

LEARNING OPPORTUNITIES

DATA PROTECTION POLICY

(BASED ON GDPRIS)



Contents

1.	Introduction.....	2
2.	Policy objectives	3
3.	Information Covered.....	3
4.	Key Principles.....	4
5.	Lawful Basis for processing personal information (Article 6 GDPR).....	6
6.	Data Protection Officer (DPO)	9
7.	Data Protection Impact Assessments (DPIA).....	9
8.	Documentation and Records.....	10
9.	Privacy Notices.....	11
10.	Data Minimisation.....	13
11.	Individual Rights and Responsibilities.....	14
12.	Photographs and Electronic Images.....	16
13.	Access to Personal Data	17
14.	Retention and Disposal of personal data	21
15.	Security of personal data.....	21
16.	Data breaches.....	22
17.	Complaints.....	25
18.	Consequences of a failure to comply.....	25
19.	Links to other policies.....	26
20.	Review	26
21.	Contacts.....	26
22.	Glossary	26
23.	Data breach response process	

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1. Introduction

1.1 The Data Protection Act (DPA) 2018 and the General Data Protection Regulations (GDPR) provide the law which safeguards personal privacy, giving protection for individuals as to how their personal information is used. It applies to anyone who handles or has access to people’s personal data.

Data Protection Policy

1.2 Schools are required to have a data protection policy which must comply with the GDPR. This is because every school is classed as a Data Controller under the data protection legislation because they decide how personal data for which they are responsible is processed. Each school and every employee has a legal duty to protect the privacy of information relating to individuals that it processes.

1.3 The Information Commissioner as the Regulator can impose fines of up to 20 million Euros (approximately £17 million) for serious breaches of the GDPR, therefore it is imperative that Learning Opportunities and all staff comply with the legislation.

2. Policy objectives

2.1 This policy is intended to ensure that Learning Opportunities personal information is dealt with properly and securely and in accordance with the legislation. It will apply to personal information regardless of the way it is used, recorded and stored and whether it is held in paper files or electronically.

2.2 The school is committed to being concise, clear and transparent about how it obtains and uses personal information and will ensure data subjects are aware of their rights under the legislation.

2.3 All staff must have a general understanding of the law and understand how it may affect their decisions in order to make an informed judgement about how information is gathered, used and ultimately deleted. All members of staff involved with the collection, processing and disclosure of personal data will be aware of their duties and responsibilities by adhering to these guidelines and shall attend regular training to ensure compliance with their responsibilities.

3. Information Covered

3.1 Personal data is defined under the GDPR as "any information relating to an identifiable person who can be directly or indirectly identified by reference to an identifier held by the school."

3.2 The information includes factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a living individual. This includes any expression of opinion about an individual and intentions towards an individual. Under the GDPR personal information also includes an identifier such as a name, an identification number, location data or an online identifier.

Data Protection Policy

3.3 Learning Opportunities collects and uses a large amount of personal information every year about staff, students, parents / carers and other individuals who come into contact with the school. By way of example, this includes student records, staff records, names and addresses of those requesting information, test marks, references and fee collection of Local Authorities (LAs), government agencies and other bodies. In addition, there may be a legal requirement for the School to process personal information to ensure that it complies with statutory obligations.

3.4 The information collected is processed in order to enable the School to provide education and other associated functions.

4. Key Principles

4.1 Data Protection Principles – there are seven principles contained in Article 5 of the General Data Protection Regulations, which Learning Opportunities must adhere to when processing personal data.

- Principle 1 – Personal data shall be processed lawfully, fairly and in a transparent manner (lawfulness, fairness and transparency)
- Principle 2 – Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (purpose limitation)
- Principle 3 – Personal data shall be adequate, relevant and limited to what is necessary in relation to the purpose(s) for which they are processed (data minimisation)
- Principle 4 – Personal data shall be accurate and where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that are inaccurate are erased or rectified without delay. (accuracy)
- Principle 5 - Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed. (storage limitation)
- Principle 6 (the Security Principle) - Personal data shall be processed in a manner that ensures appropriate security of the data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage to personal data, using appropriate technical or organisational measures (integrity and confidentiality).

Data Protection Policy

4.2 There is a 7th Principle - the Accountability Principle which requires organisations to take responsibility for what they do with personal data and how they comply with the other principles. At Learning Opportunities, the responsibility for adherence to the principles lies with all staff.

4.3 The organisation must have appropriate measures and records in place to be able to demonstrate their compliance.

4.4 In addition to adherence to the principles, there are transfer limitations relating to the transfer of personal data to a country outside the EEA. Should an occasion arise requiring such a transfer, members of staff should contact the Data Protection Officer for assistance.

4.5 Overall commitment to compliance with the above principles.

4.6 Alongside actions relating to specific obligations with which the legislation obliges the School to comply, and which are included below in relevant sections of this Policy, Learning Opportunities will:

- (a) Produce an information asset register that contains details of the records it holds.
- (b) Inform individuals why the information is being collected at the point it is collected by way of privacy notices.
- (c) Inform individuals when their information is shared, and why and with whom it will be shared.
- (d) Check the quality and the accuracy of the information it holds.
- (e) Ensure that information is not retained for longer than is necessary.
- (f) Ensure that when obsolete, information is destroyed and it is done so appropriately and securely.
- (g) Create, maintain and publish a Disposal and Retention Schedule setting out retention and disposal dates for common data sets and other information.
- (h) Ensure that clear and robust safeguards are in place to protect personal information from loss, theft and unauthorised disclosure, irrespective of the format in which it is recorded.
- (i) Share information with others only when it is fair and lawful to do so and satisfies the lawful basis for processing that information (lawful bases are set out in section 5.0).

Data Protection Policy

- (j) Share personal data with other organisations for the purpose of crime prevention and/or detection, or for the purpose of legal proceedings, provided that the disclosure falls within an exemption to the non-disclosure provisions contained within the Data Protection Act 1998 or any subsequent legislation.
- (k) Disclose personal data where required to do so by law for example, following receipt of a court order.
- (l) Set out procedures to ensure compliance with the duty to respond to an individual's rights to:
 - request access to personal information, known as Subject Access Requests.
 - be informed about the way their data is used;
 - have inaccurate personal data rectified;
 - have their personal data erased;
 - restrict the processing of their personal data; and
 - object to the processing of their personal data.
- (m) Ensure the School's staff are appropriately and regularly trained and aware of and understand the School's policies and procedures.
- (n) Create and maintain a data breach notification spreadsheet to record data breaches and also circumstances where a breach was narrowly avoided
- (o) Automated Decision Making
If the School carries out automated decision making (including profiling), comply with all the relevant requirements of the GDPR.

5. Lawful Basis for processing personal information (Article 6 GDPR)

5.1 Before any processing activity starts for the first time, and then regularly afterwards, the purpose(s) for the processing activity and the most appropriate lawful basis (or bases) for that processing, must be selected by the School.

5.2 The lawful basis for processing which has been selected must be recorded, to demonstrate compliance with the data protection principles, and include information about the purpose of the processing and the justification for why you believe this basis applies.

5.3 The lawful bases

Data Protection Policy

- (a) The data subject has given consent to the processing of his or her data for one or more specific purposes. (Consent)
- (b) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract. (Contract)
- (c) Processing is necessary for compliance with a legal obligation to which the data controller is subject. (Legal Obligation)
- (d) Processing is necessary in order to protect the vital interests of the data subject or of another natural person. (Vital interests)
- (e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the school (Public Task)
- (f) Processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. (Legitimate Interests) N.B. This basis does not apply to processing carried out by public authorities in the performance of their tasks. However, the ICO indicates that where there are other legitimate purposes outside the scope of the tasks as a public authority, legitimate interests may be considered where appropriate.

5.4 Where the lawful basis for processing is consent this must be clearly evidenced by a very clear and specific statement. Such consent requires a positive opt-in and so pre-ticked boxes or any other method of default consent will not be sufficient. If consent is given in a document which deals with other matters, the consent must be kept separate from those other matters.

The data subject shall have the right to withdraw his or her consent at any time and withdrawal must be promptly honoured. Prior to giving consent, the data subject shall be notified of the right of withdrawal.

5.5 Processing of special categories of personal data – Article 9

5.5.1 Processing of sensitive personal information is prohibited unless a lawful special condition for processing is identified. It comprises data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or orientation or which concerns health or is genetic or biometric data which uniquely identifies a natural person.

Data Protection Policy

5.5.2 Such personal data will only be processed by the School if:

- (a) There is a lawful basis for doing so as identified in Article 6.
- (b) One of the special conditions for processing sensitive personal information applies:
 - (i) the individual ('data subject') has given explicit consent (which has been clearly explained in a Privacy Notice)
 - (ii) the processing is necessary for the purposes of exercising the employment law rights or obligations of the school or the data subject
 - (iii) the processing is necessary to protect the data subject's vital interests, and the data subject is physically incapable of giving consent
 - (iv) the processing is carried out during its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade-union aim
 - (v) the processing relates to personal data which are manifestly made public by the data subject
 - (vi) the processing is necessary for the establishment, exercise or defence of legal claims
 - (vii) the processing is necessary for reasons of substantial public interest
 - (viii) the processing is necessary for purposes of preventative or occupational medicine, for the assessment of the working capacity of the employee, the provision of social care and the management of social care systems or services
 - (ix) the processing is necessary for reasons of public interest in the area of public health.
- (c) Learning Opportunities privacy notice(s) set out the types of sensitive personal information that it processes, what it is used for, the lawful basis for the processing and the special condition that applies.

5.6 Sensitive personal information will not be processed until an assessment has been made of the proposed processing as to whether it complies with the criteria above and the individual has been informed (by way of a privacy notice or consent) of the nature of the processing, the purposes for which it is being carried out and the legal basis for it.

5.7 Unless Learning Opportunities can rely on another legal basis of processing, explicit consent is usually required for processing sensitive personal data. In such circumstances the School will obtain evidence of and record consent so that it can demonstrate compliance with the GDPR.

6. Data Protection Officer (DPO)

6.1 Although Learning Opportunities does not conduct large-scale processing of special category data, we do take data protection seriously.

For this reason, we have appointed:

Name: Lesley Buss (Proprietor)

Address: Learning Opportunities
Ringwould Road
Ringwould
Deal
Kent CT14 8DW

Telephone: 07860 139678

Email: lesleyb@learningopps.org

7. Data Protection Impact Assessments (DPIA)

7.1 Learning Opportunities will carry out a DPIA when processing is likely to result in high risk to the data protection rights and freedoms of individuals

7.2 The GDPR does not define high risk but guidance highlights a number of factors that are likely to trigger the need for a DPIA, which include

7.2.1 the use of new technologies,

7.2.2 processing on a large scale,

7.2.3 systematic monitoring,

7.2.4 processing of special categories of personal data.

7.3 The purpose of the DPIA is to assess:

7.3.1 whether the processing is necessary and proportionate in relation to its purpose

7.3.2 the risks to individuals, including both the likelihood and the severity of any impact on them

Data Protection Policy

7.3.3 what measures can be put in place to address those risks and protect personal information.

7.4 Staff will work alongside the DPO for support and guidance when completing relevant DPIAs. Once finalised, the DPO sign off the document.

8. Documentation and Records

8.1 Learning Opportunities in accordance with its duty as a Data Controller and Data Processor will keep detailed records of data processing activities and the records shall contain: -

- (a) the name and contact details of the School and, if applicable, of any joint controllers,
- (b) the name and contact details of the School's Data Protection Officer
- (c) the name and details of individuals or roles that carry out the processing
- (d) the purposes of the processing
- (e) a description of the categories of individuals i.e. the different types of people whose personal data is processed
- (f) categories of personal data processed.
- (g) categories of recipients of personal data
- (h) details of any transfers to third countries, including documentation of the transfer mechanism safeguards in place
- (i) retention schedules
- (j) a description of technical and organisational security measures

8.2 Learning Opportunities will make these records available to the Information Commissioner's Office (ICO) upon request and will, on an annual basis, provide its registrable particulars and pay the data protection fee to the ICO.

8.3 As part of Learning Opportunities record of processing activities the DPO will document, or link to documentation on:

- (a) information required for privacy notices such as:

Data Protection Policy

- (b) the lawful basis for the processing
- (c) the legitimate interests for the processing
- (d) individuals' rights
- (e) the source of the personal data
- (f) records of consent
- (g) controller-processor contracts
- (h) the location of personal data
- (i) DPIA reports and
- (j) records of personal data breaches.

8.4 Records of processing of sensitive information are kept on:

- (a) the relevant purposes for which the processing takes place, including why it is necessary for that purpose
- (b) the lawful basis for the processing and
- (c) whether the personal information is retained or has been erased in accordance with the Retention Schedule and, if not, the reasons for not following the policy.

8.5 Learning Opportunities will conduct regular reviews of the personal information it processes and update its documentation accordingly. This may include:

- (a) Carrying out information audits to find out what personal information is held
- (b) Talking to staff about their processing activities
- (c) Reviewing policies, procedures, contracts and agreements to address retention, security and data sharing.

9. Privacy Notices

9.1 A privacy notice under the GDPR should include:

- (a) The School's name and contact details

Data Protection Policy

- (b) The contact details of the DPO.
 - (c) The personal data you are collecting & why you are collecting it;
 - (d) Where you get the personal data from & who you are sharing it with.
 - (e) The lawful basis for processing the data
 - (f) How long the data will be held for;
 - (g) Transfers to third countries and safeguards;
 - (h) Description of the data subjects' individual rights;
 - (i) The data subjects right to withdraw consent for the processing of their data;
 - (j) How individuals can complain.
- 9.2 Learning Opportunities will publish an overarching privacy notice, which will be posted on its website, which will provide information about how and why the school gathers and uses images and shares personal data.
- 9.3 In addition to publication of that notice, the School will also issue privacy notices, to all parents / carers and students, before, or as soon as possible after, any personal data relating to them is obtained. This may simply be an explanation of why the information is being requested and the purpose for which it will be used.
- 9.4 Learning Opportunities will take appropriate measures to provide information in privacy notices in a concise, transparent, intelligible and easily accessible form, using clear and plain language.
- 9.5 Learning Opportunities will issue a minimum of two privacy notices, one for student information, and one for workforce information, and these will be reviewed at regular intervals to ensure they reflect current processing and are in line with any statutory or contractual changes
- 9.6 The privacy notices will be amended to reflect any changes to the way the School processes personal data.
- 9.7 The privacy notice will include details of how/ if the School uses CCTV (if applicable), whether it intends to use biometric data and how

Data Protection Policy

consent will be requested to do this and include details of the School's policy regarding photographs and electronic images of students.

10. Data Minimisation

10.1. Purpose Limitation

Learning Opportunities will ensure that personal data

- (a) is only collected for specified, explicit and legitimate purposes
- (b) is not further processed in any manner incompatible with those purposes
- (c) is not used for new, different or incompatible purposes from that disclosed when it was first obtained unless the data subject has been informed of the new purposes and they have consented where necessary.

10.2 Data minimisation

10.2.1. Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

10.2.2. Staff may only process data when their role requires it. Staff will not process personal data for any reason unrelated to their role.

10.2.3. Learning Opportunities maintains a Retention Schedule to ensure personal data is deleted after a reasonable time for the purpose for which it was being held, unless a law requires such data to be kept for a minimum time.

10.2.4 Staff will take all reasonable steps to destroy or delete all personal data that is held in its systems when it is no longer required in accordance with the Schedule. This includes requiring third parties to delete such data where applicable.

10.2.5. Learning Opportunities will ensure that data subjects are informed of the period for which data is stored and how that period is determined in any applicable Privacy Notice.

11. Individual Rights and Responsibilities

11.1 Individual rights

Learning Opportunities will observe the following rights which staff as well as any other 'data subjects' enjoy in relation to their personal information:

- (a) To be informed about how, why and on what basis that information is processed (see the relevant privacy notice)
- (b) To obtain confirmation that personal information is being processed and to obtain access to it and certain other information, by making a subject access request
- (c) To have data corrected if it is inaccurate or incomplete
- (d) To have data erased if it is no longer necessary for the purpose for which it was originally collected/processed, or if there are no overriding legitimate grounds for the processing ('the right to be forgotten')
- (e) To restrict the processing of personal information where the accuracy of the information is contested, or the processing is unlawful (but the individual(s) concerned does/do not want the data to be erased) or where the School no longer needs the personal information, but the individual(s) require(s) the data to establish, exercise or defend a legal claim
- (f) To restrict the processing of personal information temporarily where they do not think it is accurate (and the School is verifying whether it is accurate), or where they have objected to the processing (and the School is considering whether the School's legitimate grounds override the individual's(s') interests)
- (g) In limited circumstances to receive or ask for their personal data to be transferred to a third party in a structured, commonly used and machine-readable format
- (h) To withdraw consent to processing at any time (if applicable)
- (i) To request a copy of an agreement under which personal data is transferred outside of the EEA.

Data Protection Policy

- (j) To object to decisions based solely on automated processing, including profiling
- (k) To be notified of a data breach which is likely to result in high risk to their rights and obligations
- (l) To make a complaint to the ICO or a Court.

11.2 Individual Responsibilities

During their employment, staff may have access to the personal information of other members of staff, suppliers, students, parents / carers or the public. The School expects staff to help meet its data protection obligations to those individuals.

If members of staff have access to personal information, they must:

- (a) only access the personal information that they have authority to access and only for authorised purposes
- (b) only allow other staff to access personal information if they have appropriate authorisation
- (c) only allow individuals who are not School staff to access personal information if they have specific authority to do so
- (d) keep personal information secure (e.g. by complying with rules on access to premises, computer access, password protection and secure file storage and destruction in accordance with the school's policies).
- (e) not remove personal information, or devices containing personal information (or which can be used to access it) from the School's premises unless appropriate security measures are in place (such as pseudonymisation, encryption or password protection) to secure the information and the device
- (f) not store personal information on local drives or on personal devices that are used for work purposes.

12. Photographs and Electronic Images

12.1 CCTV: Should Learning Opportunities decide to install CCTV in various locations around the school to ensure it remains safe. The School will adhere to the ICO's Code of Practice for the use of CCTV.

There is no requirement to ask individuals' permission to use CCTV, but the School would make it clear where individuals are being recorded. Security cameras would be made clearly visible and accompanied by prominent signs explaining that CCTV is in use.

Any enquiries about the CCTV system would need to be directed to the DPO.

12.2 Photographs and Videos: As part of the school's activities, we or a 3rd party (e.g. school photographers) may want to take photographs and record images of individuals within the school.

Learning Opportunities will obtain *written* consent from parents/carers for photographs and videos to be taken of their child for communication, marketing and promotional materials. We will clearly explain how the photograph and/or video will be used to both the parent/carer and student.

Uses may include:

- Within school on notice boards and in school magazines, brochures, newsletters, etc.
- Outside of school by external agencies such as the school photographer, newspapers, campaigns
- Online on our school website or social media pages

Consent can be refused or withdrawn at any time. If consent is withdrawn, we will delete the photograph or video and not distribute it further.

When using photographs and videos in this way we will not accompany them with any other personal information about the student, to ensure they cannot be identified.

13. Access to Personal Data – A subject access request (SAR)

13.1 This section sets out the process that will be followed by the Learning Opportunities when responding to requests for access to personal data made by the student or the parent or carer with parental responsibility.

13.1.1 There are two distinct rights of access to information held by schools about students, parents/carers and staff:

- (a) Students and parents / carers or those with Parental Responsibility have a right to make a request under the GDPR to access the personal information held about them.
- (b) students and parents / carers or those with Parental Responsibility have a right to access the educational records. The right of those entitled to have access to curricular and educational records is defined within the Education (Pupil Information) (England) Regulations 2005.

13.2 Handling a subject access request for access to personal data:

13.2.1 Article 15 of the GDPR gives individuals the right to access personal data relating to them, processed by a data controller. The right can be exercised by a person with Parental Responsibility on behalf of their child dependent on the age and the understanding of the child.

For the purposes of a subject access request the School will apply the full legal definition of 'Parental Responsibility' when determining who can access a child's personal data.

13.2.2 Requests for information may come in from various sources whether verbally, through webforms/social networks or in writing, which can include e-mail. Where possible the requestor should be encouraged to complete a request form to best capture what information is being requested. If the original request does not clearly identify the information required, then the School will seek further enquiries to clarify what information is being requested.

Data Protection Policy

13.2.3 The request will be recorded within the GDPRiS portal and assigned to a member of staff to monitor and ensure the request is investigated and either fulfilled or rejected.

13.2.4. The identity of the requestor must be established before the disclosure of any information is made. Proof of the relationship with the student (if not known) must also be established as this will verify whether the individual making the request can lawfully exercise that right on behalf of the student.

Below are some examples of documents which can be used to establish identity:

- Passport
- Driving licence
- Utility bill with current address
- Birth/marriage certificate
- P45/P60
- Credit card or mortgage statement.

13.2.5 Each request will be considered on its own merits and the circumstances surrounding the request and the student. A student with competency to understand can refuse to consent to a request for their personal information made under the GDPR. This position differs when the request is for access to the Education Record of the student (see below for more detail).

13.2.6 No charge can be made for access to personal data that is not contained within an education record but the School reserves the right to cover its communication costs e.g. photocopying, postage, in which case a fees notice will be sent to the requestor.

13.2.7 The response time for a subject access request is 1 calendar month from the date of receipt.

13.2.8 The relevant response time period for a subject access request will not commence until any necessary clarification of information has been sought and received from the requestor. The time to respond can be extended to two months where the request is complex or numerous.

- 13.2.9 There are some exemptions available under the Data Protection Act which will mean that occasionally personal data will need to be redacted (information blacked Data Protection Policy May 2018 out/removed) or withheld from the disclosure. All information will be reviewed prior to disclosure to ensure that the intended disclosure complies with the School's legal obligations.
- 13.2.10 Where the personal data also relates to another individual who can be identified from the information, the information will be redacted to remove the information that identifies the third party. If it is not possible to separate the information relating to the third party from the information relating to the subject of the request, consideration will be given to withholding the information from disclosure. These considerations can be complex and additional advice will be sought when necessary.
- 13.2.11 Any information which may cause serious harm to the physical or mental health or emotional condition of the student or another person will be withheld along with any information that would reveal that the child is at risk of abuse, or information relating to Court Proceedings.
- 13.2.12 Where redaction has taken place then a full copy of the information provided will be retained in order to maintain a record of what was redacted and why and a clear explanation of any redactions will be provided in Learning Opportunities response to the request.
- 13.2.13 If there are concerns about the disclosure of information additional advice will be sought.
- 13.3 Handling a request for access to a curricular and educational record as defined within the Education (Pupil Information) (England) Regulations 2005.
- 13.3.1 A parent may make a request to access information contained within their child's education record, regardless of whether the child agrees to the disclosure of information to them. The right of access belongs to the parent in these cases.

Data Protection Policy

It is not a right being exercised by the parent on behalf of the child.

- 13.3.2 For the purpose of responding to an Educational Records request, Learning Opportunities will apply the definition of 'parent' contained within the Education Act 1996.
- 13.3.3 An "educational record" means any record of information which-
- (a) Is processed by or on behalf of the Proprietor of, or a teacher at, any school maintained by a local education authority and any special school which is not so maintained.
 - (b) Relates to any person who is or has been a student at any such school; and
 - (c) Originated from or was supplied by or on behalf of the persons specified in paragraph (a), other than information which is processed by a teacher solely for the teacher's own use
- 13.3.4 The amount that can be charged for a copy of information contained in an education record will depend upon the number of pages provided. The charge made will be in accordance with the Education (Pupil Information) (England) Regulations 2005.
- 13.3.5 No charge will be made to view the education record.
- 13.3.6 The response time for requests made under the Education (Pupil Information) (England) Regulations 2005 is 15 school days (this does not include half terms or teacher training days) or 1 calendar month, whichever is shorter.
- 13.4.7 An exemption from the obligation to comply with the request will be claimed where the disclosure of the information to the parent may cause serious harm to the physical or mental or emotional condition of the student or another person or if the disclosure of the information would reveal that the child is at risk of abuse.

14. Retention and Disposal of personal data

The Proprietor of Learning Opportunities will ensure that the School has a up to date and accurate retention and disposal schedule that is compliant with GDPR. The School will ensure that personal data is stored, transferred and disposed of securely and in accordance with the retention and disposal schedule.

15. Security of personal data

15.1. The Security Principle

The Security Principle requires that appropriate security is put in place to prevent the personal data it holds being accidentally or deliberately compromised.

15.2 In order to comply with this principle Learning Opportunities will:

- 15.2.1 Ensure that all individuals involved in processing data understand the requirements of confidentiality, integrity and availability for the personal data being processed.
- 15.2.2 Undertake an analysis of the risks presented by its processing, and uses this to assess the appropriate level of security it needs to put in place to keep paper and electronic personal data secure and ensure that appropriate security measures are enforced
- 15.2.3 Ensure that only authorised individuals have access to personal data.
- 15.2.4 Put in place appropriate physical and organisational security measures, as well as technical measures, and regularly review the physical security of the School buildings and storage systems.
- 15.2.5 Require staff to ensure that no personal data will be left unattended in any vehicles and that if it is necessary to take personal data from School premises, for example to complete work from home, the data is suitably secured.

Data Protection Policy

- 15.2.6 Review its information security policy regularly and takes steps to make sure the policy is implemented.
- 15.2.7 Put in place basic technical controls and be aware that it may also need to put other technical measures in place depending on the circumstances and the type of personal data it processes.
- 15.2.8 Use encryption and/or pseudonymisation where it is appropriate to do so.
- 15.2.9 Ensure that all portable electronic devices containing personal data are password protected.
- 15.2.10 Refer to any relevant guidance and seek advice where necessary if processing personal data utilising a cloud based solution.
- 15.2.11 Make sure that it can restore access to personal data in the event of any incidents, such as by establishing an appropriate backup process.
- 15.2.12 Ensure that any data processor it uses also implements appropriate technical and organisational measures.

15.3. Learning Opportunities will conduct regular testing and reviews of its measures to ensure they remain effective, and act on the results of those tests where they highlight areas for improvement.

16. Data breaches

16.1 If the school learns that it has suffered a data breach, we will investigate the incident immediately. The aim is to determine whether we are required to report the incident, which will be the case if it "pose[s] a risk to the rights and freedoms of natural living persons".

16.2 How do we know when that is the case? Here are some examples:

- **Social damage** - This applies when the breached records include special needs information, staff and students records, child protection records, staff pay scale and payroll information, and student progress and attainment records.

Data Protection Policy

- **Identity theft or fraud** - This applies when names, dates of birth and addresses are all compromised, or when completed student data collection sheets are breached.
- **Financial loss** - This applies when banking information from payroll data or recruitment forms is breached, or when unauthorised parties access payment software, billing information or bank accounts.
- **Reputational damage** - This applies when the breached information contains staff or student performance management records, or child protection records.

16.3 A data breach may take many different forms:

- (a) Loss or theft of data or equipment on which personal information is stored
- (b) Unauthorised access to or use of personal information either by a member of staff or third party
- (c) Loss of data resulting from an equipment or systems (including hardware or software) failure
- (d) Human error, such as accidental deletion or alteration of data
- (e) Unforeseen circumstances, such as a fire or flood
- (f) Deliberate attacks on IT systems, such as hacking, viruses or phishing scams
- (g) Blagging offences where information is obtained by deceiving the organisation which holds it

16.4 In the event of the loss, damage or theft of equipment:

- (a) notification of the loss, damage or theft of any equipment should be sent at the first opportunity to the DPO, with any details of personal data that may have been affected.
- (b) a written or e-mail report must be filed within 24 hours to the Head Teacher and Data Protection Officer.
- (b) the employee responsible for that equipment will describe to the LT the circumstances surrounding the loss, damage, or theft.
- (c) The Head Teacher will provide guidance as to notice to be provided to the appropriate police authorities.

Data Protection Policy

- 16.5 Learning Opportunities will require Staff, in the event of a data breach however caused, and whether or not it occurs on a school working day, in term time or school holiday time, to ensure they inform the Head Teacher, or in their absence, a member of the LT, immediately that a breach is discovered and make all reasonable efforts to recover the information, following the School's agreed breach reporting process (see Information Security Policy).
- 16.6 In the event of a data breach occurring Learning Opportunities will comply with the requirement to report the breach to the DPO without undue delay and the DPO will determine whether there is a requirement to report such breach to the Information Commissioner's Office, on the basis that it is likely to result in a risk to the rights and freedoms of individuals. The School is required to report such a breach within 72 hours of discovery. The School will also notify the affected individuals if the breach is likely to result in such a high risk.
- 16.7 The school will provide a detailed account of the incident, including:
- The extent of the damage;
 - When and how we learned about the breach;
 - When the breach happened;
 - What data protection training the relevant staff have received;
 - Whose data has been affected;
 - How we are responding to the incident; and
 - Who the ICO should contact if it needs more information.
- 16.8 The ICO won't expect a comprehensive analysis. However, it will expect the school to demonstrate an awareness of what's happened and how the damage should be addressed.
- The ICO, it will confirm receipt, and the incident will go on a list of active cases. We will generally hear back within a few weeks if the investigators are happy with our actions.
- If the ICO suspects a GDPR violation, it may begin a formal investigation, which can take several months to complete.
- 16.9 The school will keep a log of data breaches and incidents.

17. Complaints

- 17.1 Subject to paragraphs 17.2 and 17.3, complaints relating to the School's compliance with the GDPR will be dealt with in accordance with the School's Complaints Policy.
- 17.2 Complaints relating to access to personal information or access to education records should be made to the DPO (see section 4 of this policy) who will decide whether it is appropriate for the complaint to be dealt with through the School's complaints procedure. Complaints which are not appropriate to be dealt with through the school's complaints procedure can be referred to the Information Commissioner. Details of how to make a complaint to the ICO will be provided with the response letter.
- 17.3 Complaints relating to information handling may be referred to the Information Commissioner's Office (the statutory regulator). Contact details can be found on their website at www.ico.org.uk or telephone 01625 5457453

18. Consequences of a failure to comply

- 18.1 The School takes compliance with this policy very seriously. Failure to comply puts data subjects whose personal information is being processed at risk and carries the risk of significant civil and criminal sanctions for the individual and the School and may in some circumstances amount to a criminal offence by the individual.
- 18.2 Any failure to comply with any part of this policy may lead to disciplinary action under the School's procedures and this action may result in dismissal for gross misconduct. If a non-employee breaches this policy, they may have their contract terminated with immediate effect.

19. Links to other policies

This Policy should be read in conjunction with the following policies:

- Acceptable Use Policy
- Online Safety Policy
- Staff Code of Conduct Policy
- Child Protection and Safeguarding Policy

20. Review

This policy will be reviewed annually for the next two years to ensure any further guidance issued by the ICO is reflected within the policy, and thereafter every three years, or sooner if statutory requirements change

The policy review will be undertaken by the Proprietor in conjunction with the Head Teacher.

21. Contacts

(a) Any enquiries in relation to this policy, should be directed to the Lesley Buss (Proprietor) via the School Office: Tel: 01304 381908 / email: lesleyb@learningopps.org

(b) Further advice and information is available from the Information Commissioner's Office at www.ico.org.uk or telephone 01625 5457453

22. Glossary

Automated Decision-Making (ADM): when a decision is made which is based solely on automated processing (including profiling) which produces legal effects or significantly affects an individual. The GDPR prohibits automated decision-making (unless certain conditions are met) but not automated processing.

Data Protection Policy

Automated Processing: any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to an individual, in particular to analyse or predict aspects concerning that individual's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements. profiling is an example of automated processing.

Consent: agreement which must be freely given, specific, informed and be an unambiguous indication of the data subject's wishes by which they, by a statement or by a clear positive action, which signifies agreement to the processing of personal data relating to them.

Data Controller: The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. It is responsible for establishing practices and policies in line with the GDPR. The school is the Data Controller of all personal data relating to its pupils, parents and staff.

Data Subject: a living, identified or identifiable individual about whom we hold personal data. Data Subjects may be nationals or residents of any country and may have legal rights regarding their personal data.

Data Privacy Impact Assessment (DPIA): tools and assessments used to identify and reduce risks of a data processing activity. DPIA can be carried out as part of Privacy by Design and should be conducted for all major systems or business change programs involving the processing of personal data.

Data Protection Officer (DPO): the person required to be appointed in public authorities under the GDPR.

EEA: the 28 countries in the EU, and Iceland, Liechtenstein and Norway.

Explicit Consent: consent which requires a very clear and specific statement (not just action).

General Data Protection Regulation (GDPR): General Data Protection Regulation ((EU) 2016/679). Personal data is subject to the legal safeguards specified in the GDPR.

Personal data: Any information relating to an identified or identifiable natural person (data subject) who can be identified, directly or indirectly by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Personal data includes sensitive personal data and

Data Protection Policy

pseudonymised personal data but excludes anonymous data or data that has had the identity of an individual permanently removed. Personal data can be factual (for example, a name, email address, location or date of birth) or an opinion about that person's actions or behaviour.

Personal data breach: A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Privacy by Design: implementing appropriate technical and organisational measures in an effective manner to ensure compliance with the GDPR.

Privacy Notices: separate notices setting out information that may be provided to Data Subjects when the school collects information about them. These notices may take the form of general privacy statements applicable to a specific group of individuals (for example, school workforce privacy policy) or they may be stand-alone privacy statements covering processing related to a specific purpose.

Processing: Anything done with personal data, such as collection, recording, structuring, storage, adaptation or alteration, retrieval, use, disclosure, dissemination or otherwise making available, restriction, erasure or destruction.

Processor: Organisations that do processing on behalf of a controller. For instance, if a school uses a payroll company to manage salaries, that's a processor. The school wants the data processed and the payroll company does that for it. The school may also be a data processor for organisations such as the Department for Education (DfE) where they want the school to process information about staff and/or students. Where there is a *legal* requirement to process data on behalf of another organisation, however, the school will be the controller. An organisation can be both a controller and a processor for different processing activities.

Pseudonymisation or Pseudonymised: replacing information that directly or indirectly identifies an individual with one or more artificial identifiers or pseudonyms so that the person, to whom the data relates, cannot be identified without the use of additional information which is meant to be kept separately and secure.

School Day: Any day in which there is a session and pupils are in attendance.

Sensitive Personal Data: information revealing racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health conditions, sexual life, sexual orientation, biometric or genetic data, and Personal data relating to criminal offences and convictions.

Working Days: Exclude school holidays and “inset” or training days where the pupils are not present.

23. Data Breach Response Process

Detect

Objective: Identify potential breaches as quickly as possible.

Unless you know that a breach has happened (or may have happened), and know what sort of breach it was, you will not be able to respond effectively, if at all. How you detect a breach will vary depending on the nature of that breach – a stolen or lost laptop is quickest to discover via a staff report, for instance, while cyber-attacks will likely require some form of automated security monitoring. Where an anomaly is detected (multiple failed login attempts to a user account, for example), an alarm is raised for someone to manually investigate.

Triage

Objective: Establish the urgency of the situation, and whether it needs to be escalated.

Triage, which normally involves a manual follow-up to a potential breach, needs to occur as quickly as possible after the initial report. This process must establish whether you are dealing with a false alarm or an actual breach and, if the latter, how to escalate it. It is important you document the process, showing how you reached your conclusions and providing information you may need later.

Assess

Objective: Establish exactly what happened.

If it appears to be an actual breach, you need to assess the situation to determine what further steps you must take. In particular, you must establish as quickly as possible – certainly within 72 hours of discovery – what data has been compromised, whether the GDPR deems it sensitive personal data, how many data subjects are affected, whether the data was encrypted, and other information that will determine the impact of the breach and, by extension, whether it is reportable.

In addition, it is important to understand the cause of the breach, particularly because this will help direct your remediation activities. If you suffered a cyber

Data Protection Policy

attack, for example, the attacker may still be moving through your systems, or perhaps ransomware is preventing you from accessing your files. This information will also need to be included in your report for the ICO.

Report

Objective: Meet your regulatory obligations.

As mentioned earlier, where the breach is likely to present a risk to the rights and freedoms of natural persons, you must report it to the ICO within 72 hours of becoming aware of the breach.¹⁴ Note, however, that you do not need to provide full details at this initial notification stage. The GDPR recognises that it is hard to have all this information within 72 hours and permits you to provide further information at a later stage, provided you explain to the regulator the reason for the delay and when you expect to have the information. Eventually, the information you need to provide to the ICO includes:

- The nature of the breach;
- When and how you became aware of the breach;
- The categories and numbers of data subjects affected;
- The categories and quantity of personal data breached;
- The likely consequences of the breach;
- The measures you have taken or will take to address the breach and its effects;
- When the person(s) involved last received data protection training; and
- The name and contact details of your DPO.

Additionally, where there is likely a high risk to data subjects' rights and freedoms, you have to notify those subjects directly. The information you need to provide is similar to the above list; however, the ICO encourages organisations to offer advice to data subjects about steps they can take to mitigate the risks they may face.

This can include, for example, a warning to be wary of phishing emails that fraudulently claim to represent your organisation, and a recommendation to change their passwords as soon as possible. If the breach is significant enough that you need to inform your data subjects, you may also have to issue a public statement and/or provide comment to the press. Remember that the ICO is not the only authority that you may need to notify. Depending on the nature of the breach, you might also need to provide information to the police, your insurers, Action Fraud, the NCSC, and so on.

Remediate

Objective: Contain and repair the damage.

Now that you should understand what you are dealing with, it is time to remediate the situation. Particularly if you are dealing with a cyber attack, you will likely

Data Protection Policy

need to start with containing the damage by, for example, forcing logout to stop or delay an attacker, or remote wiping a lost laptop to prevent the information stored on it from being stolen. This will stop the breach from getting any worse and, by extension, contain the harm to affected parties, including your data subjects.

Next, you need to take steps to repair the damage. If you are dealing with malware, for example, you need to eliminate every trace of it, and likely harden and patch your systems. If the breach was caused by something more pedestrian such as an employee sending confidential data to the wrong recipient, contacting that recipient to apologise for the mistake and asking them to delete the data can reduce the impact.

It is worth reiterating here how important it is to think ahead: many of these types of responsive measures are only truly effective if implemented in advance. Furthermore, to prevent a loss of information availability, it is important you run regular backups for the next phase (recovery) – data security is not just about preventing information from falling into the wrong hands, but also ensuring authorised users can access it when necessary, and ensuring that the information is accurate and complete.

Recover

Objective: Get back to operating as normal.

Recovery is all about ensuring survival. If you were dealing with a cyber attack, the threat should be eradicated at this stage, meaning it is now time to restore your systems and backups. At this point, you may also want to let staff and pupils know that everything should be up and running.

Review

Objective: Reassess the risks and improve your defences if necessary.

Once you have recovered, you may still be vulnerable to the same threat, be it a malicious cyber attack or an accidental breach caused by human error. Whatever the nature of the breach, once all urgent actions are complete, it is sensible to reassess the risks and decide whether and how you need to change or improve your defences. This may involve, for example, making changes to your technical measures, updating or refining procedures, or rolling out a staff training programme.

You should also take the time to review the incident response processes and plans themselves, and make improvements where possible, leaving you better prepared for next time. Where you have them, it may also be worth reviewing your data protection impact assessments (DPIAs).

Resolved

Objective: Close the event.

Data Protection Policy

Once you are certain the event was a false alarm, or believe that the breach has been satisfactorily dealt with, you can mark it as resolved. Remember to document any suspected breaches, even if they turn out to be a false alarm or not a reportable breach – you may need that information to justify your decisions later. It may also help you fine-tune your detection mechanisms, and be used for later training.

More to the point, recording every breach, notifiable or not, is a regulatory requirement. You must also document why you believe the breach does not need to be reported. It is also possible that a breach that initially does not have to be reported does become notifiable at a later stage – for instance, if the encryption key for a breached data set is stolen later – so it is important to periodically review your logs.