



NYS ED LAW 2-D DATA PROTECTION & PLANNING

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NYS REQUIREMENTS FOR DATA SECURITY AND PRIVACY

Education Law 2-d and Part 121 of the Commissioner’s Regulations outline requirements for school districts and BOCES related to the protection of the personally identifiable information (PII) of students, as well as some teacher and principal information. The law and the regulations require schools to undertake a multi-pronged approach to information governance.

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)



Protect the confidentiality of student PII (as defined in FERPA) and certain teacher and principal PII (confidential APPR data)

PARENTS’ BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY



Develop and post, on the agency’s website, a Parents Bill of Rights with supplemental information about each agreement with a third-party contractor that involves disclosure of PII

DATA SECURITY AND PRIVACY POLICY



Adopt and post a Data Security and Privacy Policy that includes adherence to the NIST Cybersecurity Framework to protect PII

NIST CYBERSECURITY FRAMEWORK



Apply the planning, processes, and categories of information protection defined within the NIST Cybersecurity Framework to district practices

THIRD-PARTY CONTRACTS



Whenever a contractor receives protected PII, ensure that the agreement for using the product or services (or, an addendum to that agreement) includes required language

ANNUAL EMPLOYEE TRAINING



Deliver annual privacy and security awareness training to all employees with access to protected data

UNAUTHORIZED DISCLOSURE COMPLAINT PROCEDURES



Create and publish a complaint process

INCIDENT REPORTING AND NOTIFICATION



Follow reporting and notification procedures when a breach or unauthorized disclosure occurs

DATA PROTECTION OFFICER



Appoint a Data Protection Officer to oversee implementation of Education Law 2-d responsibilities

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

