



VLP Partner Michael Whitener Interviewed by *EdWeek Market Brief* for the Article “As States Toughen Data-Privacy Laws, Ed-Tech Providers Adjust”

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VLP Partner Michael Whitener was interviewed by *EdWeek Market Brief* for the article “As States Toughen Data-Privacy Laws, Ed-Tech Providers Adjust.” The article reported on the recent tidal wave of state laws aimed at protecting student-data privacy and policies that lay out how ed-tech vendors can and cannot use such data. Many providers are still gauging how those policies will affect their products and influence their strategies for working with schools. The article also noted that the laws are almost certain to affect companies’ pricing, product development and contracts with districts as ed-tech providers try to adjust quickly in order to remain competitive.

Michael said the new laws place greater compliance responsibility on vendors. He noted that under the federal Family Educational Rights and Privacy Act (FERPA) schools are primarily responsible for compliance. In cases where schools are not in tune with the law, the government can withhold or rescind funding, but it more commonly works with schools to bring them into compliance. By contrast, many of the new state laws hold vendors responsible for compliance, and are enforceable by the attorneys general in different states.

Michael went on to note that the new laws, and perhaps the individual agreements between vendors and districts, could shape ed-tech companies’ pricing to K-12 clients. If companies are depending on revenue from selling student data or using the information for marketing, that revenue could evaporate. Other vendors, meanwhile, could raise prices because of the added costs, such as having to hire consultants to conduct security audits of software or hire lawyers to review privacy policies. In other cases, he added, new laws also could force vendors to charge for a subscription or leave the education market if they depend on advertising for their revenue.

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Michael Whitener is a VLP Partner. His legal practice focuses on two areas: (1) technology transactions and (2) data privacy and cybersecurity. Michael provides practical advice on the collection, use, sharing and protection of data in compliance with an ever-changing network of privacy laws. He conducts privacy audits and risk assessments, drafts privacy/security policies and data transfer agreements, advises on compliance with U.S. and foreign data privacy laws and regulations, and assists companies in preventing and responding to data security incidents.