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Statutory Framework for K-12 Breach Notification Handout

| | State Breach Notification Laws | FERPA |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Citation | Mich. Comp. Laws §§ 445.61, 445.63, 444.64, 445.72 | 34 CFR Part 99 |
| Data | "Data" means computerized personal information. | All records, electronic or physical. |
| PI/Education Records | <p>First name or first initial and last name, in combination with one or more of the following data elements:</p> <ul style="list-style-type: none"> • Social Security number; • Driver's license or state identification card number; • Financial account or payment card number, in combination with any required code or password permitting access to the account. | <p>Personally identifiable information (PII) from education records includes information, such as a student's name or identification number, that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.</p> <p>Education records means records directly related to a student and maintained by an educational agency or institution, or by a party acting on behalf of the agency or institution. See FERPA regulations, 34 CFR §99.3</p> |
| "Breach" | The unauthorized access <u>and</u> acquisition of data that compromises the security or confidentiality of PI maintained by an Entity as part of a database of PI regarding multiple individuals, except for certain good faith acquisitions. | A data breach is any instance in which there is an unauthorized release or access of PII or other information not suitable for public release. |
| Encryption Safe Harbor | Yes. Notice is not required for encrypted or redacted information, provided that the encryption key is also not acquired. | |
| Notification | Notification required without unreasonable delay to impacted MI residents and only if security breach has or is likely to cause substantial loss or injury to, or result in identity theft, and upon determining scope and after remediation. | <p>None. Requires "recordation" of each incidence of (unauthorized) data disclosure¹ 34 CFR 99.32(a)(1).</p> <p>Direct student notification may be advisable if the compromised data includes student SSNs and other identifying information that could lead to identity theft" (Family Educational Rights and Privacy, Final Rule, 73 Federal Register 74843-74844 [December 9, 2008]).</p> |

¹ As stated in the preamble of the 2008 amendment to the FERPA regulations: "The [U.S.] Department [of Education] does not have the authority under FERPA to require that agencies or institutions issue a direct notice to a parent or student upon an unauthorized disclosure of education records. FERPA only requires that the agency or institution record the disclosure so that a parent or student will become aware of the disclosure during an inspection of the student's education record. ... FERPA does not require an educational agency or institution to notify students that information from their education records was stolen or otherwise subject to an unauthorized release, although it does require the agency or institution to maintain a record of each disclosure. 34 CFR 99.32(a)(1). In any case, direct student notification may be advisable if the compromised data includes student SSNs and other identifying information that could lead to identity theft" (Family Educational Rights and Privacy, Final Rule, 73 Federal Register 74843-74844 [December 9, 2008]).

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