

# THIRD-PARTY CONTRACTS CHECKLIST

Select one district software platform and work with colleagues to populate information from the related contract into the third-party contracts' checklist.

<b>VENDOR:</b> _____	<b>PRODUCT:</b> _____
<b>CONTAINS:</b> <input type="checkbox"/> <b>Student Data</b> <input type="checkbox"/> <b>Teacher or Principal Data</b>	
<b>REVIEW BY:</b> _____	<b>REVIEWED DATE:</b> _____

It is highly recommended that the reviewer attach related agreements to this checklist. Use Tables 1 and 2 to populate information related to the statutory requirements that must be addressed in each contract.

CONFIDENTIALITY REQUIREMENTS	2-D	121	Y	N	WHAT SECTION?
Is there a provision that confidentiality of the shared data be maintained in accordance with federal and state law?	5(d)	2(c)			
Is there a provision that confidentiality of the shared data be maintained in accordance with the district/BOCES Policy on Data Security and Privacy?	5(d)	2(c)			

DATA SECURITY AND PRIVACY PLAN REQUIREMENTS	2-D	121	Y	N	WHAT SECTION?
Is there 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 district/BOCES Policy on Data Security and Privacy?	5(e)	6(a)			
Does the plan specify the administrative, operational and technical safeguards and practices the contractor has in place to protect personally identifiable information?		6(a)			
Does the plan demonstrate compliance with the supplemental information requirements (see Table 3)?		6(a)			
Does the plan specify how the vendor's officers and employees who have access to protected data will receive training on the federal and state laws governing confidentiality of the data prior to receiving access?	5(e)	6(a)			
Does the plan specify how the vendor's assignees (subcontractors) who have access to protected data will receive training on the federal and state laws governing confidentiality of the data prior to receiving access?	5(e)	6(a)			
Does the plan specify if the contractor uses subcontractors and how it will manage any relationships and contracts to ensure personally identifiable information is protected?		6(a)			
Does the plan specify how the contractor will manage data security and privacy incidents, identify breaches and unauthorized disclosures, and promptly notify the agency?		6(a)			
Does the plan specify whether, how and when data will be returned to the agency, transitioned to a successor contractor, or destroyed by the contractor when the contract is terminated?		6(a)			
Does the plan include a signed copy of the district/BOCES Parents Bill of Rights for Data Privacy and Security?	5(e)				

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Use Table 3 to populate information the district/BOCES needs to post about the contract (supplemental information) with the Bill of Rights for Data Privacy and Security.

SUPPLEMENTAL INFORMATION ELEMENT	2-D 121		SUPPLEMENTAL INFORMATION
The exclusive purpose(s) for which the student data or teacher or principal data will be used by the third-party contractor, as defined in the contract	3(c)	3(c)	
How the contractor will ensure that any other entities with which it shares the protected data, if any, will comply with the data protection and security provisions of law, regulation and this contract	3(c)	3(c)	
When the agreement expires and what happens to the protected data when the agreement expires	3(c)	3(c)	
If a parent, student, or eligible student may challenge the accuracy of the protected data that is collected; if they can challenge the accuracy of the data, describe how	3(c)	3(c)	
Where the protected data will be stored (described in a way that protects data security), and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated	3(c)	3(c)	
How the data will be protected using encryption.	3(c)	3(c)	

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Use Table 4 to populate information about other contract considerations relevant to Education Law 2-d and general contractual best practices.

CONTRACT CONSIDERATION	2-D	121	Y	N	WHAT SECTION?
Includes language that requires the vendor to provide notice of breaches and unauthorized disclosures of protected data in accordance with the Commissioner's Regulations (no more than 7 days after discovery).	6(a)	10(a)			
Includes language that tracks the statutory requirements imposed on vendors by Section 2-d, subsection 5(f) and the related regulations: <ul style="list-style-type: none"> <li>• Vendor will adopt technologies, safeguards, and practices that align with the NIST Cybersecurity Framework;</li> <li>• Vendor will comply with the data security and privacy policy of the district/BOCES, Education Law Section 2-d, and Part 121 of the Commissioner's Regulations;</li> <li>• Vendor will limit access to education records to persons with a legitimate educational interest;</li> <li>• Vendor will not use education records for any purposes other than those explicitly authorized in the contract;</li> <li>• Vendor will not disclose PII to any other person (except a person authorized by the vendor to help carry out the contract) without consent of the parent or eligible student, unless required to do so by statute or court order and the educational agency has been given notice of the disclosure;</li> <li>• Vendor will maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of PII student information;</li> <li>• Vendor will use encryption technology to protect data in motion and data at rest using a technology or methodology specified in guidance issued by the U.S. Secretary of Health and Human Services to implement HIPAA.</li> <li>• Vendor will not sell PII nor use or disclose it for any marketing or commercial purpose, and will not facilitate the use or disclosure of PII by any other party for any marketing or commercial purpose, and will not permit any other party to do so; and</li> <li>• If Vendor engages a subcontractor to perform its contractual obligations, it shall ensure that the subcontractor is contractually bound to comply with the same data protection obligations imposed on the Vendor by state and federal law and this contract.</li> </ul>		9(a)			
		9(a)			
		9(a)			
	6(f)	9(a)			
	6(f)	9(a)			
	6(f)	9(a)			
	6(f)	9(a)			
	6(f)	9(a)			
	9(a)				
	9(b)				

The contract is governed by New York State law without regard to the state's choice of law rules, and venue is in the District's county and federal court district.				
Indemnification language is bilateral, not merely requiring the District to indemnify the vendor.				
Price increases capped.				



**This resource is relevant to the THIRD-PARTY CONTRACTS Part 121 of the Commissioner's Regulations Requirements.**