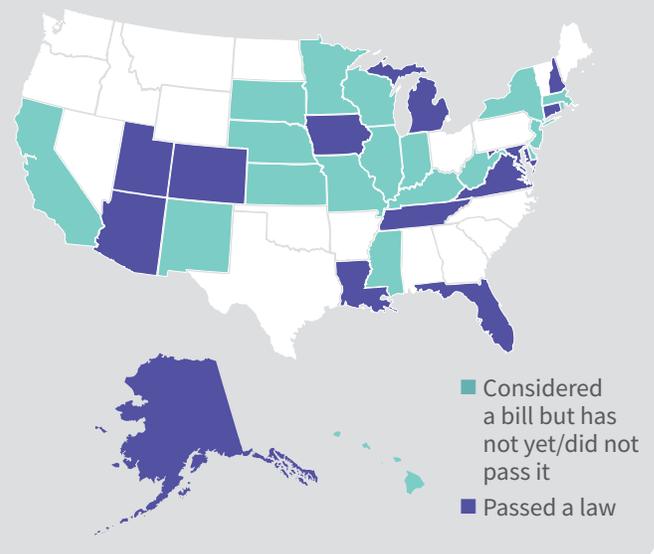
When states guarantee access and protect privacy, they ensure that those closest to students—their families and teachers—have meaningful, useful data about their progress over time while still safeguarding students' privacy.

In 2018, 32 states considered 117 bills and 13 states passed 20 new laws to guarantee data access for educators and families or protect data privacy.

State policymakers can use legislation to guarantee access to data and protect privacy by passing legislation that

- requires that educators and parents have real-time access to their own individual students' longitudinal data through tools such as dashboards or student information systems;
- establishes statewide **data privacy and security policies** that implement robust safeguards without unnecessarily limiting the use of data to support learning; and
- creates clear guidelines and rules for different education data users including state agencies and online service providers.

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



Even as states increase the quality and scope of their education data activities and develop new data tools and resources, few are using legislation to ensure that parents and teachers have access to data about their own students. Instead, the majority of bills in this category this year focused solely on protecting data privacy.

TREND *Building some data access for educators*

No state used legislation this year to provide all parents in the state with access to longitudinal data on their own student's performance. And only three bills (one of which became law) were designed to provide educators with their students' individual-level data.

- **Louisiana** will now require schools to provide teachers with their individual students' state assessment results in a format that is easy to understand and that includes longitudinal student data if possible.
- **Mississippi** considered legislation that would have required districts to provide teachers with their students' performance on local assessments within one week and to provide parents

with the information within 30 days. The bill would also have required results from state assessments to be reported in an easy-to-read format along with an explanation of the results, longitudinal and comparative data, predictive information where available, personalized areas for improvement for parents, and available resources for a student's current and next teachers.

- **Massachusetts** considered a bill that would have created an electronic data backpack program for foster youth to ensure that anyone responsible for that student would have access to his or her education record.

Education Data Privacy: Taking Stock and Looking Ahead

Education data privacy continues to be one of the most prominent topics in state education data legislation. This year's bills reflected the field's changing knowledge and sentiments about data and privacy.

2018 marks the fifth year in a row that legislators have focused on education data privacy. In 2013, one piece of state legislation focused explicitly on education data privacy; since then more than 600 have focused on this issue. **Of the 117 education data privacy bills considered this year, 22 became laws that govern the protection of education data.**

Looking Back: Privacy Trends Over Five Years

Since 2013, 49 states have introduced 620 bills and 43 states have passed 116 new laws expressly addressing the privacy and security of education data. But while privacy has remained a consistently important component of legislating data use in education, the focus of these bills has continuously evolved along with the field's understanding of data's role in education.

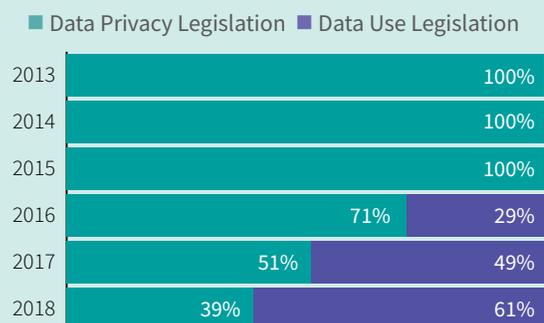
2014: Privacy and Use and State Education Data Systems

2014 marked a profound shift in how states used legislation to explore, explain, and govern education data use and protection. State legislators in 36 states introduced 110 bills and 20 states passed 28 new laws governing the privacy of education data. The rise and fall of inBloom, a proposed data storage system poised for adoption in several states, and ongoing conversations about data use in all aspects of daily life prompted legislators to look at federal and state education data collection. Informed by emerging data concerns and guided by principles from Oklahoma's 2013 [education data transparency and governance law](#), states considered bills to limit some collections and uses of data and to both define and more clearly communicate how and why they would collect, safeguard, use, and grant access to education data.

2015: Looking Beyond the State to Service Provider Data Use

In 2015, state legislators continued to grapple with state collection and use of education data, but much of the year was dominated by a new theme that began to emerge in late 2014—the use of education data by third-party service providers. The 2014 passage of California's [Student Online Personal Information Protection Act \(SOPIPA\)](#) law, which prevented online service providers from using student data for commercial purposes while allowing data use for personalized learning, became a model for states across the country. In all, 46 states considered 182 bills and 15 states passed 28 new laws governing education data privacy in 2015.

EDUCATION DATA PRIVACY AND USE LEGISLATION OVER TIME



2016: Moving from Reaction to Proactive Governance

In 2016, conversations about state and third-party service providers' collection and use of data continued to dominate education data legislation. However, as the intensity of the public concern about student data privacy in 2012–14 slowly subsided and states began to build on and refine privacy legislation from the previous two years, the percentage of state data privacy bills with a governance focus (i.e., one that seeks to establish procedures, roles and responsibilities, and supports for appropriate data use, as opposed to simply prohibiting the collection or use of data) rose significantly from 47 percent in 2014 to 82 percent in 2016. That year, 34 states introduced 112 bills addressing student data privacy, and 15 states passed 18 new student data privacy laws.

Data Privacy in 2018

In 2018, privacy remained a principal topic of state education data legislation, but the percentage of bills on education data privacy fell even lower than in 2017. The privacy legislation that was introduced mainly continued the trends of the previous year—notably governing data use by third-party service providers.

Because so many states have already passed foundational data privacy legislation in recent years, many education-specific privacy bills this year focused on refining or updating existing laws to expand their scope, incorporate new developments, or address unintended consequences or implementation challenges.

TREND *Continuing to look at specific privacy topics*

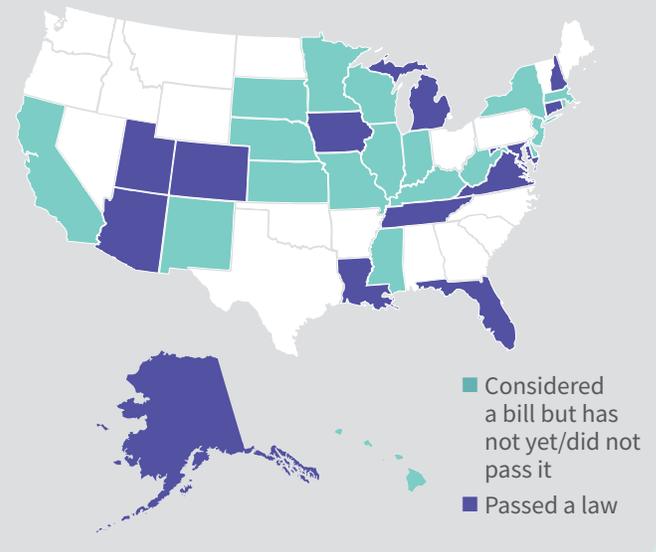
While the overall number and proportion of education data privacy bills have fallen over time, many of the most common privacy trends from the past four years continued in 2018.

- Nineteen states considered 39 bills and six states passed six laws describing data deletion responsibilities.
- Eleven states considered 26 bills and two states passed two laws describing penalties for data misuse.
- Fourteen states considered 18 bills and three states passed three laws governing the collection and privacy of education biometric data elements such as fingerprint scans and voice recordings.
- Ten states considered 16 bills and three states passed three laws describing education or statewide data breach notification procedures.

2017: Expanding from Data Privacy to Data Use

By 2017, state education data legislation still focused significantly on data privacy, but a shift toward data use was becoming even more evident. While states considered 93 bills and passed 18 new education data privacy laws in 2017, these represented only half of the year's 183 education data bills and less than 40 percent of the 53 new state education data laws. The scope of many state privacy bills expanded to encompass student privacy beyond education records and to address privacy issues at the intersection of education, social media, and 1-to-1 device use. However, states also considered dozens of education data bills related to how states use data to support student learning.

States That Considered and Passed Legislation to Protect Privacy



TREND *Continuing to build on an existing model*

California's 2014 SOPIPA legislation to govern data use by online service providers remains a commonly used model.

- This year, eight states considered 12 bills and two states passed two new laws to implement or update provisions from SOPIPA.
- Since 2015, states have introduced 109 bills and passed 24 new laws based on the SOPIPA model.

Conclusion

Over the past five years, policymakers and education leaders in every state have asked tough questions about education data—whether data can help provide real insights and supports for policymakers and education leaders, whether state investments in data improve learning, and whether the benefits of data use outweigh the challenges of safeguarding privacy.

State legislation from the past five years answers these questions with a resounding yes. In 2014 through 2016, states introduced 29 bills to defund or profoundly limit their SLDSs; this year, only one state considered such a bill. Instead, states passed laws to create more useful and detailed public reports, to use data and evidence

to inform policy decisions, and to create governance structures that help states use their data wisely while safeguarding privacy.

But there is more work to be done. Only by providing those who work directly with students the data they need will statewide investments produce real results for students. By continuing to measure what matters, make data use possible, be transparent and earn trust, and guarantee data access and protect privacy, legislators can continue to ensure that they, their educators, and their families have the data they need to meet their policy goals and support every student.

Legislative topic	Number of bills	Number signed into law
PROHIBITIVE VS. GOVERNANCE/GOVERNANCE FOR USE OF STUDENT DATA*		
Prohibitive approach	69	9
Governance or accountability approach	64	18
PRIVACY		
Expressly governs data privacy or security	117	22
PROVISIONS OF CALIFORNIA'S 2014 SOPIPA LAW		
Adopts many of the provisions of California's 2014 SOPIPA law	12	2
PRIVACY PROVISIONS		
Includes data deletion requirements	39	6
Includes penalties for data misuse	26	2
Includes data breach notification	16	3
STAFF TRAINING		
Provides for data privacy or security training	13	0
Provides for data literacy or use training	12	1
NEW RESPONSIBILITIES		
Regulates states or state education agencies	222	51
Regulates school districts (local education agencies)	104	23
ROLE OF SERVICE PROVIDERS		
Regulates data activities of vendors	42	8
Establishes criteria for state or district contracts with service providers	36	8
RESEARCH		
Governs education research or access to data by researchers	29	7
Prohibits education research or access to data by researchers	5	1
OPT-OUT		
Allows parental opt-out of some type of data collection or sharing	34	4
ESSA		
Explicitly mentions provisions of ESSA	15	2
CHANGES TO PUBLIC REPORTS		
Requires states to change at least one aspect of their public reporting	94	21
SCHOOL DISCIPLINE		
Includes new data collection or reporting around student discipline practices	36	8

**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).