

## Appendix S: PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

To satisfy their responsibilities regarding the provision of education to students in pre-kindergarten through grade twelve, "educational agencies" (as defined below) in the State of New York collect and maintain certain personally identifiable information from the education records of their students. As part of the Common Core Implementation Reform Act, Education Law §2-d requires that each educational agency in the State of New York must develop a Parents' Bill of Rights for Data Privacy and Security (Parents' Bill of Rights). The Parents' Bill of Rights must be published on the website of each educational agency, and must be included with every contract the educational agency enters into with a "third party contractor" (as defined below) where the third party contractor receives student data, or certain protected teacher/principal data related to Annual Professional Performance Reviews that is designated as confidential pursuant to Education Law §3012-c ("APPR data").

The purpose of the Parents' Bill of Rights is to inform parents (which also include legal guardians or persons in parental relation to a student, but generally not the parents of a student who is age eighteen or over) of the legal requirements regarding privacy, security and use of student data. In addition to the federal Family Educational Rights and Privacy Act (FERPA), Education Law §2-d provides important new protections for student data, and new remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

### **A. What are the essential parents' rights under the Family Educational Rights and Privacy Act (FERPA) relating to personally identifiable information in their child's student records?**

The rights of parents under FERPA are summarized in the Model Notification of Rights prepared by the United States Department of Education for use by schools in providing annual notification of rights to parents. It can be accessed at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>, and a copy is attached to this Parents' Bill of Rights. Complete student records are maintained by schools and school districts, and not at the New York State Education Department (NYSED). Further, NYSED would need to establish and implement a means to verify a parent's identity and right of access to records before processing a request for records to the school or school district. Therefore, requests to access student records will be most efficiently managed at the school or school district level.

Parents' rights under FERPA include:

1. The right to inspect and review the student's education records within 45 days after the day the school or school district receives a request for access.
2. The right to request amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA. Complete student records are maintained by schools and school districts and not at NYSED, which is the secondary repository of data, and NYSED make amendments to school or school district records. Schools and school districts are in the best position to make corrections to students' education records.
3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the school or school district with legitimate educational interests; (ii) officials of another school for purposes of enrollment or transfer;

(iii) third party contractors providing services to, or performing functions for an educational agency; (iv) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (iv) (v) organizations conducting studies for or on behalf of educational agencies) and (vi) the public where the school or school district has designated certain student data as “directory information” (described below). The attached FERPA Model Notification of Rights more fully describes the exceptions to the consent requirement under FERPA).

- 4. Where a school or school district has a policy of releasing “directory information” from student records, the parent has a right to refuse to let the school or school district designate any all of such information as directory information. Directory information, as defined in federal regulations, includes: the student’s name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level,

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New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234; and

- (E) Parents have the right to file complaints with an educational agency about possible breaches of student data by that educational agency's third-party contractors or their employees, officers, or assignees, or with NYSED. Complaints to NYSED should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, email to [CPO@mail.nysed.gov](mailto:CPO@mail.nysed.gov). The

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Education Law §2-d provides very specific protections for contracts with “third party contractors”, defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. The term “third party contractor” also includes an educational partnership organization that receives student and/or teacher or principal APPR data from a school district to carry out its responsibilities pursuant to Education Law §211-e, and a not-for-profit corporation or other non-

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and records and obtain documentation from, or require the testimony of, any party relating to the alleged improper disclosure of student data or teacher or principal APPR data.

Where there is a breach and unauthorized release of PII by a by a third party contractor or its assignees (e.g., a subcontractor): (i) the third party contractor must notify the educational agency of the breach in the most expedient way possible and without unreasonable delay; (ii) the educational agency must notify the parent in the most expedient way possible and without unreasonable delay; and (iii) the third party contractor may be subject to certain penalties including, but not limited to, a monetary fine; mandatory training regarding federal and state law governing the confidentiality of student data, or teacher or principal APPR data; and preclusion from accessing any student data, or teacher or principal APPR data, from an educational agency for a fixed period up to five years.

## **8. Data Security and Privacy Standards**

Upon appointment, NYSED's Chief Privacy Officer will be required to develop, with input from experts, standards for educational agency data security and privacy policies. The Commissioner will then promulgate regulations implementing these data security and privacy standards.

## **9. No Private Right of Action**

Please note that Education Law §2-d explicitly states that it does not create a private right of action against NYSED or any other educational agency, such as a school, school district or BOCES.

**APPENDIX S-1**

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***or otherwise destroyed as provided in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.***

4. Specify the expiration date of the Contract and explain what will happen to the Student Data or APPR Data in the Contractor’s possession, or the possession of any person/entity described in response to Paragraph 3, upon the expiration or earlier termination of the Contract.

Contract expiration date: **June 30, 2025**

Contractor agrees to return the Student Data or APPR Data to NYSED consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.

Contractor agrees to securely destroy the Student Data or APPR Data consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.

5.







**DATA PRIVACY AND SECURITY PLAN**

1. CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN IS ATTACHED HERETO AND INCORPORATED HEREIN.
2. CONTRACTOR MUST PROVIDE A SIGNED COPY OF ESBOCES PARENTS' BILL OF RIGHTS.

**EASTERN SUFFOLK BOCES  
PARENTS' BILL OF RIGHTS  
FOR DATA SECURITY AND PRIVACY**

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Eastern Suffolk BOCES (ESBOCES) is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, parents, legal guardians, and persons in parental relation to a student are entitled to certain rights with regard to their child's personally identifiable information. ESBOCES wishes to inform the school community of the following rights:

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
  2. Parents have the right to inspect and review the complete contents of their child's education record maintained by ESBOCES.
  3. State and Federal laws protect the confidentiality of personally identifiable information. Safegu3 (s )-1
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9. provide a signed copy of this Parents' Bill of Rights to ESBOCES, thereby acknowledging that they are aware of and agree to abide by this Parents' Bill of Rights.

This Parents' Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department's Chief Privacy Officer, as well as emerging guidance documents.

Contractor hereby acknowledges that it is aware of and agrees to abide by the terms of this Parents' Bill of Rights. A copy of this signed document must be made a part of Contractor's Data Security and Privacy Plan.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_