

# AI and Edtech Procurement: Legal Considerations for Schools and Regulators

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**NATIONAL ASSOCIATION OF STATE ADMINISTRATORS  
AND SUPERVISORS OF PRIVATE SCHOOLS**

**April 27-30 | St. Louis, MO**

# Regulatory Nerds, Assemble!



Caitlyn Shelby  
Education and Edtech

*Voluntarily attended an entire negotiated rulemaking*



Kristin Marshall  
Cyber/Data/Privacy

*Enjoys creating charts comparing various obligations under the patchwork of U.S. state privacy laws*



Shannon Noonan  
Education and Edtech

*Loves printing a new proposed rule and reviewing with colorful tabs and highlights*

*Do you use AI in your current role?*

# ChatGPT Prompt

***Summarize how colleges and universities in the United States are using artificial intelligence on campus and in the classroom. Include specific examples of use of artificial intelligence to support students and school operations.***



# ChatGPT Output

Colleges and universities in the United States are increasingly using **artificial intelligence (AI)** to enhance both student support and operational efficiency. Here's a summary with specific examples:

## In the Classroom

1. **Personalized Learning**
  - o [REDACTED] uses an AI-powered chatbot called [REDACTED] to answer students' questions about coursework, helping reduce "summer melt" by 21%.
  - o Adaptive learning platforms like [REDACTED] (used in schools like [REDACTED]) adjust math and science content in real time based on student progress and performance.
2. **AI Teaching Assistants**
  - o [REDACTED] famously used an AI teaching assistant named [REDACTED] (powered by IBM Watson) in online classes to answer student queries in discussion forums. Many students didn't realize they were interacting with AI.
3. **Plagiarism Detection & Writing Support**
  - o Tools like **Turnitin** and **Grammarly** use AI to check student writing for originality and quality, aiding both students and faculty in maintaining academic integrity and improving written communication.

## Supporting Students

1. **Chatbots and Virtual Assistants**
  - o [REDACTED] employs an AI chatbot named [REDACTED] to provide 24/7 support for admissions, housing, and financial aid questions.
  - o AI bots are used at [REDACTED] campuses to proactively reach out to students about registration deadlines and support services.
2. **Early Warning Systems**
  - o [REDACTED] system uses predictive analytics to identify students at risk of failing and alerts instructors and students early to intervene.
  - o At [REDACTED], the [REDACTED] AI system recommends courses based on students' strengths and predicted success, improving graduation rates.

## Campus Operations

1. **Admissions and Enrollment Management**
  - o AI is used to analyze applications, forecast enrollment trends, and personalize recruitment strategies. For instance, [REDACTED] uses AI to tailor communications to prospective students.
2. **Facilities Management and Safety**
  - o Some campuses, like [REDACTED], are experimenting with AI-driven smart buildings to monitor energy usage and optimize climate control.
  - o AI-powered surveillance and access control systems are also being implemented to enhance campus safety.
3. **Academic Advising**
  - o [REDACTED] uses predictive analytics to help advisors identify students who may need academic support or are off-track for graduation.

In short, AI is becoming deeply embedded in the fabric of U.S. higher education, helping to **improve student outcomes, streamline operations, and enhance the learning experience.**

# Legal Considerations: AI & Edtech

Consideration	Details
Applicable Laws and Policies	<p>Federal laws (e.g., FERPA, ADA/Section 504, Title IV of the Higher Education Act, Title VI of the Civil Rights Act)</p> <p>State laws (e.g., state authorization, digital accessibility, consumer data privacy)</p> <p>Accreditation standards</p> <p>Institutional policies</p>

# Legal Considerations (cont'd)

Consideration	Details
Heightened Focus on Data Privacy and Security	Data collection, use, and sharing  Consent and disclosure requirements

# Legal Considerations (cont'd)

Consideration	Details
Contractual Requirements and Institutional Processes	<p>Institutional priorities and values</p> <p>Big picture and tool impact/benefit</p>



# The Procurement Process



Understand the Technology



Define the Problem, Identify Solutions



Dilligence the Product and Provider



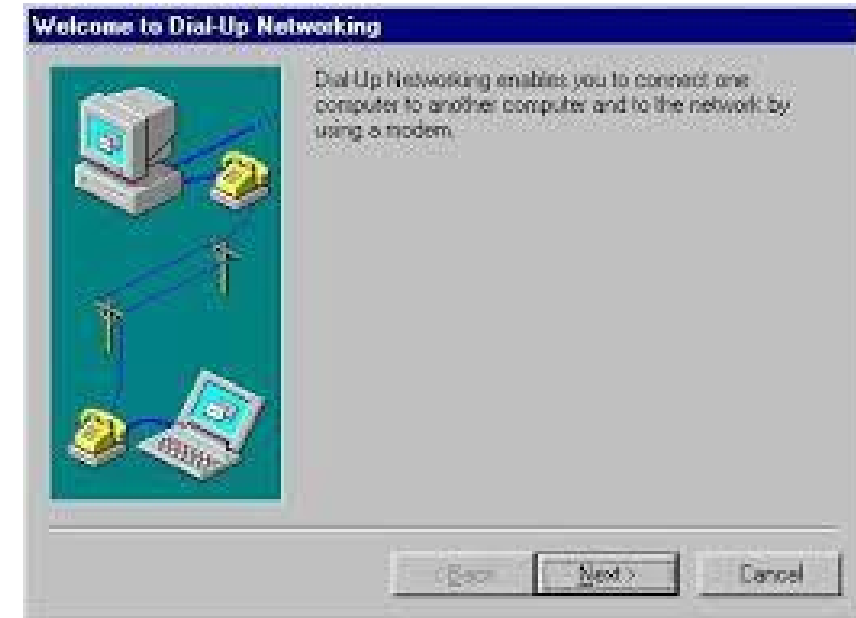
Negotiate Contractual Terms



Implement Plan and Deploy Product

# Understand the Technology:

## *What's Edtech Again?*



# Understand the Technology:

## *Legal Considerations*

*Focus of federal and state legislative efforts*

- AI guardrails
- Privacy and data collection

*Relevance of existing legal and regulatory frameworks*

- FERPA
- ADA and state digital accessibility laws
- Title IV of the Higher Education Act
- Title VI of the Civil Rights Act
- State authorization and accreditation standards
- State consumer privacy laws

# Define the Problem, Identify Solutions:

## *Ownership and Buy-in*

### *Powerful and nuanced tools, not off-the-shelf solutions*

- What are you trying to solve or improve?
- Is an AI product or tool the right answer?
- Use your network – examples from other institutions?

### *Institutional processes and consultation*

- Who are the key stakeholders, champions?
- What internal processes apply?

# Define the Problem, Identify Solutions:

## *Legal Considerations*

*Applicable laws limit or promote the identified solution?*

- Trigger regulatory approval?
- Restricted by standard of accreditation or criteria of approval?
- Necessity of innovative approach acknowledged or encouraged?

# Diligence the Product and Provider:

*Evaluate and Reduce Risk*



Incorporate key legal and operational considerations into process

Rely on your networks

Try before you buy

Meet with vendor/company leadership



# Diligence the Product and Provider:

## *Legal Considerations*

*Focus on institutional priorities or areas of scrutiny*

- Informed by compliance history, specific state or accreditor requirements
- If product is designed to resolve specific issue, probe to ensure it does not inadvertently create a different issue

*Get comfortable with specifics of AI-enabled tool or product*

- Ask how data will be used and shared; data security measures; how model is trained

# Negotiate Contractual Terms:

## *Documentation and Format*

*Identify appropriate documents to memorialize agreement (e.g., order form, master agreement, DPA)*

- Will vary depending on product/tool features and use

## *Standardization vs. reality*

- Inflexible standard forms can be insufficient for sophisticated arrangements
- Identify non-negotiables but be prepared to consider and negotiate revisions, including to reflect the diligence discussions

# Negotiate Contractual Terms:

## *Legal Considerations: General Terms*

*In general, making obligations mutual can facilitate negotiations*

- Termination rights
- Indemnification/limitations on liability

*Identify terms that are and are not negotiable*

- Intellectual property rights in inputs and outputs
- Representations (e.g., “best practice” versus “commercially reasonable”)
- Governing law
- Payment terms

# Negotiate Contractual Terms:

## *Legal Considerations: Data*

### *Rights w/r/t personal data*

- Use and purpose of collection of personal data
- Purpose of collection
- Responsible person to yield data requests

### *Data security obligations*

- Obligations for each party

### *Consider whether restrictions on de-identified data are necessary*

- Use of de-identified data broadly permitted by law
- De-identified data to provide the services and improve the product

# Implement Plan and Deploy Product:

## *Training and Monitoring*

*Train individuals intended to use the product*

- Make sure users are aware of data that should not be entered into a product

*Monitor use and confirm establishing goals*

# Questions?



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# Thank you!

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