Pennsylvania Association of School Business Officials

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2015-2016 Workshop Series

SCHOOL RECORD RETENTION*

March 22, 2016

Webcast (9:30 – 11:00 AM)

Records management, retention, and destruction is an urgent security concern for many school districts. From data breach concerns, to compliance with Right To Know requests, to migrating from paper files to cloud-based databases – records management has been changing dramatically over the past ten years. This webcast will walk participants through the current legal landscape addressing the following essential questions:

- What constitutes a "record"?
- How long must records (Student, HR, Finance) be maintained? Which records?
- When must records be produced pursuant to a Right-To-Know request, or because of litigation?
- Is e-mail treated as an educational record? How long should e-mails be retained?
- What must a school district do in the event of a data breach?
- What should school officials look for in contracts where sensitive data is stored by a contractor?
- How should school districts protect sensitive data on personal cell phones and computers?

INTENDED AUDIENCE:
Business Managers, Department Directors

SPEAKER:
Mark W. Cheramie Walz, Esquire, Sweet, Stevens, Katz & Williams LLP

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Thank you for your participation!

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School Record Retention

March 22, 2016 Webcast

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Smart Business + Informed Decisions = Great Schools

Presenter

- Mark Cheramie Walz, Partner, Sweet, Stevens, Katz & Williams, LLP

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Smart Business + Informed Decisions = Great Schools

The 10 Commandments of Data Security and Data Management

Presented by:
Mark Cheramie Walz

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Key Term: Sensitive Data

- Any data that must be kept confidential by law, or that would otherwise be harmful to the IU if released publicly. Includes all sensitive employee records (payroll, disability, workers comp, discipline, etc.) and all FERPA records for students.

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Commandment 1 - Nearly All Records Are Subject To Release

- FERPA = Allows students & parents to inspect "educational records."
- "Educational Records"
  - Contains "personally identifiable information" about a student or students
  - "maintained" by the agency or a person acting on behalf of that agency.
- Very broad

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Examples of FERPA Records

- Student's cumulative file
- Special education documents (IEPs, progress monitoring, NOREP, evaluations, etc.)
- Health records
- Disciplinary records
- Emails about a student
- Student's work product that is maintained
- Counseling notes
- Report cards
- Attendance Records

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NOT an education record:

- Records kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- Relevant as we consider e-mails and documents stored by individual users.

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More on FERPA

- Doesn't matter:
  - Where the record is physically located
  - Why or for what purpose the record was created
  - Who created the record
  - Whether the record has anything to do with "education"
  - Whether the record is electronic or maintained in hard copy

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Nuts and Bolts of FERPA

- Request must be in writing
- Right to inspect and copy
- May request to change / alter record
- Must respond within reasonable time
- May charge fee to copy, but not to inspect
- May only request and inspect Student's own records

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Potential Records?

- What about student performance data stored online through a website?
- What about bulletin boards on Blackboard, or a moodle site?
- What about student work product through an educational website?

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Educational Records Request

- Very common
- Often related to special education litigation
- In general, simply a request for a copy of all of a student's records
- Who determines what to send? Who pulls all the data? Do redactions have to be made? What about records teachers have maintained?

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FERPA Applied

- Parent suspects that a Principal has been speaking poorly about boy Student behind his back, and may even be bullying Student himself for being "a girl." Parent sends a handwritten note to school with Student requesting all emails about Student.
- How do we address the request?

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- No reference to FERPA in the request, should we treat it as a FERPA request?
- Leaving paper records aside, what e-mails should be provided?
  - Emails stored on District servers?
  - District determines the search terms
  - Emails stored by users? (Maintained by district?)
  - Emails in deleted folders?
  - Emails from teacher's personal account?
- Redactions required for other students' information
- Printed out emails?

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Right To Know Law

- All agency records are public unless the agency can prove that they are exempt.
  - Exceptions such as privilege, security, trade secrets, etc.
- Records in possession of a party with whom the agency contracts to perform a governmental function are not exempt, and therefore are public records.
- Written request must identify the record sought with sufficient specificity to enable the agency to ascertain which records are being sought.

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Is it a record?

- Requestor must prove that the request is for a "record" as defined by RTK. Two part test:
  - Information must document a "transaction or activity of the agency"; and
  - Information must be "created, received, or retained" in connection with the activity of the agency.

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Notes on RTK

- Not required to create records or compile, format, or organize a record.
- Redaction may be required.
- Don't have to provide information that would jeopardize network security.
- Timeline for response is a mere 5 days. (May be extended with written notice to the requestor).
- Record shall be provided in the medium requested if it exists in that medium, otherwise provided in the medium in which it exists.

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RTK Examples

- Surveillance video of student sit-in
- Training documents for bus drivers
- Configuration of Internet filters

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Commandment 2 - All Stored Data Must Be Preservable

- Litigation Hold - means that all data related to that employee, or related to a student, or related to an incident, must be preserved AS IS.
- How to undertake? Who is responsible? How is it "held"?
- Consequences for non-compliance are substantial.
- Here again, doesn't matter where it is stored or by whom it is stored if a contractor is involved.

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Spoliation

- AKA - Adverse Inference Instruction
- If records were supposed to be maintained, but we destroyed them of failed to maintain them, the jury is instructed to essentially "assume the worst" about the missing evidence.
- Makes winning very difficult!
- Can be safe harbor for routine deletion so long as it is according to policy and is rigorously adhered to, and there were good faith efforts to preserve the data sought.

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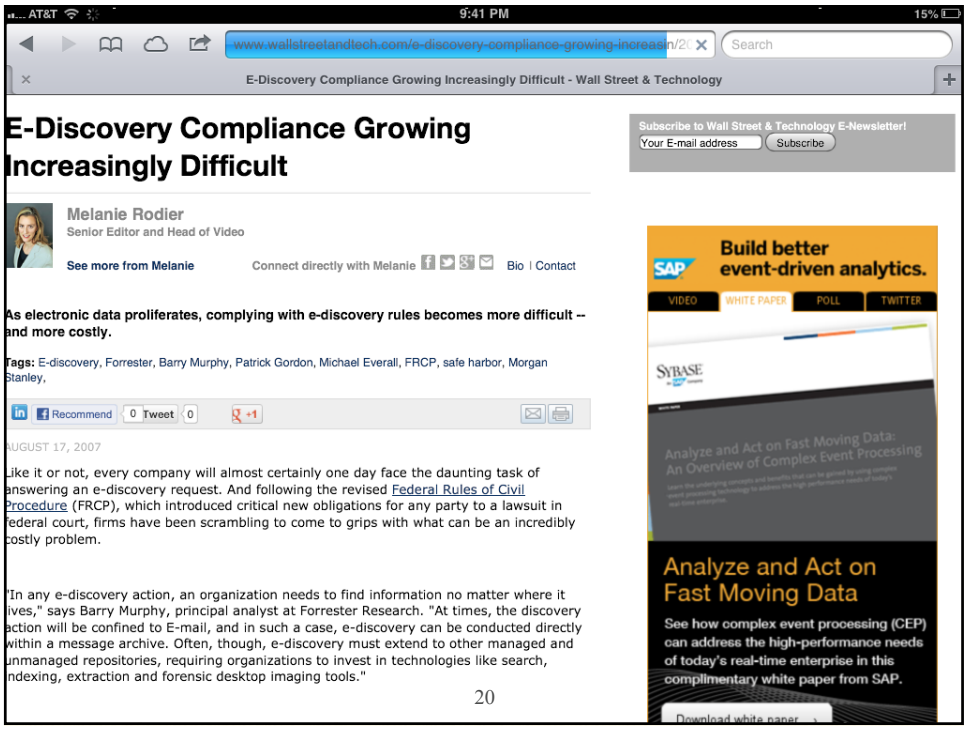

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Commandment 3 - Back Up All Sensitive Data

- Critical in case we need to restore following data breach, loss, outage, etc.
- Individual files stored in unauthorized locations are NOT backed up (e.g. Thumb drive, unauthorized cloud storage, etc.)
- Back-ups play a key role in determining what is lost in the event of a theft or loss of a device.

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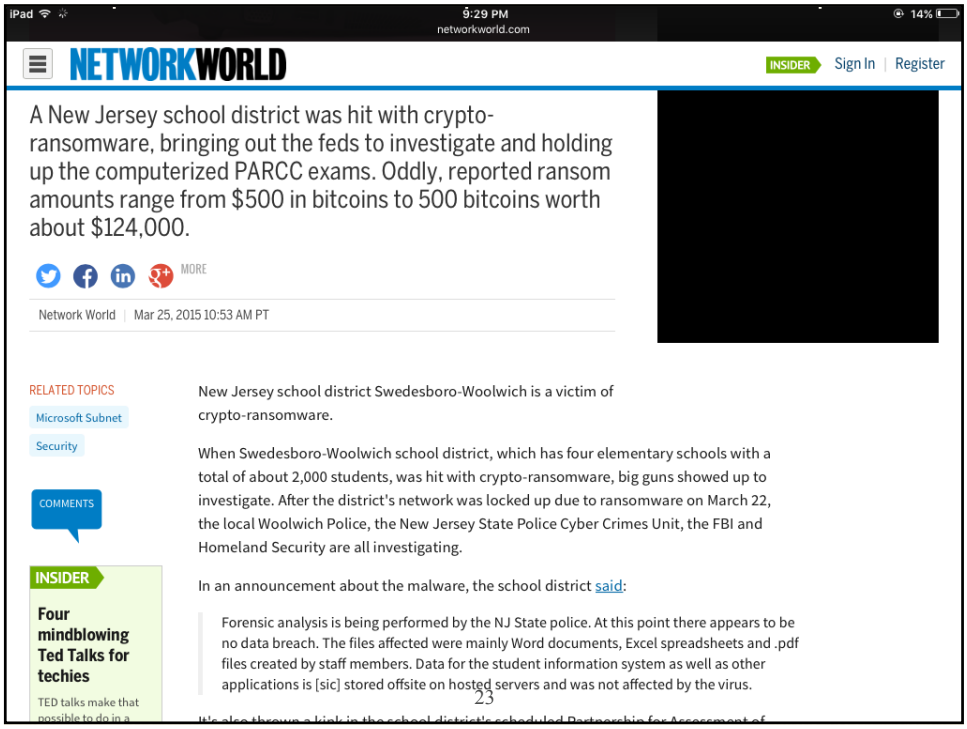

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A New Jersey school district was hit with crypto-ransomware, bringing out the feds to investigate and holding up the computerized PARCC exams. Oddly, reported ransom amounts range from $500 in bitcoins to 500 bitcoins worth about $124,000.

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Network World | Mar 25, 2015 10:53 AM PT

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New Jersey school district Swedesboro-Woolwich is a victim of crypto-ransomware.

When Swedesboro-Woolwich school district, which has four elementary schools with a total of about 2,000 students, was hit with crypto-ransomware, big guns showed up to investigate. After the district's network was locked up due to ransomware on March 22, the local Woolwich Police, the New Jersey State Police Cyber Crimes Unit, the FBI and Homeland Security are all investigating.

In an announcement about the malware, the school district said:

> Forensic analysis is being performed by the NJ State police. At this point there appears to be no data breach. The files affected were mainly Word documents, Excel spreadsheets and .pdf files created by staff members. Data for the student information system as well as other applications is [sic] stored offsite on hosted servers and was not affected by the virus.

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Commandment 4 - Must Vet All Contractors Storing Sensitive Data

- Ensure that contractors utilize appropriate data security precautions and backups.
- Review contracts to ensure legal compliance.
- Seek provisions assuring FERPA compliance per educational official exception, where student data involved.
- Ensure contractor is obligated to notify IU in event of a data breach.

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Commandment 5 - Have Data Breach Response Plan

- Common Data Breaches
  - Lost laptop
  - Lost mobile device
  - Lost thumb drive, or other portable media
  - Content mistakenly posted publicly
  - Contractor data breach
  - Errant e-mail sent to wrong party

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Less Common Data Breaches

- Firewall failure
- Hacking (whether from internal or external sources)
- Rogue employee data dump

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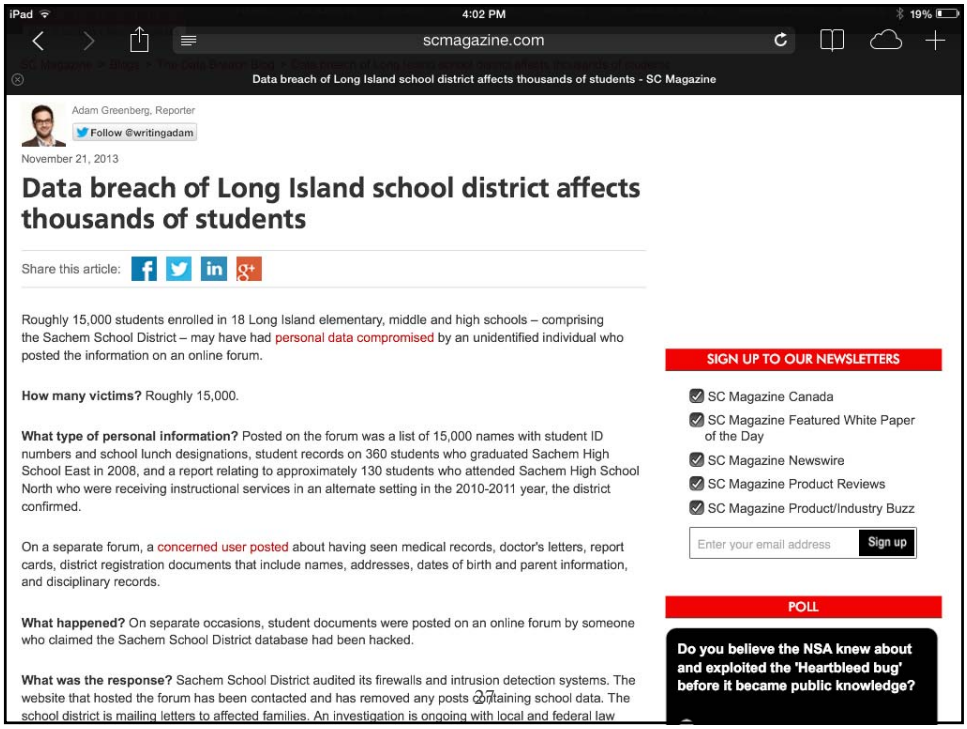
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November 21, 2013
Data breach of Long Island school district affects thousands of students
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Roughly 15,000 students enrolled in 18 Long Island elementary, middle and high schools – comprising the Sachem School District – may have had personal data compromised by an unidentified individual who posted the information on an online forum.
How many victims? Roughly 15,000.
What type of personal information? Posted on the forum was a list of 15,000 names with student ID numbers and school lunch designations, student records on 360 students who graduated Sachem High School East in 2008, and a report relating to approximately 130 students who attended Sachem High School North who were receiving instructional services in an alternate setting in the 2010-2011 year, the district confirmed.
On a separate forum, a concerned user posted about having seen medical records, doctor's letters, report cards, district registration documents that include names, addresses, dates of birth and parent information, and disciplinary records.
What happened? On separate occasions, student documents were posted on an online forum by someone who claimed the Sachem School District database had been hacked.
What was the response? Sachem School District audited its firewalls and intrusion detection systems. The website that hosted the forum has been contacted and has removed any posts containing school data. The school district is mailing letters to affected families. An investigation is ongoing with local and federal law
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Virginia School District Admits Data Breach - eSecurity Planet
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Student names, addresses, phone numbers, dates and places of birth, dates of attendance, and school schedules were exposed.
By Jeff Goldman | Posted January 10, 2014
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Virginia's Loudoun County Public Schools (LCPS) recently acknowledged that an error made by third-party provider Risk Solutions International (RSI) made student and staff information accessible online (h/t Washington Post).
RSI, which had been maintaining an emergency management plan Web site for LCPS, conducted technical testing on November 4, 2013, December 19, 2013, and December 24, 2013. "Security protocols were not followed and the data was exposed," according to an LCPS statement. "The exact date of the incident has not been determined nor has the length of time the information was exposed."
"Risk Solutions International acknowledged that human error, on their part, was the cause of the data breach," LCPS superintendent Edgar B. Hatrick stated in a separate announcement. "I have insisted that they take all necessary steps to ensure the complete privacy of our data."
8 Ways to Better Monitor Network Security Threats in the Age of BYOD
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When LCPS was notified on January 2, 2014 that the information was accessible through a Web search, it contacted RSI requesting a shutdown. It took until January 8, 2014 to remove caches of the documents to ensure the information was no longer accessible.
Information exposed includes student names, addresses, phone numbers, dates and places of birth, dates of attendance, and school schedules. According to the Washington Post, one school's locker combinations were also exposed.
Photo courtesy of Shutterstock.
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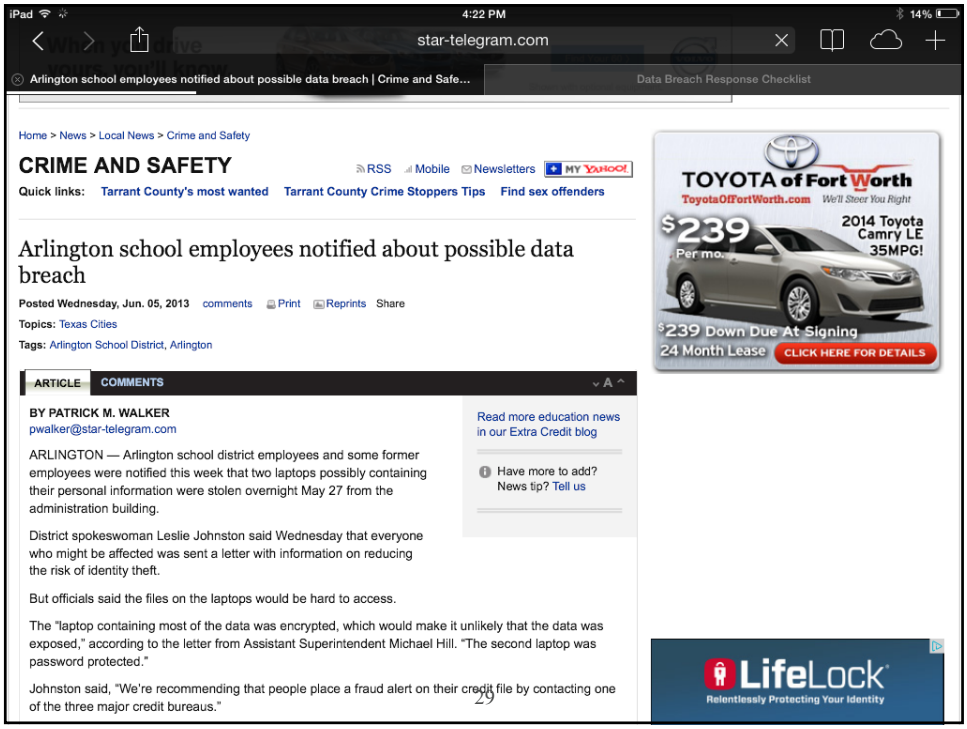
By 2017, more than 50% of end-user devices will be restricted to running only apps that have been pre-inspected for security and privacy risks, up from 20% today. In today's market, the endpoint protection platform provides a collection of security utilities to protect PCs and tablets. Vendors in this market compete on the quality of their protection capabilities, the depth and breadth of features, and the ease of administration. Read this Gartner Magic Quadrant analyst report for an in-depth comparison of 17 ...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BY PATRICK M. WALKER
pwalker@star-telegram.com
ARLINGTON — Arlington school district employees and some former employees were notified this week that two laptops possibly containing their personal information were stolen overnight May 27 from the administration building.
District spokeswoman Leslie Johnston said Wednesday that everyone who might be affected was sent a letter with information on reducing the risk of identity theft.
But officials said the files on the laptops would be hard to access.
The "laptop containing most of the data was encrypted, which would make it unlikely that the data was exposed," according to the letter from Assistant Superintendent Michael Hill. "The second laptop was password protected."
Johnston said, "We're recommending that people place a fraud alert on their credit file by contacting one of the three major credit bureaus."
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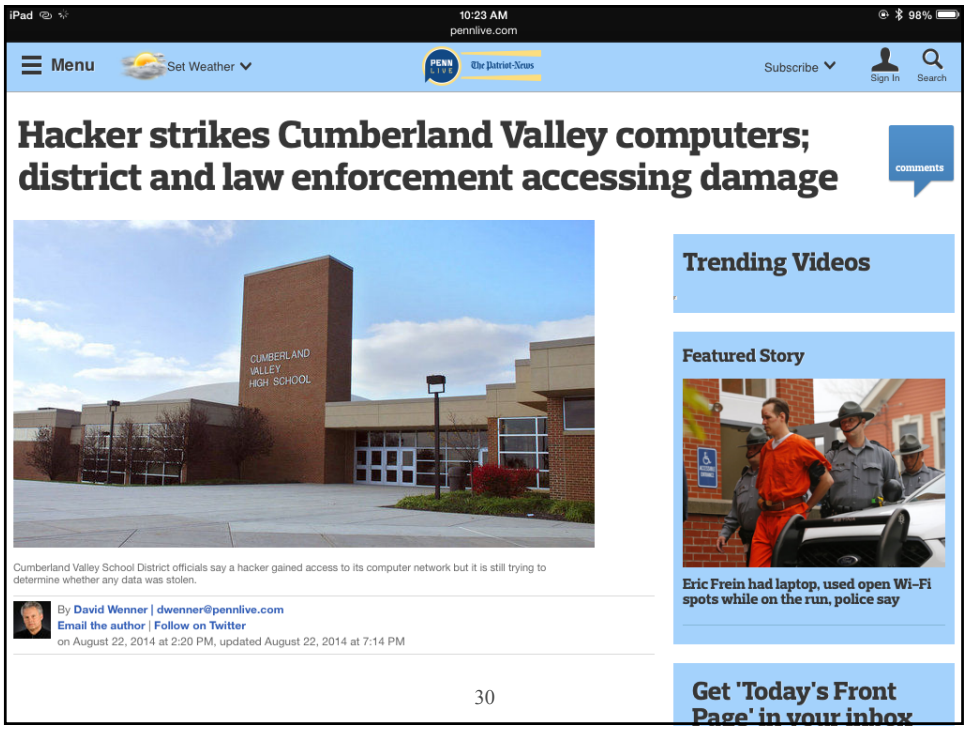
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CUMBERLAND VALLEY HIGH SCHOOL
Cumberland Valley School District officials say a hacker gained access to its computer network but it is still trying to determine whether any data was stolen.
By David Wenner | dwenner@pennlive.com
Email the author | Follow on Twitter
on August 22, 2014 at 2:20 PM, updated August 22, 2014 at 7:14 PM
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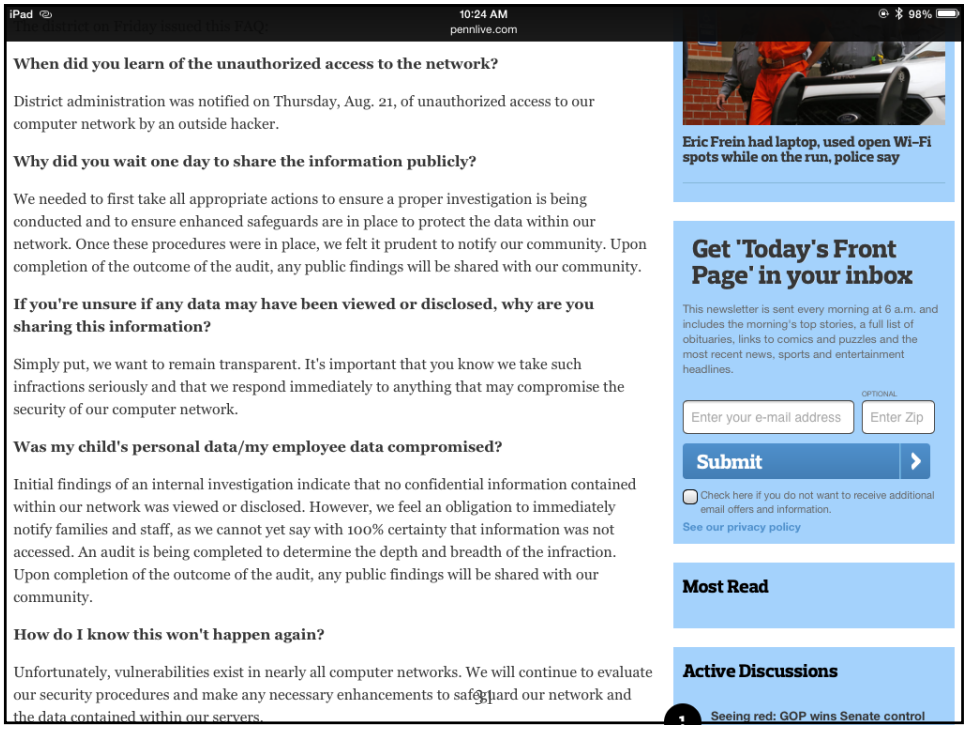
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When did you learn of the unauthorized access to the network?
District administration was notified on Thursday, Aug. 21, of unauthorized access to our computer network by an outside hacker.
Why did you wait one day to share the information publicly?
We needed to first take all appropriate actions to ensure a proper investigation is being conducted and to ensure enhanced safeguards are in place to protect the data within our network. Once these procedures were in place, we felt it prudent to notify our community. Upon completion of the outcome of the audit, any public findings will be shared with our community.
If you're unsure if any data may have been viewed or disclosed, why are you sharing this information?
Simply put, we want to remain transparent. It's important that you know we take such infractions seriously and that we respond immediately to anything that may compromise the security of our computer network.
Was my child's personal data/my employee data compromised?
Initial findings of an internal investigation indicate that no confidential information contained within our network was viewed or disclosed. However, we feel an obligation to immediately notify families and staff, as we cannot yet say with 100% certainty that information was not accessed. An audit is being completed to determine the depth and breadth of the infraction. Upon completion of the outcome of the audit, any public findings will be shared with our community.
How do I know this won't happen again?
Unfortunately, vulnerabilities exist in nearly all computer networks. We will continue to evaluate our security procedures and make any necessary enhancements to safeguard our network and the data contained within our servers.
Eric Frein had laptop, used open Wi-Fi spots while on the run, police say
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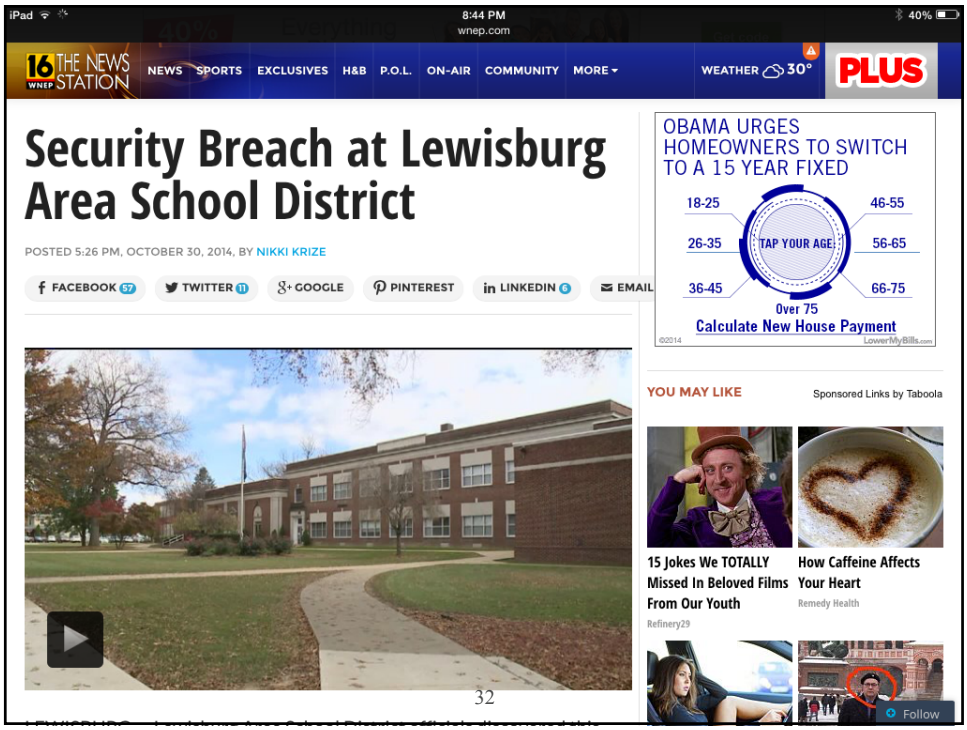
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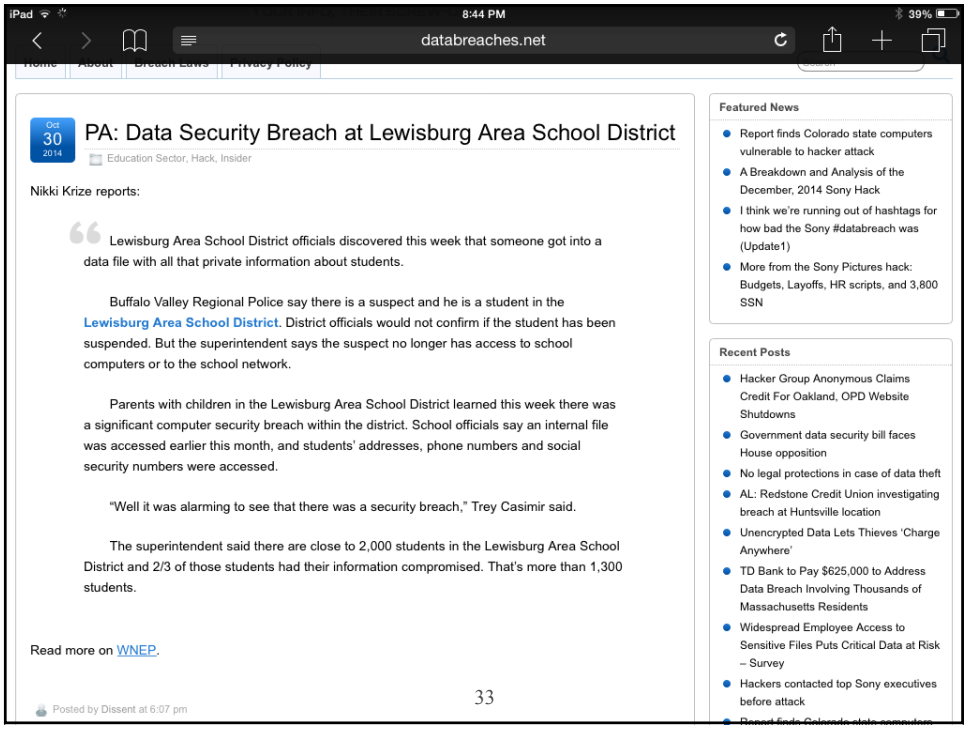
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2014
PA: Data Security Breach at Lewisburg Area School District
Education Sector, Hack, Insider
Nikki Krize reports:
Lewisburg Area School District officials discovered this week that someone got into a data file with all that private information about students.
Buffalo Valley Regional Police say there is a suspect and he is a student in the Lewisburg Area School District. District officials would not confirm if the student has been suspended. But the superintendent says the suspect no longer has access to school computers or to the school network.
Parents with children in the Lewisburg Area School District learned this week there was a significant computer security breach within the district. School officials say an internal file was accessed earlier this month, and students' addresses, phone numbers and social security numbers were accessed.
"Well it was alarming to see that there was a security breach," Trey Casimir said.
The superintendent said there are close to 2,000 students in the Lewisburg Area School District and 2/3 of those students had their information compromised. That's more than 1,300 students.
Read more on WNEP.
Posted by Dissent at 6:07 pm
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What are you required to do in light of a data breach?
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PA Data Breach Law

- Breach of Personal Information Notification Act (73 P.S. § 2301)
- "Entity." A State agency, a political subdivision of the Commonwealth or an individual or a business doing business in this Commonwealth.

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Notification of Breach

- (a) General rule.--An entity that maintains, stores or manages computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery of the breach of the security of the system to any resident of this Commonwealth whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person.
- The notice shall be made without unreasonable delay.*

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- "Breach of the security of the system." The unauthorized access and acquisition of computerized data that materially compromises the security or confidentiality of personal information maintained by the entity as part of a database of personal information regarding multiple individuals and that causes or the entity reasonably believes has caused or will cause loss or injury to any resident of this Commonwealth.

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- maintained by the entity as part of a database of personal information regarding multiple individuals and that causes or the entity reasonably believes has caused or will cause loss or injury
- Personal Information:
  - (1) An individual's first name or first initial and last name in combination with and linked to any one or more of the following data elements when the data elements are not encrypted or redacted:
    - (i) Social Security number.
    - (ii) Driver's license number or a State identification card number issued in lieu of a driver's license.
    - (iii) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account.

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Other details

- Must provide notice of the breach if encrypted information is accessed and acquired in an unencrypted form OR if the security breach is linked to a breach of the security of the encryption, OR if the security breach involves a person with access to the encryption key.
- Contractor/Vendor - required to notify the entity. It is then the duty of the entity to make the notification required by the law.
- If more than 1000 notified, must also notify credit reporting agencies.

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Exception

- (a) Information privacy or security policy.--An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information and is consistent with the notice requirements of this act shall be deemed to be in compliance with the notification requirements of this act if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

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Summary of PA Data Breach Law

- Applies in a narrow instance to very specific and highly sensitive information.
- Definitely does not apply to many school district data breaches.
- Requires timely and specific response.
- May be costly response for large-scale breach, of breach whose scale is unknown.

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If not required, then what are best practices?

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Planning Ahead

- Set backup frequency to better plan data breach response.
- Plan for remote tracking or lost devices and securing authority to remotely wipe the contents of lost devices without other approval.
- Train staff to utilize approved cloud based storage instead of thumb drives for transferring files.
- Plan clean-up of downloaded files and other cached data at regular intervals.
- Password protect and/or encrypt data on school owned devices.
- Adopt policies and procedures for safeguarding data on employee owned devices.

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Data Breach Response Plan

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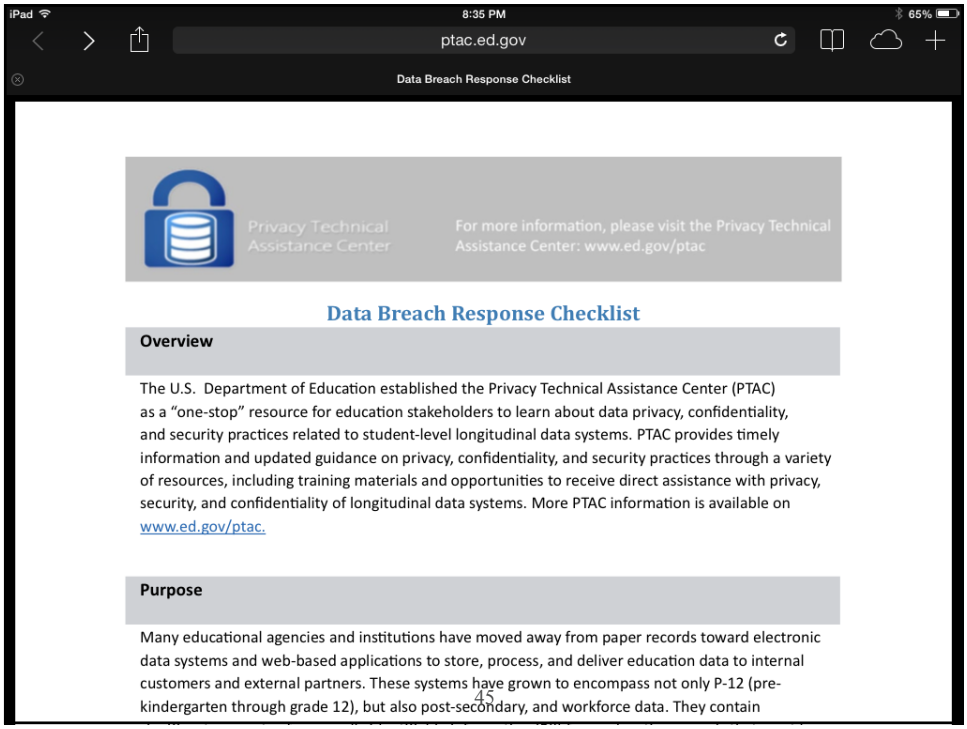

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Commandment 6 - Destroy Irrelevant and Outdated Records

- Student record do not need to be kept for 99 years, that "guideline" was repealed years ago.
- Should have a records retention and destruction policy and all employees should be trained to follow it.
- Work together within the administration to establish parameters for each department that everyone is capable of following.
- This ensures that data that is not longer relevant is destroyed, freeing up space and resources, but importantly removing any risk associated with data security.

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tinyurl.com/pasborecords

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Related: Destroy Temporary Data

- Examples: Chat logs, video surveillance, voicemails, text messages, fax cover sheets, post-it notes, etc.
- Define "records" to exclude these temporary data sources in record retention policy.

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Commandment 7 - Mind The Metadata

- The internal data on files can tell who created the file, when it was edited, what changes were made, who sent a document, etc.
- It is relevant not only in litigation, but also to Parents and Staff who may submit a RTK request.
- Under RTK, must provide document in the form requested if it exists in the form requested. (e.g. Can't turn MS Word file into PDF prior to sending if request is for the MS Word file).
- When sending files outside the organization, use metadata tools to clean metadata from the file prior to sending.

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Commandment 8 - Adopt and Enforce a Mobile Device Policy

- Require all employees to utilize data security standards on their personal devices.
- These include passwords on devices, and ensuring that sensitive data is never stored locally on a personal device.
- Also includes provisions for the termination of access upon retirement or separation to ensure data integrity.

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More on Mobile Devices

- Data belonging to the organization that is stored on a personal mobile device is still subject to RTK, and would likely still be subject to a FERPA request.
- Need to utilize approved resources only to ensure that the data needed can be quickly recovered, preserved, and produced.

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Commandment 9 - Emails Are a Record of Government

- Always use school account, not personal account, to conduct business (including board members).
- Utilize an email archiver to retain a searchable record of all messages into and out of the organization.
- Emails are subject to FERPA and RTK requests, and staff MUST be trained on the level of professionalism needed over email. Don't write anything you wouldn't want a parent or employee to see.
- Work with staff on when to speak on the phone, or in person, instead of utilizing email.

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Commandment 10 - Establish a Culture of Data Security

- Establish a culture where security matters - from passwords, to encryption, to data back-ups.
- Don't just turn the other way when you find out that an employee is storing data in an unapproved resource.
- The only way data stays secure in large organizations is with team buy-in, where all employees are aware of expectations and policies.

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Time for Questions

- Send text questions using the "Chat" function at the left side of your screen.
- Type message in box and click "Enter" to send.

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REMINDER:
Webcast sites are asked to have every participant sign-in on the Attendance Form and return to the PASBO Office for attendance and credit purposes.

Forms must be received by March 29.

Thank you for your participation!

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- ELEMENTS OF FACILITIES MANAGEMENT – April 13/Kulpsville; April 14/Mars
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SCHOOL RECORD RETENTION
Webcast Recording Order Form

Records management, retention, and destruction is an urgent security concern for many school districts. From data breach concerns, to compliance with Right To Know requests, to migrating from paper files to cloud-based databases – records management has been changing dramatically over the past ten years. This webcast will walk participants through the current legal landscape addressing the following essential questions:

- What constitutes a "record"?
- How long must records (Student, HR, Finance) be maintained? Which records?
- When must records be produced pursuant to a Right-To-Know request, or because of litigation?
- Is e-mail treated as an educational record? How long should e-mails be retained?
- What must a school district do in the event of a data breach?
- What should school officials look for in contracts where sensitive data is stored by a contractor?
- How should school districts protect sensitive data on personal cell phones and computers?

A recording of the webcast program will be available for download approximately one week after the program date. Whether you use it as a review or share it with fellow employees unable to attend the live webcast, the information is at your fingertips!

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Webcast Date: 3/22/16 Webcast Title: School Record Retention

Paid Registrant: _____ Registrant's LEA/organization: _____

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If you are requesting PASBO CEU or Accountant CPE Credit, you must check the appropriate column and provide your email address.

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Please return this form <u>no later than 7 days following the program date</u> by ONE of the following methods.
Scan and email to kpierich@pasbo.org ♦ Fax to 717-540-1796 *(Cover sheet is not required)* ♦ Mail to PASBO, 2608 Market Place, Harrisburg, PA 17110
CPE Certificates will be mailed. Credit is available for the live program only, not the recording.