



September 3, 2019

The Honorable Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 200510

The Honorable Edward Markey  
United States Senate  
255 Dirksen Senate Office Building  
Washington, DC 200510

The Honorable Richard Blumenthal  
United States Senate  
706 Hart Senate Office Building  
Washington, DC 200510

Dear Senators Durbin, Markey and Blumenthal:

Thank you for your letter requesting additional information on the privacy protections for student data by education technology firms. As an education company, D2L is firmly committed to student learning first and foremost. As such, we believe strongly in the protection of student information and its strict use for educational purposes. We have built a strong and intentional culture of privacy and security at D2L that is ingrained into the products we build. We thank you for your interest in D2L's policies and practices around privacy and security, and welcome the opportunity to share more about how we ensure strong protections for our customers and most importantly, the students they serve.

As background, D2L (Desire2Learn) is an education company that has been transforming the way the world learns since 1999. Our cloud-based learning management platform, Brightspace, is currently being used in both traditional and non-traditional education settings by K-12 schools, institutions of higher education and businesses to provide individuals with online and blended face-to-face learning experiences.

When the company was founded 20 years ago, our vision was to use technology to dramatically transform learning. Today, D2L continues to operate in the spirit of that vision to reduce barriers and to ensure that everyone has access to the best possible learning opportunities; regardless of age, geography, gender, ability, income or other factors.

Through the Brightspace platform, students engage in their learning online which provides the ability for personalized experiences driven by data and analytics. This way, learner outcomes are optimized to the individual and instruction and delivery are flexible to meet the varying needs of each student where, when and how they learn best.

### **Working with schools**

D2L acts as a service provider to schools, school districts and institutions of higher education. We always have written contracts with our customer entities that outline the services being contracted and the privacy and security requirements. D2L never allows access to Brightspace for an individual student or teacher without an agreement with an authorized individual at the district or institution in place. Unlike with a "freemium" business model, where the product is free and the data is the value, D2L's contractual relationship with customers keeps the value on the service and our focus on education.

We follow this business model for two primary reasons:

1. A contractual relationship ensures that the school, district or institution is the controlling agent of any services being used in the classroom setting and of the student personal information collected. D2L acts only on the instructions of our customers to process their data.
2. We believe that any educational tool used in a classroom setting should be thoroughly evaluated as part of a school, district or institution's strategic education plan. Such a plan is based first on student needs, curriculum and instructional goals followed by the identification of the tools most appropriate to fulfill those needs and goals.

Individual accounts for students and parents are established by the school, district or institution once an agreement is in place. Students and parents are able to request access, correction or deletion of their personal information by contacting their school or institution, which controls the data.

### **Security Practices**

To protect student data from unauthorized access, D2L has implemented a multi-layered approach to security for our platform and the student data we process to prevent unauthorized access. This approach employs tools for network monitoring, vulnerability management and patching, encryption of data at rest and in transit, and activities for the security of our physical office space and employee hardware.

To keep our practices current and aligned with technology industry best practices, D2L maintains several security certifications, including ISO/IEC 27001 Information Security Management and ISO/IEC 27018 Protection of Personally Identifiable Information. We hold these certifications independently as D2L, not through a partner or subcontractor.

More information on our security and audit practices and certifications can be found on our [Security Center webpage](#).

### **Privacy Practices**

As an education company focused on student learning, D2L adheres to privacy practices in the best interest of students. We are a signatory to the [Student Privacy Pledge](#) developed by the Future of Privacy Forum (FPF) and the Software and Information Industry Association (SIIA), and follow the principles of Privacy by Design, a framework based on proactively embedding privacy features and concepts into a product's initial design, in developing and improving the Brightspace platform and in our partnership with customer schools, districts and institutions.

Our contract provisions with customers require D2L's strict confidentiality of customer data and limitations on our access to account data. In keeping with our commitments as an education company, we never:

- sell, rent or lease any student data – personally identifiable or not;
- allow advertisements in the Brightspace platform; or
- collect, track, target, use or sell learner data for advertising purposes or the creation of advertising profiles.

[D2L's Privacy Statement](#) can be found on our website. We have also created an [online Privacy Center](#) to provide additional, easy-to-understand information about our privacy practices.

We appreciate the opportunity to share D2L's best practices in privacy and security of student information. Please let us know if we can address any other questions you might have about D2L or Brightspace. We look forward to working with you and your staff as a resource in education and protecting student data privacy and security.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Baker".

John Baker  
President & CEO

A handwritten signature in blue ink, appearing to read "Anna Forgione".

Anna Forgione  
Chief Privacy Officer

# Attachment

## Responses to Questions in August 12 Letter

1. List and describe any online courseware offerings, software, or electronic devices for K-12, as well as higher education, that you have put into production since your company was founded.
  - a. How many educational institutions and students have used your courseware, software, or electronic devices as of August 12, 2019?
  - b. What is the age range of students using your courseware, software, or electronic devices?

D2L was founded in 1999 with the launch of the Brightspace learning management system. While we have had many features and tools throughout the last 20 years, each has been a component of, and accessed through, the Brightspace platform. D2L contracts with school districts (K-12), institutions of higher education, and state agencies to offer its tools and services to students throughout the kindergarten to college pipeline.

Today, D2L is a global company operating in more than 40 countries and complying with international frameworks and rules for data privacy and security.

The Brightspace is a learning management system (LMS) enabling schools to implement and scale up blended and online learning through digital content and application management, virtual classrooms, a parent portal, communication and collaboration tools, feedback and assessment, OER development and sharing and more.

2. List and describe each type of data collected from students, parents, teachers, or educational institutions through your courseware, software, or electronic devices.
  - a. How long do you retain this data and what is your process for deleting collected information?
  - b. Are students or parents able to easily opt-out of, correct, delete, or acquire a copy of any data that has been collected by your company?
  - c. Do you sell products or services that make use of data collected through courseware, software, or electronic devices offered by your company?
  - d. In the event of a merger, acquisition, bankruptcy, or dissolution of your company, how would this data be handled?
  - e. Do students or parents have the option to cease data collection or retention prior to a change in company ownership? How does this look in practice?
  - f. Is any data used for advertising purposes, hosted on a third party platform, or otherwise shared with or sold to third parties, including subcontractors, subsidiaries, data brokers, or universities? If yes, please explain and explain what safeguards are in place to ensure that third parties' use of this data is limited and the purpose for each third party's access.

School, district and institution administrators determine the data collected from students, parents or teachers. They are the controllers of all data within the Brightspace platform, which includes control over access, correction, deletion and retention. D2L processes data on behalf of our customers and only at their direction. In accordance with education and privacy laws and best practices for verification of identity and authority, individual students and parents work with their school or institution of higher education to correct, delete or acquire a copy of their education record.

D2L uses deidentified and aggregate information in Brightspace only for service delivery, product improvement and product development, as described in our [Privacy Statement](#) and contracts with our customer schools, districts and institutions of higher education. D2L never sells, rents or leases student information – whether identifiable or not.

As described in our [Privacy Statement](#), any successor company to D2L would continue to be bound by our Privacy Statement. Following a change in ownership, any rights and obligations regarding data collection would be assumed by the successor entity in accordance with the terms governing the relationship between the successor and the customer school, district or institution.

**3. List and describe any other sources of student data that you receive, including the types and names of third parties that share or sell this data to you.**

Brightspace only receives student data for processing from customer schools, districts and institutions. D2L does not buy, sell, rent or lease student data.

**4. Do you use your courseware, software, or electronic devices to group students into labels or categories, and if so, are students, parents, educational institutions, or other third parties given access to these labels or categories?**

- a. **If yes, please list and describe the data you collect to determine to which label or category a student is assigned.**

Brightspace does not group students into labels or categories in any automated, pre-determined or other algorithmic manner. Administrators or teachers may however choose to group students for instructional or other school purposes into groups of their choosing. For example, a teacher may place students into small groups within a single course based on instructional needs, such as to receive specialized content or additional engagement.

D2L does provide products and services, that schools or institutions may choose to turn on within Brightspace, that predict student success in courses and programs, the results of these tools are recommendations only. No decision or determination about student progress or paths are ever made by Brightspace. Trained educators and administrators interpret recommendations and make decisions on any final action.

**5. Do you ask students to fill out a survey, create a login, or disclose personal information, such as address, date of birth, or involvement in official activities, to use your products, including to view your Terms of Service or End User License Agreement?**

D2L only engages with authorized individuals in schools, districts and institutions of higher education. We only provide access to Brightspace to a school or institution with a written agreement in place that addresses privacy and security requirements. School, district or institution administrators create individual student and parent accounts for Brightspace and control any data types collected from students, parents or teachers through the platform.

At D2L, we believe that any educational tool should be implemented only as part of an intentional, strategic education plan that emphasizes instructional goals, curriculum and student needs first. Education technology vendors dealing with students or teachers directly undermines those strategic

activities and puts student learning, privacy and security at risk if inappropriate tools are used in the classroom.

**6. Please describe and provide copies of the disclosures, notice, and consent made available to students, parents, and educational institutions using your online courseware, software, or electronic devices.**

D2L maintains a [privacy statement](#) on our website covering the Brightspace platform and interactions on our non-educational, general public facing website ([www.d2l.com](http://www.d2l.com)). For customers and individual users, D2L also maintains a [Privacy Center](#) and [Security Center](#) to provide further information about Brightspace privacy and security practices in accessible, easy-to-understand language. Both of these webpages are readily available from any page on our website.

Additionally, D2L maintains individual written agreements with each school, district or institution of higher education customers which addresses privacy and security requirements. These agreements are tailored for each customer to address state and local requirements.

**7. Has a data breach or other unauthorized acquisition of data ever occurred on your online services or databases of those of any of your subsidiaries or subcontractors?**

D2L has no data breaches to report in this regard.

**8. What is your company's understanding of its obligations under the Family Education Rights and Privacy Act and the Children's Online Privacy Protection Act, and how are you complying with these laws?**

As provided under FERPA and COPPA, D2L contracts with schools, districts and institutions of higher education to provide an educational service that would otherwise be provided by the school or institution. D2L works under the direct control of our customers through written agreements, and only processes student personal information to provide the services for which we have been directed through contract.

The types of data collected and the tools used by students are controlled only by the school, district or institution of higher education. Students and parents can access and request correction or deletion of their personal information through their school, district or institution, which controls the data and is able to verify an individual's identity and authority to make such requests. Retention protocols for student records are set by the school or state law and are enumerated in D2L's written agreements with customers.

D2L works actively with our customers to help them to further meet their obligations under FERPA and to provide the greatest levels of privacy and security protections for students.