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

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.
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)

#### Participate in a BOCES Service

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

#### Consider Procurement and Service Options

- Who will hold the contract?

#### District Negotiates an Ed Law 2-d Compliant Contract

- 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)

#### Post Supplemental Information

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

### 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.