

DISCLOSURE OF INFORMATION TO THIRD PARTY CONTRACTORS

In addition to the Parent's Bill of Rights, Education Law §2-d also imposes obligations with respect to a school district's disclosure of student information to third party contractors, consultants or vendors. Specifically, the law requires that contracts between school districts and third party contractors/consultants/vendors include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy. Such plan shall include, but not be limited to, a signed copy of the parents bill of rights and a requirement that any officers and employees of the contractor, including any assignees, who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

In addition to the requirements set forth above, any third party contractor/consultant/vendor that enters into an agreement with an educational agency under which the contractor/consultant/vendor will receive student, teacher or superintendent data shall:

- limit internal access to education records to those individuals that are determined to have legitimate educational interests
- not use the education records for any other purposes than those explicitly authorized in its contract
- except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information (i) without the prior written consent of the parent or eligible student; of (ii) unless required by statute or court order and the party provides a notice of disclosure to NYSED, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order.
- maintain reasonable administrative, technical and physical safeguards to protect security, confidentiality and integrity of personally identifiable information in its custody; and
- use encryption technology to protect *data while in motion or in its custody from unauthorized disclosure.

**"Data" for students is defined as the types of records currently protected by FERPA. "Data" for teachers and superintendents is defined as personally identifiable information relating to annual professional performance reviews.*

STEPS THE DISTRICT WILL TAKE IN REGARD TO A BREACH OR SUSPECTED BREACH OF CONFIDENTIALITY OR SECURITY IN REGARD TO STUDENT, TEACHER OR SUPERINTENDENT DATA:

Upon receipt of a complaint or other information indicating that a third party contractor may have improperly disclosed student data, or teacher or superintendent APPR data, NYSED's Chief

Privacy Officer is authorized to investigate, visit, examine and inspect the third party contractor's facilities 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 Personal Identifiable Information 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 superintendent APPR data, from an educational agency for a fixed period up to five years.

In compliance with Education Law §2-d and as a condition of the Agreement with the Edinburg Common School District, _____ (“Contractor/Consultant”) hereby assures and warrants it shall:

- (1) *Limit internal access to education records to those individuals determined to have legitimate educational interests;*
- (2) *Not use the education records for any other purposes than those explicitly authorized by the School District in the Agreement;*
- (3) *With the exception of authorized representatives of the Contractor carrying out their obligations pursuant to the Agreement, not disclose personally identifiable information to any other party without the prior written consent of the parent or eligible student or unless required by statute or court order and upon notice to the Board of Education prior to disclosure;*
- (4) *Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and*
- (5) *Use encryption technology to protect data from unauthorized disclosure using technology or methodology specified by the secretary of the United States Department of Health and Human Services.*

Contractor affirms its employees and officers who will have access to protected data have received or will receive training on federal and state laws governing confidentiality of student, teacher, or principal data prior to receiving any access pursuant to this Agreement. Contractor acknowledges that any breach or unauthorized release of personally identifiable information in violation of applicable state or federal laws, the Parent Bill of Rights, District data privacy and security policies and/or any contractual obligation relating to data privacy and security, shall require immediate notification to the District and may subject the Contractor to civil penalties up to \$150,000. Furthermore, in the event of a breach or unauthorized disclosure of student information or teacher or superintendent data, the Chief Privacy Officer, after permitting the Contractor notice and an opportunity to be heard, may order the Contractor be (1) precluded from accessing student data from the School District, or if such disclosure was knowing and reckless, from any School District in the State, for a period of up to five (5) years; and/or (2) prohibit the Contractor from being deemed a responsible bidder or offerer on any contract with an educational agency that involves the sharing of student data or teacher or superintendent data for a period of up to

five (5) years; and/or (3) require training to the Contractor's employees and officers at the Contractor's expense regarding student confidentiality and data privacy pursuant to State and Federal laws.