THIRD-PARTY CONTRACTS

A third-party contractor is 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 agreement for purposes of providing services to such agency, including but not limited to data management, conducting studies, or evaluation of publicly funded programs. To learn more about this requirement, agencies can review Part 121.2, 121.3, 121.6, 121.9, and 121.10 of the Regulations.

REQUIREMENTS FOR NYS EDUCATIONAL AGENCIES

COMPLIANCE CHECKS

Pre-Negotiations:

✓ Update Parents' Bill of Rights

✓ Adopt District Policy

Contracts:

✓ Include All Required Elements

REQUIRED CONTRACT ELEMENTS

✓ **CONFIDENTIALITY MAINTAINED**
Contracts must require the confidentiality of shared protected data be maintained in accordance with law and the educational agency's policy.

✓ **DATA SECURITY AND PRIVACY PLAN**
Contracts must include the third-party contractor's data security and privacy plan that is accepted by the educational agency. Required elements are outlined in 121.6. Plans must:

- **IMPLEMENTATION OF ALL REQUIREMENTS**
  Outline how the contractor will implement all state, federal, and local contract requirements, consistent with the agency's policy;
- **SECURITY PROTECTIONS**
  Specify the administrative, operational and technical safeguards and practices it has in place;
- **SUPPLEMENTAL INFORMATION COMPLIANCE**
  Demonstrate that it complies with the supplemental information requirements;
- **CONTRACTOR AND SUBCONTRACTOR TRAINING**
  Specify how employees and its assignees receive or will receive training on the laws governing data prior to receiving access;
- **SUBCONTRACTORS MANAGEMENT**
  Specify if the contractor will utilize sub-contractors and how it will manage sub-contractor relationships and contracts;
- **CYBER INCIDENT PLAN**
  Specify how the contractor will manage incidents including specifying any plans to identify incidents, and to notify the agency;
- **DATA TRANSFER AND DISPOSAL**
  Describe whether, how and when data will be returned or destroyed when the contract is terminated;
- **SIGNED COPY OF THE BILL OF RIGHTS**
  Include a signed copy of the parents bill of rights for data privacy and security.
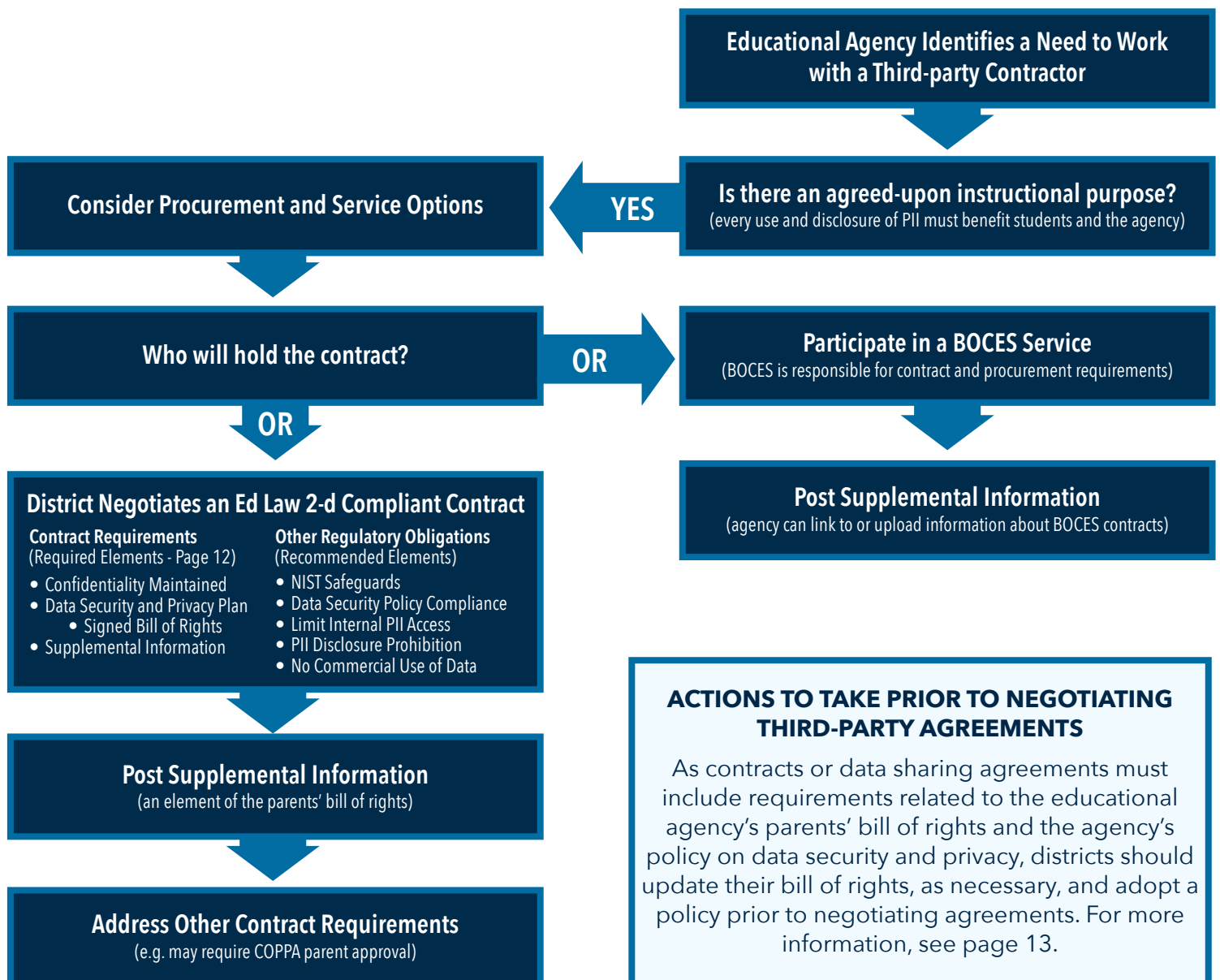
✓ **SUPPLEMENTAL INFORMATION**
The bill of rights must include supplemental information for each third-party contract. See page 6, for more information.

THIRD-PARTY CONTRACTS AND PATHS TO COMPLIANCE

An agreement that covers the requirements defined by Ed Law 2-d must exist either directly between the school district and the product vendor, or, if the product is part of a service obtained through a BOCES CoSer, an agreement between that BOCES and the product vendor. A vendor cannot achieve compliance unilaterally.

If a district procures a product directly from a vendor, whether it is a paid platform or the district "signs up" for a free service, the district is entering into a contract with the vendor. Even though a compliant agreement may exist between a BOCES and a vendor, if a district does not obtain that vendor's product as part of a service delivered through a BOCES CoSer governed by that agreement, the BOCES-negotiated terms do not apply to that district.

TWO PATHS TO CONTRACTUAL COMPLIANCE

Educational Agency Identifies a Need to Work with a Third-party Contractor

Is there an agreed-upon instructional purpose?
(every use and disclosure of PII must benefit students and the agency)

YES

Consider Procurement and Service Options

Who will hold the contract?

OR

OR

Participate in a BOCES Service
(BOCES is responsible for contract and procurement requirements)

Post Supplemental Information
(agency can link to or upload information about BOCES contracts)

District Negotiates an Ed Law 2-d Compliant Contract

Contract Requirements
(Required Elements - Page 12)
- Confidentiality Maintained
- Data Security and Privacy Plan
  - Signed Bill of Rights
- Supplemental Information

Other Regulatory Obligations
(Recommended Elements)
- NIST Safeguards
- Data Security Policy Compliance
- Limit Internal PII Access
- PII Disclosure Prohibition
- No Commercial Use of Data

Post Supplemental Information
(an element of the parents' bill of rights)

Address Other Contract Requirements
(e.g. may require COPPA parent approval)

ACTIONS TO TAKE PRIOR TO NEGOTIATING THIRD-PARTY AGREEMENTS

As contracts or data sharing agreements must include requirements related to the educational agency's parents' bill of rights and the agency's policy on data security and privacy, districts should update their bill of rights, as necessary, and adopt a policy prior to negotiating agreements. For more information, see page 13.