

DRAFT

**BOARD AGENDA
BUSINESS MEETING**

Thursday, June 20, 2024
7:00 PM In the School Cafeteria

CV-S Central School
Cherry Valley, NY

I. OPENING OF MEETING

A. QUORUM CHECK

B. CALL TO ORDER

C. PLEDGE OF ALLEGIANCE

D. SPECIAL PRESENTATIONS - Community Service, Student Representative, Administration, & Board Committee Reports

E. ADDITIONS TO AGENDA

F. CORRESPONDENCE RECEIVED

G. SUPERINTENDENT'S REPORT

H. RECOGNITION OF VISITORS

II. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

III. CONSENT AGENDA ITEMS – Consider motion to approve consent agenda items to include RESOLUTIONS 1-6-2024 through RESOLUTION 14-6-2024

A. RESOLUTION 1-6-2024
APPROVAL OF MINUTES – May 21, 2024

B. FINANCIAL

RESOLUTION 2-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent does hereby approve the following transfers:

From: A5530400 \$4600 To: A55104507 \$4600

From: A2855150 \$5500, From: A2850160 \$4500, & From: A2850150 \$11000 To: A2850150 \$21,000

From: A2110120 \$25000 & From: A2110130 \$35000 To: A2610490 \$60000

From: A9040800 \$16500 & From: A9010800 \$14800 To: A9030800 \$31300

C. ANNUAL REORGANIZATIONAL MEETING

RESOLUTION 3-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, does hereby set the Annual Reorganizational Meeting date to be July 10, 2024.

D. OTSEGO COUNTY PRESCHOOL SERVICE PROVIDER AGREEMENT

RESOLUTION 4-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the agreement with the Otsego County as per ATTACHMENT III D.

E. SOCCER MERGER

RESOLUTION 5-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the merger between the Sharon Springs Central School District and the Cherry Valley- Springfield Central School District, for Modified and Varsity Girls Soccer and Varsity Boys Soccer athletic competition during the 2024-2025 season.

F. PERSONNEL

RESOLUTION 6-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby accept the retirement of Lori Miller, part-time occupational therapist, effective June 30, 2024.

RESOLUTION 7-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby approve the leave of absence for Sara Valenta, Licensed Teacher Assist, effective September 3, 2024 through December 18, 2024.

RESOLUTION 8-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby approve the individual salary agreement for the following: Driver/Mechanic.

RESOLUTION 9-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Tammie Waterman to a position as a Long-term Substitute Teacher effective September 1, 2024 for the 2024-2025 school year and approves her leave of absence as a Licensed Teacher Assistant for the same time period.

RESOLUTION 10-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Celia Rathbun, who is Initially Certified Generalist in Middle Childhood Education (Grades 5-9), to a position as an English Teacher for a probationary period beginning September 1, 2024 through September 1, 2027.

RESOLUTION 11-6-2024

RESOLVED that the Board of Education of the Cherry Valley-Springfield Central School District hereby re-appoints Lindsay Monser from the seniority/recall list, pursuant to Education Law 3013, to a one year leave replacement LTA position in the LTA tenure area, effective September 1, 2024. Lindsay Monser will be reinstated with the three (3) years seniority which she had accrued prior to being excessed.

RESOLUTION 12-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following 2024 Summer Program positions: *Summer Program is contingent on the enrollment figures.

Elementary - 1:1 Aide: Caitlen Page, Substitute: Christina Shuttig & Student Workers: Hannah Decker and Alixandria Ritchie

RESOLUTION 13-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following Extracurricular assignments for the 2024-2025 school year:

Soccer: Boys Modified - Mark Hitt & Girls Varsity - Celia Rathbun

Basketball: Boys Varsity - Michael King, Boys JV - David Bliss, Boys Modified - Ben Haig

Girls Varsity - Kelly Taggart, Girls JV - Carol McGovern, Girls Modified - David Mayton

H.S. Cheerleading - Shannon Rockwell

Baseball: Varsity - Mark Hitt

Softball: Varsity - David Bliss

Track: Boys & Girls Varsity Track - Celia Garretson

Class Advisors - Senior - Kelly Taggart & September Schecter

Junior - Jodi Mravlja

Freshman - Adrienne Haig & Lisa Shaffer

Eighth Grade - Stephanie Weaver

Publicity - Jennifer LeJeune Yearbook Advertising Coordinator - Shannon Rockwell

Marching Band - Kelly Oram & Rich Lyford Jazz Band - Kelly Oram Color Guard - Kelly Oram

Instructional Music (Spring Musical) - Kelly Oram Vocal Music (Spring Musical) - Rich Lyford

All County Music - Kelly Oram & Rich Lyford

Senior Drama Club - Jodi Mravlja

Varsity Club - Kelly Taggart

Foreign Language Club - Donna Ahrens

Ski Club - Jennifer O'Leary

SADD Advisor - Shannon Rockwell

Safety Patrol - Deb Whiteman

Iridescence - Jordan Rhodes

Science Club - Mark Hitt

Student Council - Michael King

Jr. Honor Society - September Schecter

Sr. Honor Society - September Schecter

Math Honor Society - Terri Santillan

History Honor Society - Traci Waterman

English Honor Society - Jordan Rhodes

Website Coordinator - Ginger Thayer

Athletic Coordinator - Ken Whiteman

Minecraft - Elisabeth Wathen

Social Media Coordinator - Ginger Thayer

Detention - Donna Ahrens, Kristie Fassett, Robin Horne, Jodi Mravlja, Terri Santillan, September Schecter, & Tammie Waterman

Tutoring - Donna Ahrens, Kristie Fassett, Robin Horne, Joslyn Mabie, Jodi Mravlja, Terri Santillan, September Schecter, Erin Seales, Lisa Shaffer, Elisabeth Wathen & Celia Rathbun

LMC After School - Robin Horne, Jodi Mravlja, Terri Santillan, Tammie Waterman & Deb Whiteman

After School Study Hall - Donna Ahrens, Kristie Fassett, Robin Horne, Jodi Mravlja, Jordan Rhodes, Terri Santillan, September Schecter, Lisa Shaffer, Tammie Waterman, Elisabeth Wathen & Celia Rathbun

Chemical Hygiene Officers - Mark Hitt & David Mayton

Auditorium Stage Lighting - Stephanie Weaver

Ticket Seller - Kristie Fassett

Elementary Club - Jodi Mravlja

FFA Advisor - Megan Richards

Chaperones:

Dances - Donna Ahrens, Rebecca Brown, Kristie Fassett, Dakota Jicha, Robin Horne, Shelbi Kinsley, Jennifer LeJeune, Jodi Mravlja, Kelly Oram, September Schechter, Ginger Thayer, Elisabeth Wathen, Deb Whiteman, Sarah Williams

Basketball Games - Donna Ahrens, Rebecca Brown, Dakota Jicha, Robin Horne, Shelbi Kinsley, Jodi Mravlja, Lisa Shaffer, Ginger Thayer, Deb Whiteman, Beth Spaulding, Celia Rathbun

Concerts - Rebecca Brown, Kristie Fassett, Dakota Jicha, Robin Horne, Jennifer LeJeune, Molli McCarty, Jodi Mravlja, Lisa Shaffer, Ginger Thayer, Ken Whiteman, Sarah Williams, Beth Spaulding, Celia Rathbun

Drama Performances - Donna Ahrens, Rebecca Brown, Kristie Fassett, Dakota Jicha, Robin Horne, Jennifer LeJeune, Molli McCarty, Kelly Oram, Lisa Shaffer, Ginger Thayer, Elisabeth Wathen, Ken Whiteman, Sarah Williams, Beth Spaulding, Celia Rathbun

Track & Field Meets - Dakota Jicha, Robin Horne, Molli McCarty, Jodi Mravlja, Lisa Shaffer, Ginger Thayer

RESOLUTION 14-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the following volunteers for the 2023-2024 school year:

Joleen Lusk

Mariah Kraham

IV. NEW BUSINESS

A. POLICY REVIEW

RESOLUTION 15-6-2024

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby conduct a first reading of Policies and Regulations: 1120 School District Records, 4772 Graduation Ceremonies, 4773 Diploma and Credential Options for Students with Disabilities, 5500 Student Records, 5550 Student Privacy, and 8635-R Information and Data Privacy, Security, Breach and Notification Regulation.

V. OLD BUSINESS

VI. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

- Matters leading to the employment of particular individual(s)
- Employment history of particular individual(s) or corporation(s)
- Review collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law)

VII. ADJOURNMENT

OTSEGO COUNTY DEPARTMENT OF HEALTH
4410 PRESCHOOL SERVICE PROVIDER CONTRACT
AGREEMENT BETWEEN

CHERRY VALLEY SPRINGFIELD CENTRAL SCHOOL

AND

OTSEGO COUNTY DEPARTMENT OF HEALTH
DIVISION FOR CHILDREN WITH SPECIAL NEEDS PROGRAM
140 COUNTY HIGHWAY 33W, SUITE 3
COOPERSTOWN, NY 13326

This contract, by and between the MUNICIPALITY OF OTSEGO COUNTY, hereinafter referred to as the MUNICIPALITY, acting by and through the Otsego County Department of Health, having its office at 140 County Highway 33W, Suite 3, Cooperstown, New York and CHERRY VALLEY SPRINGFIELD CENTRAL SCHOOL, hereinafter referred to as PROVIDER and/or EVALUATOR having its office at 597 County Highway 54 Cherry Valley, NY 13320 is for the provision of services to preschool children with disabilities pursuant to section 4410 of the New York State Education Law.

WHEREAS, 'MUNICIPALITY' shall mean the county outside the City of New York or the City of New York in the case of a county contained within the city of New York; and

WHEREAS, 'BOARD' shall mean:

- A. a board of education as defined in section two of the New York State Education Law; or
 - B. trustees of a common school district as defined in section 1601 of the New York State Education Law;
- and

WHEREAS, 'COMMISSIONER' shall mean the Commissioner of Education of the State of New York, and

WHEREAS, 'EVALUATOR' shall mean a program approved by the Commissioner of Education pursuant to section 4410 of the Education Law, with a multi-disciplinary evaluation component as defined in section 200.1(aa); and

WHEREAS, the 'PROVIDER' has been approved by the COMMISSIONER to provide special education services in accordance with Section 4410 of the New York State Education Law and Part 200 of the

Regulations of the COMMISSIONER; and

WHEREAS, the PROVIDER warrants that it can meet the needs of children with disabilities placed in its approved program under section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner, and shall comply with all applicable federal, state and local laws; and

WHEREAS, the MUNICIPALITY shall provide either directly or by contract such eligible preschoolers with a multi-disciplinary evaluation as initiated by a committee on preschool special education with parental/legal guardian consent pursuant to 8 NYCRR200.16 (c) (1) and (2) pursuant to Section 4410 of said act to determine the child's eligibility for services; and

WHEREAS, the MUNICIPALITY shall provide either directly or by contract for suitable transportation to and from the PROVIDER'S program, in accordance with section 4410 of the New York State Education Law and Part 200 of Regulations of the COMMISSIONER; and

WHEREAS, Section 4410 of the New York State Education Law requires a contract, in a form approved by the COMMISSIONER, between the MUNICIPALITY and the PROVIDER of the approved program selected by the BOARD.

NOW, THEREFORE, in order to make available those services to preschoolers with special needs placed under Section 4410 of the New York State Education Law as determined by the BOARD, the parties hereto mutually agree as follows:

1. The PROVIDER and EVALUATOR agree to comply with all applicable MUNICIPALITY policies, federal, state and local statutes, rules and regulations.
2. The EVALUATOR shall provide appropriate, comprehensive, functional, multi-disciplinary evaluations assessing the preschooler as defined in 8 NYCRR 200.4(b). In addition, with consent of the parent/legal guardian, approved evaluators and committees shall be provided with the most recent report for a child in transition from programs and services provided pursuant to Title 2(a) of Article 25 of the Public Health Law.
3. The EVALUATOR shall complete an initial evaluation using a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional, developmental and academic information. Eligibility shall be based on developmental delays in one or more of the following developmental domains: cognitive development; physical development; including vision and hearing; communication development; social-emotional development and adaptive development or a diagnosed condition with a high probability of developmental delay as per 8 NYCRR Part 200.1 (mm). The EVALUATOR shall obtain parental/legal guardian consent to perform the evaluation prior to initiating the evaluating procedures. The EVALUATOR shall receive written authorization from the School District.
4. The EVALUATOR shall complete the requested evaluation and prepare a report and written summary within a sufficient time frame to hold the CPSE meeting within 60 days of the receipt of the consent as defined in 8 NYCRR 200.16(2). The summary report shall include a detailed statement of the preschool student's individual needs, if any. The summary report shall not include a recommendation as to the general type, frequency, location and duration of special education services and programs that should be provided; shall not address the manner in which the preschool student can be provided with instruction or related services in the least restrictive environment; and shall not make reference to any specific provider of special services or programs.

5. The EVALUATOR shall send a copy of the Preschool Student Evaluation Summary Report and full evaluation and other assessments to the MUNICIPALITY prior to the scheduled CPSE meeting. The evaluation shall contain the identification of the persons performing the evaluation, a description of the assessment and conditions, the child's response and score that was used and an explanation of these scores.

6. The PROVIDER shall provide appropriate services for children with disabilities placed by the BOARD to attend the PROVIDER'S program. The PROVIDER shall provide all services listed on the child's Individualized Education Plan. Services must be provided at the frequency and duration indicated on the IEP. The PROVIDER shall provide such services for that part of the school year for which children are placed by the BOARD. The school year is hereby defined as a July/August session from July 1 through August 31 and/or September/June session from September 1 through June 30.

7. The PROVIDER shall be responsible for the delivery of appropriate services, including the training and/or retraining of direct service staff employed by the PROVIDER. If the PROVIDER requires specific training in order to a service a child, the PROVIDER will be responsible for obtaining said training.

8. The PROVIDER will maintain the standards set forth under section 200.20 of the Regulations of the Commissioner to preserve its status as an approved school for the education of children with disabilities. It is understood and agreed by the parties that failure to do so shall render this Contract void, in which case the PROVIDER shall be entitled to no compensation for the portion of the school year in which such approval ceases to be maintained and shall reimburse the MUNICIPALITY any amounts already received for that portion of such school year.

9. The PROVIDER shall make available professional licenses, certificates or qualifications, report of direct staff, continuing education/training and medical evaluations, including immunizations, as requested by the MUNICIPALITY.

10. The PROVIDER and EVALUATOR agrees to maintain all education records for the period set forth in the State Regulations. All records shall be subject at all reasonable times to inspection, review or audit by the MUNICIPALITY, the State of New York, Federal and other personnel duly authorized by the MUNICIPALITY. These records will be maintained for the period set forth in the state regulations.

11. The PROVIDER shall complete Appendix A-1, Statement of Reassignment and Appendix A-2, Provider Agreement; and agrees to maintain all documentation necessary to support the MUNICIPALITY'S claims to Medicaid and further agrees not to bill Medicaid directly for any services provided under this contract. The PROVIDER will ensure that all services are provided by a Medicaid qualified clinician or will ensure that all supervision/direction criteria are met as indicated in Appendix B, Under the Direction of and Under the Supervision of.

12. The PROVIDER shall maintain communication with the MUNICIPALITY via phone and email. The PROVIDER shall maintain a phone line with an out going message that is of a professional nature and shall return phone messages within a reasonable time frame. The PROVIDER shall maintain an email account that will be checked regularly. Email communication shall not contain any client specific information.

REIMBURSEMENT PROCESS

1. All financial arrangements for services under this Contract shall be between the MUNICIPALITY and PROVIDER. The MUNICIPALITY, in accordance with the provisions of this contract, shall reimburse the PROVIDER for expenditures made for contract services as follows:

2. Such payments shall be at the rates approved for tuition and evaluations established by the COMMISSIONER and certified by the Director of the Budget of the State of New York. Where the enrollment for a child is for periods of less than the full July/August session or September/June session, the payment shall be prorated by the COMMISSIONER pursuant to the Regulations of the COMMISSIONER.

3. The PROVIDER and EVALUATOR shall submit an invoice to the MUNICIPALITY for services rendered one complete calendar month at a time. Invoices shall be submitted no later than fifteen (15) days after the end of the month in which services occurred.

A. All invoices for tuition reimbursement must be accompanied by attendance logs and therapy session notes. All applicable CPT codes for services provided must be submitted with the invoice for payment. CPT codes can be on the invoice itself or each individual session note.

B. All invoices for evaluations must be accompanied by a complete evaluation report. All applicable CPT codes for the evaluation must be submitted with the invoice for payment. CPT codes can be on the invoice itself or may be contained within the evaluation report.

4. In the event of notification by the COMMISSIONER of an official rate change, the PROVIDER shall submit a voucher to the MUNICIPALITY for any additional payment due to a rate increase or shall notify the MUNICIPALITY of any refund owed due to a rate decrease. Such voucher or notice shall be submitted not more than thirty (30) days after official notification.

5. No parent or any other person shall be required or requested to make any payment for tuition, evaluations or transportation, in addition to the payments made by the MUNICIPALITY pursuant to this Contract.

6. No parent or any other person shall be required or requested to make any payment for tuition, evaluations or transportation, in addition to the payments made by the MUNICIPALITY pursuant to this contract.

7. The MUNICIPALITY shall not be obligated to pay any bills submitted more than three (3) months after the services were rendered unless notification is received from the New York State Department of Education indicating a rate change for services previously rendered.

RECORDS MANAGEMENT

1. Individual child records pursuant to the contract shall be kept and maintained in a confidential manner in compliance with all applicable laws, regulations and guidelines of Federal, State and local governments and their agencies, including requirements that apply to professions licensed, registered or certified under State Education Law.

2. The PROVIDER shall continue to maintain the confidentiality of individual case records and safeguard such records against destruction, as set forth above, after termination of this contract or any subsequent contracts, until final disposition of such case records is made in accordance with all applicable laws, regulations and guidelines.

3. At a minimum, the PROVIDER shall preserve and retain all records for each child under this contract in readily accessible form during the term of this Contract for a period of at least six (6) years from the date that care, services or supplies were provided to the child and family. Records must be retained as required by all applicable laws, regulations or records retention schedules of the State of New York or the Federal Government.

4. All provisions of this contract relating to record maintenance and retention shall survive the termination of this contract and shall bind the PROVIDER until the expiration of the period commencing with termination of this contract or if an audit is commenced by the MUNICIPALITY, or NYSED, until the completion of the audit, whichever occurs later. If the PROVIDER becomes aware of any litigation claims, financial management review or audit that is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, financial management review or audit finding involved in the record have been resolved and final action taken.

5. Information about the specific details of service delivery must be recorded and maintained by the PROVIDER and EVALUATOR in order to establish the nature and extent of services provided and to substantiate the MUNICIPALITY'S claims for reimbursement.

6. Session notes documenting the delivery of services on a particular date must be completed by all qualified personnel delivering services as listed on the child's IEP for each service delivered. Session notes shall include the following:

- a. Student's name
- b. Specific type of service provided
- c. Whether the service was provided individually or in a group. If in a group the number of children in the group.
- d. The location in which the service was rendered
- e. Date service was rendered
- f. Duration of session, including start and end times
- g. A brief description of student's progress toward IEP goals
- h. Name, title, signature and credentials of the person furnishing the service and signature/credentials of supervising clinician, as appropriate
- i. Caregivers signature

7. The PROVIDER must complete a quarterly report for each child receiving services as set forth in Part 200 of the regulations of the Commissioner of Education 200.4(d)(2)(x). The provider must submit a copy to the school district, municipality and parent. Progress reports shall be submitted to the parents and school districts by the dates that are established by the school district.

A. The periodic progress report must summarize the effectiveness of the service(s) and must include:

1. Child's progress made towards meeting all IEP objectives and goals

2. Statement of any objectives/goals met
3. Any newly identified or recommended goals

B. The PROVIDER must submit quarterly progress reports to the MUNICIPALITY by the following dates: December 1st, February 1st, May 1st, and July 1st

C. The PROVIDER acknowledges and agrees that failure of the PROVIDER to submit the quarterly progress reports in proper form on the date(s) required shall be cause for the MUNICIPALITY to withhold payments otherwise payable under this agreement

8. The PROVIDER shall complete an Annual Report for each child receiving services and shall submit a copy to the school district, municipality and parent.

A. Annual Reports are due **5 BUSINESS DAYS PRIOR** to a student's Annual CPSE review meeting and shall contain the following:

1. Name of test(s) and/or assessment(s), date give and standard scores
2. Present levels of educational performance
3. Annual goals, instructional objectives and benchmarks
4. Recommendations for continuation in CPSE (frequency, duration of services)
5. Recommendations for transition into CSE

B. The PROVIDER is encouraged to enter the annual report directly into the districts Individualized Education Program software but may elect to submit a written annual report.

9. The PROVIDER shall be responsible for additional reports as deemed necessary by the school district to assist in meeting the child's individual educational needs. This information includes but is not limited to annual goals, instructional objectives and benchmarks, evaluation criteria procedures and schedules, present levels of performance and individual needs.

10. The PROVIDER shall prepare and make available such statistical, financial and other records pursuant to section 4410 of the New York State Education Law, as are necessary for reporting and accountability. All documents and records shall be consistent with New York State financial requirements for audit and rate establishment procedures.

11. The financial records and other financial documents relevant to this Contract shall be retained by the PROVIDER for nine (9) years after the school year in which services have been provided.

12. These records pursuant to section 4410 of the New York State Education Law shall be subject at all reasonable times to inspection, review or audit by the BOARD, the municipality where the PROVIDER is located, the State of New York, acting through the Education Department or the Office of the State Comptroller, federal and other personnel duly authorized by such municipality.

CONFIDENTIALITY

The MUNICIPALITY and PROVIDER shall observe and require observance of all subcontractors and their

employees of all applicable Federal and New York State requirements relating to confidentiality of records and information. The PROVIDER expressly agrees to preserve the confidentiality of all electronic and/or hard-copy data and information, both historical and current data, shared, received, collected or obtained as a result of this agreement. No disclosure, re-disclosure or release of such data or information is to be made, permitted or encouraged by the PROVIDER, its officers or employees, except as expressly authorized by law.

The PROVIDER shall abide by the procedures established at the MUNICIPALITY in compliance with 18 NYCRR Part 357 and Section 403.9 to safeguard against the prohibited re-disclosure of HIV related information.

The PROVIDER shall ensure that any personnel receiving confidential HIV related information as a necessity for providing services under this agreement are fully informed of the penalties and fines for re-disclosure in violation of State Law and regulations.

The PROVIDER agrees that any disclosure of confidential HIV information will be accompanied by the following written statement:

“This information has been disclosed to you from confidential records which are protected by State Law. State Law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State Law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.”

LIABILITY REQUIREMENTS

Prior to commencing work, the PROVIDER shall obtain at its own cost and expense liability insurance with a minimum limit of liability of \$1,000,000.00 per claim, \$3,000,000.00 annual aggregate and shall provide evidence of such insurance to the MUNICIPALITY. This coverage may not be changed or cancelled without 30 days prior written notice to the MUNICIPALITY. The MUNICIPALITY must also be listed as a certificate holder on the insurance policy and shall receive a certificate listing such coverage requiring notice to the MUNICIPALITY of any cancellation or alteration of coverage.

INDEMNIFICATION

The PROVIDER further covenants and agrees to indemnify, defend and hold harmless the MUNICIPALITY, its Board of Supervisors, officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal property rights, of every name and nature and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by, or because of, any omission or duty, negligence or wrongful act on the part of the PROVIDER, its employees or agents.

CONFLICT OF INTEREST

The PROVIDER hereby warrants that there is no conflict of interest, if any, with the activities to be performed hereunder and that the PROVIDER shall advise the MUNICIPALITY if any conflict or potential conflict of interest exists or arises in the future.

NON-ASSIGNMENT/SUBCONTRACTING

Both parties recognize that this contract is one for personal services and cannot be transferred, assigned or sublet by either party without prior written consent to the other.

All agreements between PROVIDER and subcontractors shall be by written contract. All subcontracts entered into by the PROVIDER relative to the purchase of services pursuant to the Contract shall be in writing in accordance with all federal and State laws, regulations and guidelines and shall be disclosed on the application to the COMMISSIONER for program approval. No provision of any such subcontract shall incur any financial obligation by the MUNICIPALITY in addition to the established tuition and evaluation rates. Any arrangements entered into by a PROVIDER with a subcontractor shall be governed by all applicable provisions relating to conflict of interest pursuant to the Laws of New York State. The PROVIDER shall not be relieved of any responsibility of this Contract by any subcontract.

NON-DISCRIMINATION

Both parties shall make available services to all persons without regards to race, color, sex, creed, national origin, or source of payment, and that no person shall, on the grounds of race, color, gender, sexual orientation, military status, marital status, creed or national origin, be excluded from participation, under any activity or program of either agency.

The PROVIDER shall comply with the requirements of the United State Civil Rights Act of 1964 as amended and the Executive Order of 11246 entitled "Equal Employment Opportunities" and the regulations issued pursuant thereto as contained in 41 CFR Part 60 and any other Federal or State regulations or law.

The PROVIDER shall observe and comply with the Federal regulations contained in 45 CFR 894 entitled "Non-Discrimination on the basis of handicap; programs and activities receiving or benefiting from Federal financial assistance."

COOPERATION ON CLAIMS

The PROVIDER agrees to render diligently to the MUNICIPALITY any and all cooperation without additional compensation that may require defending the MUNICIPALITY against any claims, demand, or action that pertains to the PROVIDER that may be brought against the MUNICIPALITY in connection with this agreement.

SEVERABILITY

It is expressly agreed that if any term or provision of this contract, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this agreement shall be valid and shall be enforced to the fullest extent permitted by the law.

TERM AND TERMINATION OF THIS AGREEMENT

1. This agreement shall be in effect from July 1, 2024 through June 30, 2027. This agreement may be terminated by either party upon 30 days prior written notice to the other party. This agreement will be automatically terminated if either party loses their license to operate. This agreement shall be deemed terminated immediately if the COMMISSIONER withdraws approval for the PROVIDER to provide services or programs for children with disabilities.

A. In the event a successor agreement is not executed by the parties on or before _____, or either party fails to give the other party at least thirty (30) days written notice of its intent not to renew this agreement, then, notwithstanding anything contrary herein, this agreement shall be extended automatically for a period of six (6) months.

B. In the event a successor agreement is not executed by the parties on or before _____ or either party fails to give the other party at least thirty (30) days written notice of its intent not to renew this agreement, then, notwithstanding anything contrary herein, this agreement may be extended for a second period of six (6) months, at the MUNICIPALITY'S option.

2. Should the PROVIDER be requesting termination of this contract based on the PROVIDER'S intent to cease operation, all specific closedown procedures shall be followed by the PROVIDER in accordance with Part 200 of the Regulations of the COMMISSIONER. Written notice of any such termination shall be provided to the MUNICIPALITY and the BOARD(S) by the PROVIDER not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the PROVIDER shall undertake no additional expenditures not already required.

3. The MUNICIPALITY shall have the right to terminate this agreement, in whole or with respect to any identifiable part of the program, effective immediately in cases of imminent danger to the health and safety of eligible children, parents and/or staff, or, at its option, effective at a later date specified in the notice of such termination to the PROVIDER, on the following basis:

- A. If the PROVIDER fails to fulfill in a timely and proper manner its obligations under this agreement;
- B. If the PROVIDER becomes bankrupt or insolvent or falsifies its records or reports, or misuses its funds from whatever source.
- C. Upon conviction of an individual PROVIDER or principal of an agency PROVIDER of a criminal offense by any Court of competent jurisdiction, or action on license by NYSDOH or New York State Education Department (NYSED);
- D. If an Agency PROVIDER knowingly fails to act upon the conviction of an employee or employees of a criminal offense or action on license by the NYSDOH or NYSED;
- E. Upon failure of the PROVIDER to cooperate with an audit, programmatic monitoring and/or quality improvement monitoring by the MUNICIPALITY, NYSDOH or NYSED or its respective designee;
- F. Upon the failure of the PROVIDER to implement recommendations resulting from monitoring by the MUNICIPALITY, NYSDOH or NYSED that are necessary to bring the PROVIDER into compliance with the Act and Regulations;
- G. Engages in any act that constitutes an unacceptable practice under the Medical Assistance Program as enumerated in Title 18 of the New York Code of Rules and Regulations Section 515.2(1) and (b)(1) through (b)(15);
- H. Funding for the services to be performed under this contract is terminated, modified or curtailed.

RELATIONSHIP TO PARTIES

The relationship between the PROVIDER and the MUNICIPALITY shall be that of an independent contractor. The PROVIDER, in accordance with its status as an independent contractor, covenants and agrees that it will neither hold itself out as nor claim to be an officer or employee of the MUNICIPALITY by reason thereof and that it will not be reason thereof make any claim, demand or application to or for any right or privilege applicable to an office or employee of the State of New York or Otsego County including, but not limited to, worker's compensation coverage or retirement membership or credit.

The PROVIDER is not an employee. Any and all responsibility for U.S. Social Security taxes for the PROVIDER and Federal, State and local income taxes are the responsibility of the PROVIDER.

ENTIRE AGREEMENT

This agreement contains the entire understanding of the parties hereto and supersedes all prior agreements and/or understandings written or oral, and may not be amended except in a signed writing by the parties. The parties represent that they are not relying upon any representations, warranty, assurance or understanding that is not contained in this agreement, and they generally acknowledge that there are none.

The parties agrees to renegotiate this Agreement in the event that any state agency, including but not limited to the New York State Department of Health issues new or revised requirements on the MUNICIPALITY as a conditions for receiving continued Federal or State reimbursement, in order to bring the Agreement into compliance with those new or revised requirements.

APPENDIX A

The parties agree to be bound by Appendix A, Approved Programs Where Services Are Provided; which is attached hereto and made part hereof. In the event that the COMMISSIONER withdraws approval for the operation of any program or service at any site listed in Appendix A, such action shall constitute an immediate amendment to this Contract removing inclusion of such program or service from Appendix A. In the event that the PROVIDER intends to cease operation of any or all programs or services at any site listed in Appendix A, the PROVIDER shall give written notice of such intention to the MUNICIPALITY and the BOARD(S) not less than ninety (90) days prior to the intended effective date of such action. Such cessation shall constitute an immediate amendment to this contract thus removing such program or service from Appendix A.

EXECUTORY CLAUSE. This Agreement shall be deemed executory only to the extent of the funds appropriated and available for the purpose of this Agreement, and no liability on account thereof shall be incurred by the COUNTY beyond the amount of such funds. It is understood that neither this Agreement nor any representation by any public employee or officer create any legal or moral obligation to request, appropriate or make available monies for the purpose of this Agreement. The COUNTY shall promptly notify PROVIDER in writing when no funds have been appropriated or when appropriated funds have been exhausted for the PROVIDER'S services under this Agreement.

IN WITNESS WHEREOF, the parties hereunto have executed this agreement.

DIGITAL SIGNATURE PAGE

Hollis Denise-
County Attorney

Digitally signed by Hollis Denise-
County Attorney
Date: 2024.05.27 06:25:47 EDT
Reason: County Attorney approval
Location: Cooperstown, NY 13326

APPENDIX A

APPROVED PROGRAM WHERE SERVICES ARE PROVIDED

APPROVED PROGRAM	LOCATION
<p>Multi-disciplinary evaluations/supplemental evaluations</p> <p>NOTE: Rates for self contained class, integrated class, special education itinerant services and preschool evaluations are set by the State Education Department.</p> <p>Related services (ie., speech therapy, physical therapy, occupational therapy, etc.) as indicated in each child's Individualized Education Plan (IEP).</p> <p>Rates:</p> <ul style="list-style-type: none">- Individual therapy:<ul style="list-style-type: none">30 minute session - \$60.0045 minute session - \$90.0060 minute session - \$120.00- Group therapy (at least 2 children min. up to 5 children max.)<ul style="list-style-type: none">30 minute session - \$45.0045 minute session - \$60.0060 minute session - \$90.00	<p>Various locations - child's home, day care, preschool setting, community setting etc. as indicated on each child's Individualized Education Plan (IEP).</p> <p>Various locations - child's home, day care, preschool setting, community setting etc. as indicated on each child's Individualized Education Plan (IEP).</p>

RESOLUTION NO. 108-20240306

RESOLUTION – AUTHORIZING THE COUNTY ADMINISTRATOR OR THE CHAIR OF THE BOARD TO EXECUTE CONTRACTS FOR 3-5 PROGRAM SERVICE PROVIDERS

MARTINI, BASILE, BLISS, BROCKWAY, MENDEZ

WHEREAS, Section 4410 of the Education Law of the State of New York requires municipalities to enter into contracts with service agencies, that are providers of 4410, 3-5 preschool services; and

WHEREAS, a municipality must contract with providers who are approved by the State Education Department no later than 40 days from the receipt of a written notice from the State Commissioner of Education; and

WHEREAS, the Education Department has developed a suitable contract format for use of the Otsego County Public Health Department; now, therefore, be it

RESOLVED, that the County Administrator or, if unavailable, the Chair of the Board is authorized to sign and execute any and all prospective contract documents between the County and individuals or agencies providing services to County students enrolled in the Section 4410, 3-5 Preschool Program to include psychological evaluations, social history, non-physical evaluations, physical evaluations, itinerant special education teacher, center based tuition, 1:1 aide within center, child assistant, transportation, parent training, and related services (speech, occupational therapy, physical therapy, etc.), for the period of July 1, 2024, through June 30, 2027, in an amount not to exceed the total budgeted amounts in the lines as specified below; and be it further

RESOLVED, that said contracts shall contain such terms and provisions as are in the best interest of the County of Otsego; and be it further

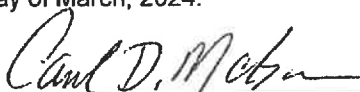
RESOLVED, that the funds for the above agreements/services are included in the 2024 Children w/ Special Needs - Edu Budget (A2960) at lines 548010 Education (3-5), 548011 Transportation (3-5), 548012 Evaluations (3-5), 548013 CPSE Admin Charges (3-5), utilizing 46% State funds, 16% Federal funds, and 38% Local funds, and shall be contained in similar budget lines for subsequent years.

STATE OF NEW YORK :
: SS
COUNTY OF OTSEGO :

I, Carol D. McGovern, Clerk of the Board of Representatives of Otsego County, New York, DO HEREBY CERTIFY that I have compared the foregoing copy of resolution with the original resolution on file in my office and that the same is a true and complete copy thereof as duly adopted by said Board of Representatives while in session on the 6th day of March, 2024.

WITNESS my hand and the official seal of the Board of Representatives of Otsego County, New York, this 7th day of March, 2024.

(SEAL)


Clerk of the Board of Representatives
Otsego County, New York

SCHOOL DISTRICT RECORDS

(X) Required

- (x) Local
- (x) Notice

NEW NOTE: We suggest changes to this policy and the accompanying regulation to address the requirements of Education Law §2-d, which further restricts the release of student and teacher/principal personally identifiable information. Additionally, because Public Officers Law §87 requires governing bodies of public agencies to promulgate "rules and regulations," we recommend the Board formally adopt the accompanying regulations, even if the Board does not have a practice of adopting regulations generally.

OLD NOTE: School boards are required to promulgate rules and regulations addressing the release of district records as required by the state Freedom of Information Law (Public Officers Law §87). This sample policy also includes language addressing the security of computerized district information. Districts are encouraged to review their current policies, regulation and procedures to make sure that they are taking the necessary precautions to ensure data security.

It is the policy of the Board of Education to inform members of the public about the administration and operation of the public schools in accordance with the Freedom of Information Law of the State of New York.

The Superintendent of Schools ~~shall~~ will develop regulations, to be adopted by the Board, ensuring compliance with the Freedom of Information Law and setting forth the procedures to be followed to obtain access to district records, and submit such regulations to the Board for approval. Such regulations ~~shall~~ will address ensuring applicable confidentiality and security of district information, including the protection of student and teacher/principal personally identifiable information in conformance with state Education Law §2-d and regulations 8 NYCRR Part 121. The Superintendent ~~shall~~ will designate, with Board approval, a Records Access and Records Management Officer, pursuant to law.

Retention and Destruction of Records

The Board hereby adopts the Records Retention and Disposition Schedule LGS-1 issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, which contains the legal minimum retention periods for district records. In accordance with Article 57-A, the district will dispose of only those records described in the schedule after they have met the minimum retention periods set forth in the schedule. The district will dispose of only those records that do not have sufficient administrative, fiscal, legal or historical value to merit retention beyond the established legal minimum periods.

The manner of destruction will be determined by the format of the record (i.e., paper, digital, etc.). In addition, destruction will be appropriately documented.

Litigation-Hold

NOTE: The policy should recognize that when litigation commences, the district must take steps to retain electronic records that may be discoverable (but might otherwise be deleted in the normal course of operations). NYSSBA recommends the following approach.

The Superintendent will establish procedures in the event that the school district is served with legal papers. The Superintendent will communicate with applicable parties, including the school attorney and the records management official, to ensure that, when appropriate, a litigation-hold is properly implemented. The litigation-hold is intended to prevent the destruction or disposal of records that may need to be produced as part of discovery. It is the intention of the Board of Education to comply with applicable rules and regulations regarding the production of necessary documents, data, files, etc. The Board directs the Superintendent to institute such procedures to implement this policy.

NOTE: The paragraph below addresses the issue of communicating to staff their responsibility with regard to records retention. It is best practice to have department-specific guidance, such as schedules for the business office, the transportation department, special education, etc. If all record management is done centrally then the following paragraph may not be necessary, or perhaps the language should be changed to reflect how the system is managed in the district and whether there is a need for staff guidance in this area.

The Superintendent or his/her designee, with assistance from the Records Management Officer, shall be is responsible for developing and disseminating department-specific retention schedules and guidance to staff, as necessary, to ensure adherence to this policy.

Cross-ref:

5500, Student Records

8630, Computer Resources and Data Management

8635, Information and Data Privacy, Security, Breach and Notification

Ref:

Public Officers Law §84 *et seq.* (Freedom of Information Law)

Education Law §§2-d; 2116

Arts and Cultural Affairs Law §57.11

Arts and Cultural Affairs Law Article 57-A (Local Government Records Law)

Federal Rules of Civil Procedure, 16, 26

8 NYCRR §185.15 (8 NYCRR Appendix L) – Records Retention and Disposition Schedule LGS-1 for New York Local Government Records; Part 121

21 NYCRR Part 1401

Adoption date:

Adoption Date:

Classification:

Revised Dates : **04.24**

SCHOOL DISTRICT RECORDS REGULATION

NEW NOTE: We suggest changes to this regulation in section V. to address the restriction on the release of certain information under Education Law §2-d and its implementing regulations 8 NYCRR Part 121. We also suggest revisions to reflect changes to the Freedom of Information Law regarding fees in section III.2, and to exempted records in section IV.

This regulation contains details to implement the district's requirements under the Freedom of Information Law. This regulation should be adopted by the Board, even if the Board does not usually adopt regulations.

The following comprises the rules and regulations relating to the inspection and production of school district records:

I. Designation of Officers

1. The Records Access Officer shall will be **[insert appropriate title for the person who handles FOIL requests for the school district]**. ~~He/She shall, who will:~~

NOTE: The second bullet addresses the role of the Record Access Officer and Record Management Officer in ensuring protection of sensitive district information. These duties are not explicitly listed in Arts and Cultural Affairs Law 57.19 and Commissioner's Regulations 185.2 (for the Records Management Officer) and State Regulations on the Committee on Open Government 21 NYCRR 1401.2 (for the Records Access Officer), but are consistent with a district's duty to protect sensitive and confidential information.

- receive requests for records of the Board of Education and make such records available for inspection or copying when such requests are granted;
- ensure that district information that is not permitted to be released is not released (see section IV. Records Exempted from Public Access, below); and
- compile and maintain a detailed current list by subject matter, of all records in the possession of the Board, whether or not available to the public.

NOTE: We suggest that the Records Management Officer have a role in maintaining information security.

2. The Superintendent of Schools, with the Board's approval, shall will designate a Records Management Officer for the district. The Records Management Officer will develop and oversee a program for the orderly and efficient management of district records, including maintenance of information security as it pertains to release of district records. The Records Management Officer shall will ensure proper documentation of the destruction of records, in accordance with the schedule.

II. Definition of Records

1. A record is defined as any information kept, held, filed, produced or reproduced by, with or for the district in any physical form whatsoever, including but not limited to reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or disks, rules, regulations or codes.
2. The Records Access Officer will have the responsibility for compiling and maintaining the following records:

- a. a record of the final vote of each member of the Board on any proceeding or matter on which the member votes;
 - b. a record setting forth the name, school or office address, title and salary of every officer or employee of the district; and
 - c. a reasonably detailed current list by subject matter of all records in possession of the district, whether or not available for public inspection and copying.
3. No record for which there is a pending request for access may be destroyed. However, nothing in these regulations ~~shall~~ will require the district to prepare any record not possessed or maintained by it except the records specified in II(2), above.

III. Access to Records

NEW NOTE: Item 2 reflects the requirements of Public Officers Law §87(1)(b) and (c).

1. Time and place records may be inspected: Records may be requested from, and inspected or copied at, the Office of the Records Access Officer, at _____ during the hours of _____ on any business day on which the district offices are open. Records may also be requested via e-mail at the following address: _____. **Optional sentence:** This information ~~shall~~ will be posted on the district's website.
2. Fees: The fee for documents up to 9 x 14 inches is 25 cents per page. For documents larger than 9 x 14 inches, tape or cassette records, ~~or~~ computer printouts, or other records, the cost will be based on the actual cost of reproduction or program utilized. Fees are subject to periodic review and change. However, no fee ~~shall~~ will be charged for records sent via e-mail, the search for or inspection of records, certification of documents, or copies of documents which have been printed or reproduced for distribution to the public. No fee will be charged if an identical record has been prepared within the past six (6) months and an electronic copy is available, except for the actual cost of a storage device if one is provided in complying with the request. The number of such copies given to any one organization or individual may be limited, in the discretion of the Records Access Officer. In determining the actual cost of reproducing a record, the district may only include: (1) the hourly salary of the lowest paid employee with the necessary skill required to prepare a copy of the record, but only where at least two hours is required, (2) the actual cost of any storage devices or media provided in complying with the request, and (3) the actual cost to the district of engaging an outside service needed to prepare a copy of the record if the district's equipment is not able to prepare a copy. The district will inform the person making the request of the estimated cost, if more than two hours of employee time would be needed, or if it would be necessary to retain an outside service.
3. Procedures: Requests to inspect or secure copies of records ~~shall~~ must be submitted in writing, either in person, by mail or via e-mail, to the Records Access Officer. [Forms are provided (1120-E.1-2) for written and e-mail requests, but are not required.]
4. All requests for information ~~shall~~ will be responded to within five business days of receipt of the request. If the request cannot be fulfilled within five business days, the Records Access Officer ~~shall~~ will acknowledge receipt of the request and provide the approximate date when the request will be granted or denied.
5. If a request cannot be granted within 20 business days from the date of acknowledgement of the request, the district must state in writing both the reason the request cannot be granted within 20 business days, and a date certain within a reasonable period when it will be granted depending on the circumstances of the request.
6. Denial of Access: When a request for access to a public record is denied, the Records Access Officer ~~shall~~ will indicate in writing the reasons for such denial, and the right to appeal.
7. Appeal: An applicant denied access to a public record may file an appeal by delivering a copy of the request and a copy of the denial to the Superintendent within 30 days after the denial from which such appeal is taken.
8. The applicant and the New York State Committee on Open Government will be informed of the Superintendent's determination in writing within 10 business days of receipt of an appeal. The Superintendent ~~shall~~ will transmit to the Committee on Open Government photocopies of all appeals and determinations.

IV. Records Exempted from Public Access

The provisions of this regulation relating to information available for public inspection and copying ~~shall~~ do not apply to records that:

1. are specifically exempted from disclosure by state and/or federal statute;
2. if disclosed would constitute an unwarranted invasion of personal privacy;
3. if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

NEW NOTE: We suggest changes to items 4 and 5 to more accurately reflect Public Officers Law §87(2)(d) and (e).

4. ~~are confidentially disclosed to the Board and compiled and maintained for the regulation of commercial enterprise, including trade secrets, or for the grant or review of a license~~ are trade secrets, or are submitted to the Board by a commercial enterprise (e.g., a for-profit business entity) and which if disclosed would cause substantial injury to the competitive position of that enterprise;
5. are compiled for law enforcement purposes and which, if disclosed, would:
 - a. interfere with law enforcement investigations or judicial proceedings (except that if the district is not conducting the investigation, it must receive confirmation from the agency conducting the investigation that disclosure would interfere with an ongoing investigation);
 - b. deprive a person of a right to a fair trial or impartial adjudication;
 - c. identify a confidential source or disclose confidential techniques or procedures, except routine techniques or procedures; or
 - d. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
6. ~~records~~ which if disclosed would endanger the life or safety of any person;
7. ~~records~~ which are interagency or intra-agency communications, except to the extent that such materials consist of:
 - a. statistical or factual tabulations or data;
 - b. instructions to staff which affect the public;
 - c. final Board policy determinations; or
 - d. external audits, including but not limited to audits performed by the comptroller and the federal government;
8. ~~records~~ which are examination questions or answers that are requested prior to the final administration of such questions;
9. ~~records~~ which if disclosed would jeopardize the district's capacity to guarantee the security of its information technology assets (which encompasses both the system and the infrastructure).

V. Prevention of Unwarranted Invasion of Privacy

To prevent an unwarranted invasion of personal privacy, the Records Access Officer may delete identifying details when records are made available. An unwarranted invasion of personal privacy includes but ~~shall not be~~ is not limited to:

1. disclosure of confidential personal matters reported to the Board which are not relevant or essential to the ordinary work of the Board;
2. disclosure of employment, medical or credit histories or personal references of applicants for employment, unless the applicant has provided a written release permitting such disclosures;
3. sale or release of lists of names and addresses in the possession of the Board if such lists would be used for private, commercial or fund-raising purposes;
4. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such records are not relevant or essential to the ordinary work of the Board; or
5. disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility.

Unless otherwise deniable, disclosure ~~shall not be~~ is not construed to constitute an unwarranted invasion of privacy when identifying details are deleted, when the person to whom records pertain consents in writing to disclosure, or when upon ~~representing~~ presenting reasonable proof of identity, a person seeks access to records pertaining to ~~him or her~~ themselves.

NEW NOTE: We suggest adding the following paragraph to comply with Education Law §2-d and its regulations 8 NYCRR Part 121.

Additionally, even if a release of information would be permitted under the state's Freedom of Information Law (FOIL), the district will not use or disclose any student or staff personally identifiable information (PII) unless it benefits students and the district, in conformance with state Education Law §2-d ("§2-d") and state regulations 8 NYCRR Part 121 ("Part 121"). Releases that "benefit students and the district" include:

- improving academic achievement,
- empowering parents and students with information, and
- and/or advancing efficient and effective school operations.

PII for student data is defined in federal regulations 34 CFR §99.3, and PII for teacher and principal data is defined in state Education Law §3012-c(10). The Superintendent, the district's Data Protection Officer, and the district's attorney, if necessary, will assist in determining whether complying with a FOIL request can be done in conformance with §2-d and Part 121.

VI. Listing of Records

Pursuant to Section 87(3)(c) of the Public Officers Law, the current records retention schedule for school districts, published by the Commissioner of Education, ~~shall serve~~ serves as the list by subject matter of all records in the possession of the school district, whether or not available under the law. The Superintendent or his/her designee, in consultation with the Records Management Officer, ~~shall~~ will develop and disseminate department-specific guidance so that staff can implement this policy and regulation.

VII. Litigation-Hold

The Superintendent will designate a "discovery" team, comprised of the school attorney, [insert appropriate title for the director of information systems for the school district], the Records Access and Records Management Officer and other personnel as needed. The discovery team will convene in the event that litigation is commenced to plan to respond to the request for records. The Superintendent, with assistance from the [director of information systems], will ensure that measures are put in place to preserve applicable records.

Adoption date:

Adoption Date:

Classification:

Revised Dates: ; **04.24**

GRADUATION CEREMONIES

(X) Required

(x) Local

(x) Notice

NEW NOTE: We are clarifying that the district's obligations to provide special education and related services to students with disabilities until they turn twenty-two only applies to those students so classified under the IDEA (as opposed to Section 504 only). There are no changes necessary to our sample regulation 4772-R.

OLD NOTE: This policy, and the accompanying administrative regulation, reflects the requirements of Education Law §3204(4-b) that school boards "establish a policy and adopt procedures" to allow students to participate in the graduation ceremony (and related activities) of their 9th grade cohort if they earn either a Career Development and Occupational Studies Commencement Credential (CDOS) or Skills and Achievement Commencement Credential (SACC). Note that the CDOS can be earned by students with or without disabilities, but the SACC is reserved for students with severe disabilities. Optional language is provided regarding students with disabilities participating in graduation ceremonies, in the absence of earning a CDOS/SACC. Consistent with state regulations, this policy reflects that districts can set other conditions for participation which would apply to all students.

Additionally, this policy reflects the district's obligations to provide special education and related services to students with disabilities, as clarified by the State Education Department's Formal Opinion of Counsel No. 242, until the student's 22nd birthday.

The graduation or commencement ceremony is a time to celebrate the honors and achievements of the graduating class. The Board of Education will establish the date for graduation ceremonies, while the administration will determine the place and program details, including attire. Academic and other awards and scholarships may be presented along with diplomas. Speakers may be selected from among the graduating class **optional:** or others].

NOTE: We have not included a specific process for selecting graduation speakers, due to the wide variation in practices among schools. Such process does not need to be included in Board policy. Options include: designating the Valedictorian and/or Salutatorian; allowing the senior class to select one of their own; establishing a selection committee of staff members; designating the senior class president; allowing the senior class to choose someone from outside the school. Another consideration is prior review and approval of speeches by school administrators.

Participation in the graduation ceremony and related activities will be predicated on satisfactory completion of all graduation requirements, or as otherwise described in this policy. Exceptions may be made under extraordinary circumstances with the permission of the Superintendent of Schools. Students who have earned either a Career Development and Occupational Studies Commencement Credential (CDOS) or Skills and Achievement Commencement Credential (SACC) - without meeting the requirements for a high school diploma by the time their ninth-grade cohort reaches graduation may, but are not required to, participate in that graduation ceremony and related activities.

NOTE: The following paragraph addresses the ability of the district to prohibit students from participating in graduation activities. The first sentence reflects a provision of state regulations which allows for students to be barred from the graduation ceremony and related activities. The second sentence covers other conditions for participation. Such other conditions that impact student

participation in the graduation ceremony would apply to all students. The third sentence regarding notice is not required, but represents good practice, although if it is included in policy it must be followed. Some districts exclude students from graduation participation based on attendance, disciplinary violations, unpaid fees or fines, or dress code violations. The district's Code of Conduct would likely address provisions for notice, opportunity to respond, and appeal.

However, students may be denied participation in the graduation ceremony and related activities as a consequence of violations of the Code of Conduct. The Building Principal may set other rules and conditions for participation in the graduation ceremony and related activities. All such rules will be provided to students and parents/guardians in advance. Students who have met the requirements for a diploma but are barred from participating in the graduation ceremony will be given their diplomas separately.

REVISED NOTE: While not required by law, the district may wish to address allowing students with disabilities to participate in the graduation ceremony with their 9th grade cohort without having earned a diploma or a CDOS/SACC. Because students with disabilities under the IDEA are entitled to special education services until their 22nd birthday, the district should consider scenarios under which a student participates in graduation and subsequently earns a CDOS/SACC/diploma, or completes their final year in school, all of which could be marked by participation in the graduation ceremony. The district could require students to choose one ceremony in which to participate. State law and regulations only require schools to permit students who have earned a CDOS/SACC to participate in the graduation ceremony of their ninth-grade cohort.

[Optional, select/modify as appropriate:] "Students with disabilities who have attended high school for four years, but who have not met the requirements for a CDOS/SACC/high school diploma, may participate in the graduation ceremony and related activities with their ninth-grade cohort, and receive a certificate of attendance and/or course completion and any other awards they have earned. Such students who subsequently meet the requirements for a CDOS, SACC, or high school diploma may participate in the graduation ceremony of that graduating class. Students with disabilities who have not previously participated in a graduation ceremony may do so at the end of their final year in school."

NOTE: The law does not specify how to address students who participate in the graduation ceremony by earning a CDOS/SACC only, and subsequently earn a diploma. We have included the optional paragraph below to reflect that a student who earns a diploma may participate in graduation ceremonies. Alternately, the Board could limit a student's participation to one graduation ceremony. In that case, use the following text instead: "Under this policy, students are allowed to participate in only one graduation ceremony, upon earning either a CDOS/SACC or a high school diploma."

[Optional language: Students who participate in the graduation ceremony by earning only a CDOS or SACC, who subsequently meet the requirements for either a Regents or local high school diploma, may participate in the graduation ceremony of that graduating class as well.

NEW NOTE: The paragraph below clarifies the district's obligations to provide special education services for students with disabilities under the IDEA until their 22nd birthday or until they receive a diploma, whichever comes first.

Students with disabilities receiving services pursuant to the Individuals with Disabilities Education Act who participate in graduation ceremonies who earn a CDOS or SACC without receiving a diploma are entitled to continue their educational programs until their 22nd birthday, or until receipt of a Regents or local high school diploma, whichever comes first.

NOTE: Usually, the Superintendent is charged to develop, approve, and promulgate regulations, which Boards usually do not adopt. However, under this law, Boards are required to adopt procedures to effectuate this policy.

The law also requires annual written notice to all students and their parents/guardians about the district's policy and procedures.

The Board directs the Superintendent to develop regulations to implement this policy, to be adopted by the Board. The district will provide annual written notice to all students and their parents/guardians of the requirements of this policy and associated regulations.

Cross-ref:

4321, Programs for Students with Disabilities Under the IDEA and New York's Education Law Article 89
4321.9, Declassification of Students with Disabilities
4773, Diploma and Credential Options for Students with Disabilities
5300, Code of Conduct

Ref:

Education Law §3204(4-b)
8 NYCRR §§100.2(o); 100.5; 100.6
A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)
Formal Opinion of Counsel No. 242 (7/6/2023), NYSED

Adoption date:

Adoption Date:

Classification:

Revised Dates: ; **04.24**

DIPLOMA AND CREDENTIAL OPTIONS FOR STUDENTS WITH DISABILITIES

- ☐ Required
☐ Local
☒ Notice

NEW NOTE: State regulations 8 NYCRR §100.6(c) require that students receiving a Skills and Achievement Commencement Credential (SACC) or Career Development and Occupational Studies Commencement Credential (CDOS) who are less than 21 years old receive a written assurance of the right to continue school attendance until they have earned a diploma or until the end of the school year in which they turn 21. However, the Second Circuit decision "A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)" held, as reiterated by the subsequent NYSED "Formal Opinion of Counsel No. 242 (7/6/2023)", that students with disabilities under the IDEA are entitled to special education and related services until their 22nd birthday. Even though these state regulations have not been revised, we recommend modifying this policy accordingly. See the "Continued Right to Educational Services" and legal citation sections.

Additionally, we are correcting the CDOS section of this policy to reflect that all students may earn a CDOS, not just those with disabilities.

Note that while not addressed in this policy, the regulations say SACCs "shall be issued at any time after such student has attended school for at least 12 years, excluding kindergarten, or has received a substantially equivalent education elsewhere, or at the end of the school year in which a student attains the age of 21" and CDOSs "shall be issued at the same time the student receives his/her Regents or local high school diploma or, for a student who is unable to meet the requirements for a Regents or local diploma, any time after such student has attended school for at least 12 years, excluding kindergarten, or has received a substantially equivalent education elsewhere, or at the end of the school year in which a student attains the age of 21." In light of "A.R. v. Connecticut" and NYSED Formal Opinion of Counsel No. 242, the district should consult with its attorney about the appropriate time to issue SACCs and CDOSs.

OLD NOTE: In general, this policy reflects the commencement and diploma options for students with disabilities, including the SACC and CDOS. Specific pathways and options for earning a Regents or local high school diploma are set forth in Commissioner's Regulations and are not repeated here. The particular requirements for granting a SACC or CDOS, including school district duties and responsibilities, are set forth in Commissioner's Regulations section 100.6(b). However, while a CDOS may be granted either in addition to or instead of a high school diploma, if more than 20% of a district's cohort of students with disabilities is granted a CDOS instead of a diploma, the district may be directed by the State Education Department as to how to spend federal IDEA funds to address this imbalance.

The Board of Education is committed to supporting all students so they are college- and career-ready upon graduation. The Committee on Special Education (CSE), which includes parents/guardians, will work with students with disabilities to attain the appropriate diploma or credential based on their Individualized Education Plan (IEP).

Regents Diploma or Regents Diploma with Advanced Designation

Students with disabilities are encouraged to work toward the completion of requirements for a Regents diploma or Regents diploma with an advanced designation, as established by New York State and the Board.

Local Diploma

Students with disabilities may work toward completion of the requirements of a local diploma. The local diploma may be earned by meeting the standards set forth in state regulations.

Career Development and Occupational Studies Commencement Credential

NEW NOTE: The CDOS is available to all students, not just students with disabilities.

~~Students with disabilities, who are not students with severe disabilities under Commissioner's Regulations,~~ Any student who is not eligible for a Skills and Achievement Commencement Credential (including students without disabilities) may be issued a New York State Career Development and Occupational Studies Commencement Credential (CDOS), pursuant to the requirements of those regulations. The student may pursue a CDOS either in addition to or instead of a high school diploma. The district ~~shall~~ will ensure that such students have been provided with appropriate opportunities to earn a high school diploma.

Skills and Achievement Commencement Credential

A student who meets the state definition of a student with severe disabilities, who has taken the State assessment for students with severe disabilities, may be issued a skills and achievement commencement credential pursuant to the requirements of Commissioner's Regulations 8 NYCRR §100.6.

Continued Right to Educational Services

If a student receiving a Career Development and Occupational Studies Commencement Credential or a Skills and Achievement Commencement Credential is a student with disabilities receiving services pursuant to the Individuals with Disabilities Education Act and is less than twenty-one years of age, the credential ~~shall~~ will be accompanied by a written assurance of the student's continued right to attend public school until the end of the school year in which the student reaches the age of twenty-one ~~student turns twenty-two,~~ or until the student has earned a Regents or local high school diploma, whichever is earlier.

Graduation Ceremonies

Students with disabilities may participate in graduation ceremonies as permitted under state law and described in policy 4772, Graduation Ceremonies.

Cross-ref:

4321, Programs for Students with Disabilities

4770, Graduation Requirements

4772, Graduation Ceremonies

Ref:

8 NYCRR §§100.1; 100.5; 100.6; 100.9

A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)

Formal Opinion of Counsel No. 242 (7/6/2023), NYSED

Adoption date:

Adoption Date:

Classification:

Revised Dates : **04.24**

STUDENT RECORDS

(X) Required

- (X) Local
- (X) Notice

NEW NOTE: We suggest revising this policy to better reflect that the release of student personally identifiable information (PII), even if permitted under FERPA, must also comply with Education Law §2-d. Changes are shown below in underline and strikeout. We have also clarified the definition of PII based on a determination of the state Chief Privacy Officer regarding student and parent telephone numbers.

OLD NOTE: This policy reflects the federal Family Educational Rights and Privacy Act, state Education Law 2-d regarding data privacy and security, and their implementing regulations. This policy also reflects a requirement under the federal McKinney-Vento Act Homeless Assistance Act, as amended by the Every Student Succeeds Act of 2015, that a homeless student's living situation must not be treated as directory information. Additionally, we have provided the district with optional text to include volunteers among those permitted under FERPA to access student personally identifiable information. This is permitted under FERPA's implementing federal regulations. This policy conforms to guidance from the State Education Department entitled "Parents' Bill of Rights for Data Privacy and Security", dated July 29, 2014. The law focuses on protection of student personally identifiable information (PII) when school districts utilize third-party contractors. It also creates requirements regarding a 'parent's bill of rights for data privacy and security,' and additional notifications.

As with all of NYSSBA's policies this is not intended to be a recitation or summary of the entire law. The regulation goes into more detail, but in order to understand the full range of district responsibilities, especially requirements applicable to contracts with third parties, NYSSBA recommends consulting with your school attorney.

The Board of Education recognizes its legal responsibility to maintain the confidentiality of student records. As part of this responsibility, the Board will ensure that eligible students and parents/guardians have the right to inspect and review education records, the right to seek to amend education records and the right to have some control over the disclosure of information from the education record. The procedures for ensuring these rights will be consistent with state and federal law, including the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations.

The Board also recognizes its responsibility to ensure the orderly retention and disposition of the district's student records in accordance with Schedule LGS-1 as adopted by the Board in policy 1120

The district will use reasonable methods to provide access to student educational records only to those authorized under the law and to authenticate the identity of the requestor. The district will document requests for and release of records, and retain the documentation in accordance with law. Furthermore, pursuant to ~~Chapter 56 of the Laws of 2014~~ Education Law §2-d ("§2-d") and its implementing regulations 8 NYCRR Part 121 ("Part 121"), the district will execute agreements with third-party contractors who collect, process, store, organize, manage or analyze student personally identifiable information (PII) to ensure that the contractors comply with the law in using appropriate means to safeguard the data.

Additionally, pursuant to §2-d and Part 121 the district will only use or disclose student personally identifiable information (including directory information described below) if it benefits students and the

district (e.g., improves academic achievement, empowers parents and students with information, and/or advances efficient and effective school operations), except for disclosure required by federal law of the names, addresses and telephone numbers of secondary students to the military and institutions of higher education.

The Superintendent of Schools is responsible for ensuring that all requirements under law and the Commissioner's regulations are carried out by the district.

Definitions

Authorized Representative: an authorized representative is any individual or entity designated by a State or local educational authority or a Federal agency headed by the Secretary, the Comptroller General or the Attorney General to carry out audits, evaluations, or enforcement or compliance activities relating to educational programs.

Education Record: means those records, in any format, directly related to the student and maintained by the district or by a party acting on behalf of the district, except:

- a. records in the sole possession of the individual who made it and not accessible or revealed to any other person except a substitute (e.g. memory joggers);
- b. records of the district's law enforcement unit;
- c. grades on peer-graded papers before they are collected and recorded by a teacher.

Eligible student: a student who has reached the age of 18 or is attending postsecondary school.

Legitimate educational interest: a school official has a legitimate educational interest if they need to review a student's record in order to fulfill their professional responsibilities.

Personally identifiable information (PII): as it pertains to students, is information that, alone or in combination, would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Such data ~~might include~~ includes, but is not limited to, a student's: name, address, date and place of birth, mother's maiden name, family member's name and address, social security number, student identification number, parents' name and/or address, a biometric record, etc. This term is fully defined in federal regulations at 34 CFR section 99.3. The State Chief Privacy Officer has determined that student and parent phone numbers are considered PII.

NOTE: *Optional text below allows the district to utilize volunteers in ways in which they may access student's personally identifiable information. This is permitted under federal regulations implementing FERPA. The district could prohibit volunteers from accessing student records by using the following text instead of the text in the paragraph below for volunteers:*

"The district prohibits volunteers from accessing student information. The district expects that if volunteers discover any information about students in the course of their volunteer duties, they will not redisclose such information to anyone other than a school official with a legitimate educational interest."

School official: a person who has a legitimate education interest in a student record who is employed by the district as an administrator, supervisor, instructor or support staff member (including health or medical staff and law enforcement unit personnel); a member of the Board of Education; a person or company with whom the district has contracted to perform a special task (such as attorney, auditor, medical consultant or therapist); or a parent or student serving on an official committee, such as disciplinary or grievance committee, or assisting another school official performing their tasks.

Optional text for volunteers: Volunteers may be considered school officials for purposes of access to personally identifiable information if they are under the direct control of the district, are trained in the requirements of law under this policy, have a legitimate educational interest, and the district uses reasonable methods to limit access to only the information that is necessary to fulfill their volunteer duties. Volunteers may only access the information necessary for the assignment, and must not disclose student information to anyone other than a school official with a legitimate educational interest. The Building Principal will provide adequate training on confidentiality of student records.]

Third party contractor: is any person or entity, other than an educational agency (which includes schools, school districts, BOCES, or the State Education Department), that receives student or teacher/principal PII from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. This includes educational partnership organizations that receive student or teacher/principal PII from a school district to carry out responsibilities under Education Law §211-e (for persistently lowest-achieving schools or schools under registration review) and is not an educational agency. This also includes not-for-profit corporations or other nonprofit organizations, other than an educational agency.

Annual Notification

At the beginning of each school year, the district will publish a notification that informs parents, guardians and students currently in attendance of their rights under FERPA and New York State Law and the procedures for exercising those rights. A 'Parents' Bill of Rights for Data Privacy and Security' will be posted on the district website and included in any agreements with third-party contractors. (see 8635-E) The notice and 'Bill of Rights' may be published in a newspaper, handbook or other school bulletin or publication. The notice and 'Bill of Rights' will also be provided to parents, guardians, and students who enroll during the school year.

The notice and Parents' Bill of Rights will include a statement that the parent/guardian or eligible student has a right to:

1. inspect and review the student's education records;
2. request that records be amended to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent; and
4. file a complaint with the United States Department of Education alleging failure of the district to comply with FERPA and its regulations; and/or file a complaint regarding a possible data breach by a third party contractor with the district and/or the New York State Education Department's Chief Privacy Officer for failure to comply with state law.

The annual notice and Parents' Bill of Rights will inform parents/guardians and students:

1. that it is the district's policy to disclose personally identifiable information from student records, without consent, to other school officials within the district whom the district has determined to have legitimate educational interests. The notice will define 'school official' and 'legitimate educational interest.'
2. that, upon request, the district will disclose education records without consent to officials of another school district in which a student seeks to or intends to enroll or is actually enrolled.
3. that personally identifiable information will be released to third party authorized representatives for the purposes of educational program audit, evaluation, enforcement or compliance purposes.
4. that the district, at its discretion, releases directory information (see definition below) without prior consent, unless the parent/guardian or eligible student has exercised their right to prohibit release of the information without prior written consent. The district will not sell directory information.
5. that, upon request, the district will disclose a high school student's name, address and telephone number to military recruiters and institutions of higher learning unless the parent or secondary school student exercises their right to prohibit release of the information without prior written consent.
6. of the procedure for exercising the right to inspect, review and request amendment of student records.

7. that the district will provide information as a supplement to the 'Parents' Bill of Rights' about third parties with which the district contracts that use or have access to personally identifiable student data.

NEW NOTE: We suggest a minor change to the paragraph below to reference state law and regulation. School districts are not required to provide annual notice of all the exceptions to prior consent.

The district may also release student education records, or the personally identifiable information contained within, without consent, where permitted under federal and state law and regulation. For a complete list of exceptions to FERPA's prior consent requirements see accompanying regulation 5500-R, Section 5.

The district will effectively notify parents, guardians and students who have a primary or home language other than English.

In the absence of the parent or secondary school student exercising their right to opt out of the release of information to the military or institutions of higher education, the district is required to, under federal law, release the information indicated in number five (5) above.

Directory Information

The district has the option under FERPA of designating certain categories of student information as "directory information." The Board directs that "directory information" include a student's **[choose which items to include:]**

- Name
- ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems (only if the ID cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the student's identity),
- Address (except information about a homeless student's living situation, as described below)
- Telephone number
- Date and place of birth
- Major course of study
- Participation in school activities or sports
- Weight and height if a member of an athletic team
- Dates of attendance,
- Degrees and awards received
- Most recent school attended
- Grade level
- Photograph
- E-mail address
- Enrollment status

NOTE: Under federal and state law and regulation regarding homeless students, "information about a homeless student's living situation" must be treated as an education record and not directory information. Such information would include a student's address, but could also include other information that would disclose a student's eligibility for services under McKinney-Vento. However, parents/guardians (and eligible students) could still consent to disclosure in the same way as for other education records under FERPA, but could not be compelled to do so. If further guidance or clarification is received, this policy may be amended.

In the meantime, districts should take reasonable steps to provide homeless students with beneficial information they otherwise would have received via directory information. The text below, utilizing the McKinney-Vento liaison, is one method. This would be consistent with the liaison's responsibilities to provide information about educational and related services to homeless students. The district could also allow the parent/guardian to select the school address as the student's address for purposes of directory information, and act as a pass-through.

Information about a homeless student's living situation will be treated as a student educational record, and will not be deemed directory information. A parent/guardian or eligible student may elect, but cannot be compelled, to consent to release of a student's address information in the same way they would for other student education records. The district's McKinney-Vento liaison will take reasonable measures to provide homeless students with information on educational, employment, or other postsecondary opportunities and other beneficial activities. [**Optional sentence:** The district permits the parent/guardian to select the school's address as the student's address for purposes of directory information.]

Social security numbers or other personally identifiable information will not be considered directory information.

Students who opt out of having directory information shared are still required to [*specify as appropriate: wear, display or disclose*] their student ID cards.

NEW NOTE: We suggest the underlined text below to clarify that release of directory information must be compliant with §2-d and Part 121.

Once the proper FERPA notification is given by the district, a parent/guardian or student will have 14 days to notify the district of any objections they have to any of the "directory information" designations. If no objection is received, the district may release this information without prior approval of the parent/guardian or student for the release, as long as such release is permitted by §2-d and Part 121. Once the student or parent/guardian provides the "opt-out," it will remain in effect after the student is no longer enrolled in the school district.

The district may elect to provide a single notice regarding both directory information and information disclosed to military recruiters and institutions of higher education.

Cross-ref:

1120, School District Records
4321, Programs for Students with Disabilities Under IDEA and Part 89
4532, School Volunteers
5550, Student Privacy
5151, Homeless Children
8635, Information and Data Security, Breach and Notification

NEW NOTE: We have updated the citation to the ESEA below.

Ref:

Family Educational Rights and Privacy Act, as amended, 20 USC 1232g; 34 CFR Part 99
Elementary and Secondary Education Act, as amended~~No-Child Left Behind Act~~, 20 USC §7908
(Military Recruiter Access)
10 USC §503 as amended by §544 of the National Defense Reauthorization Act for FY 2002
Education Law §§ 2-a; 2-b; 2-c; 2-d; 225;
Public Officers Law §87(2)(a)
Arts and Cultural Affairs Law, Article 57-A (Local Government Records Law)
8 NYCRR Part 121 (Data Privacy)
8 NYCRR §185.15 (Appendix L), Records Retention and Disposition Schedule LGS-1 for New York Local Government Records
"Guidance for Reasonable Methods and Written Agreements,"
http://www2.ed.gov/policy/gen/guid/fpc/pdf/reasonablemt_d_agreement.pdf
Parents' Bill of Rights for Data Privacy and Security, July 29, 2014:
<http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>
Family Policy Compliance Office/Student Privacy Policy Office website:
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>

Adoption date:

Adoption Date:
Classification:
Revised Dates: ; **04.24**

NYSSBA Sample Policy

STUDENT RECORDS REGULATION

NEW NOTE: We suggest revising this policy to better reflect that the release of student personally identifiable information (PII), even if permitted under FERPA, must also comply with Education Law §2-d. See the underlined text in section 5.

OLD NOTE: This regulation reflects state regulations implementing Education Law §2-d regarding data privacy and security (8 NYCRR Part 121).

These regulations provide details of the procedures that the district will use to meet the requirements of FERPA and state law as to the release of student records and safeguarding personally identifiable student data. Again, it is imperative that the Board's policy, regulations and exhibits are consistent with respect to the scope of directory information that can be released regarding students.

It is recognized that the confidentiality of student records must be maintained. The terms used in this regulation are defined in the accompanying policy. The following necessary procedures have been adopted to protect the confidentiality of student records.

Section 1. Pursuant to the Family Educational Rights and Privacy Act (FERPA) and state law it is the policy of this school district to permit parents/guardians and eligible students to inspect and review any and all official records, files and data directly related to that student, including all materials that are incorporated into each student's cumulative record folder.

The rights created by FERPA and state law transfer from the parents/guardians to the student once the student attains eligible student status. However, districts can disclose information to parents of eligible students under certain circumstances, including when the student is a dependent under the IRS tax code, when the student has violated a law or the school's rules regarding alcohol or substance abuse (and the student is under 21); when the information is needed to protect the health or safety of the student or other individuals.

Section 2. Parents/guardians or the eligible student will have an opportunity for a hearing to challenge the content of the student's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

Section 3. A letter will be sent annually to parents/guardians of students currently in attendance and students currently in attendance informing them of their rights pursuant to FERPA and state law, and will include a Parents' Bill of Rights. See Exhibits 5500-E.1 and 8635-E. The district will effectively notify parents, guardians and students who have a primary or home language other than English.

NOTE: While this regulation, in the next section, lists the Building Principal as the person to contact, the district is free to substitute any appropriate school official.

Section 4. To implement the rights provided for in sections 1 and 2, the following procedures are adopted:

NOTE: Requests by parents/guardians and eligible students to access student records must be directed to the district and not to a third-party contractor.

1. A parent/guardian or an eligible student who wishes to inspect and review student records must make a request for access to the student's school records, in writing, to the Building

Principal. Upon receipt of such request, once the district verifies the identity of the parent/guardian or eligible student, arrangements will be made to provide access to such records within 45 days after the request has been received. If the record to which access is sought contains information on more than one student, the parent/guardian or eligible student will be allowed to inspect and review only the specific information about the student on whose behalf access is sought.

- a. Before providing access to student records, the district will verify the identity of the parent/guardian or eligible student.
- b. The district may provide the requested records to the parent/guardian or eligible student electronically, as long as the parent/guardian or eligible student consents. The district will transmit PII personally identifiable information (PII) electronically in a way that maintains its confidentiality, using safeguards such as encryption and password protection.

NOTE: Federal regulations (34 CFR § 99.10) state that districts may take a reasonable amount of time, up to 45 days after receiving a request, to respond. The Board may amend this section of the policy to require that the district respond to requests in a shorter period of time, but we see no need for the Board to impose a shorter time frame on the district. With respect to the other time periods set forth in section 4 (see e.g., subsections 3 (b), 4, 5 and 7) the Board has discretion in establishing the time period. The federal regulations require only that action be taken within a "reasonable" time. We believe the time periods we have selected are "reasonable." Once the board exercises its discretion and fixes these time periods in the regulation, the district will be required to adhere to them. All of these time periods are stated in terms of calendar days.

2. A parent/guardian or an eligible student who wishes to challenge the contents of the student's school records must submit a request, in writing, to the Building Principal identifying the record or records which they believe to be inaccurate, misleading or otherwise in violation of the privacy or other rights of the student together with a statement of the reasons for their challenge to the record.
3. Upon receipt of a written challenge, the Building Principal will provide a written response indicating either that they:
 - a. finds the challenged record inaccurate, misleading or otherwise in violation of the student's rights and that the record will be corrected or deleted; or
 - b. finds no basis for correcting or deleting the record in question, but that the parent/guardian or eligible student will be given an opportunity for a hearing. The written response by the Building Principal will be provided parent/guardian or eligible student within 14 days after receipt of the written challenge. The response will also outline the procedures to be followed with respect to a hearing regarding the request for amendment.
4. Within 14 days of receipt of the response from the Building Principal, a parent/guardian or eligible student may request, in writing, that a hearing be held to review the determination of the Building Principal.
5. The hearing will be held within 10 days after the request for the hearing has been received. The hearing will be held by the Superintendent of Schools, unless the Superintendent has a direct interest in the outcome of the hearing, in which case the Superintendent will designate another individual who does not have a direct interest in the outcome of the hearing to hold the hearing.
6. The parent/guardian or eligible student will be given a full and fair opportunity to present evidence at the hearing. The parent/guardian or eligible student may, at their own expense, be assisted or represented by one or more individuals of their own choice, including an attorney.
7. The Superintendent or other individual designated by the Superintendent will make a decision in writing within 14 days after the hearing.
8. After the hearing, if the Superintendent or the individual designated by the Superintendent decides not to amend the record, the district will inform the parent/guardian or eligible student that they have the right to place a statement in the record commenting on the contested information or stating why they disagree with the decision of the district. Any statement placed in the record will be maintained with the contested part of the student record for as long as the record is maintained. Further, the statement will be disclosed by the district whenever it discloses the portion of the record to which the statement relates.

Section 5. Except to the extent that FERPA authorizes disclosure of student records without consent, student records, and any material contained therein which is personally identifiable, are confidential and will not be released or made available to persons other than parents/guardians or eligible students without the prior written consent of the parents/guardians or eligible student.

NOTE: The paragraph below includes a list of the statutory and regulatory exceptions to FERPA's requirement that the district secure the consent of the parent/guardian or eligible student before releasing student records or the personally identifiable information contained therein, other than directory information.

The list is intended to be a helpful reminder to district staff responsible for handling requests for access to student records. District staff should be aware, however, that there are additional factors which affect whether a student record may be released to a particular individual or organization without the consent of the parent/guardian or eligible student. As such, the district's legal counsel should be contacted in all situations where district staff has questions as to whether disclosure of a record without consent is permissible.

Exceptions to FERPA's prior consent requirement include, but are not limited to disclosure:

1. To other school officials within the district who have been determined to have legitimate educational interests.
2. To officials of another school, school system or post secondary institution where the student seeks or intends to enroll.
3. To authorized representatives of the Comptroller General of the United States, the U.S. Secretary of Education, the U.S. Attorney General, or state and local education authorities in connection with an audit or evaluation of a federal- or state-supported education program or in compliance with legal requirements related to those programs.
4. In connection with the student's application for or receipt of financial aid.
5. To state and local officials or authorities in compliance with state law that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are being released.
6. To organizations conducting studies for, or on behalf of, education agencies or institutions, in order to develop tests, administer student aid, or improve instruction.
7. To accrediting organizations to carry out their accrediting functions.
8. To parents of a dependent student, as defined by the Internal Revenue Code.
9. To comply with a judicial order or lawfully issued subpoena, including ex parte court orders under the USA Patriot Act. Prior to complying with a judicial order or subpoena, the district will make a reasonable effort to notify the parent/guardian or eligible student, unless the district has been ordered not to disclose the existence or content of the order or subpoena, or unless the parent is the subject of a court proceeding involving child dependency or child abuse and neglect matters, and the order is issued in context of that proceeding.
10. In connection with a health or safety emergency, the district will disclose information when, taking into account the totality of circumstances, a determination is made that there is an articulable and significant threat to the health or safety of the student or other individuals.
11. To teachers and school officials in other schools who have legitimate educational interests in the behavior or the student when the information concerns disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community.
12. To provide information that the district has designated as "directory information."
13. To provide information from the school's law enforcement unit records.
14. To a court, when the district is involved in legal action against a parent or student, those records necessary to proceed with the legal action.
15. To the U.S. Secretary of Agriculture, its authorized representatives from the Food and Nutrition Service, or contractors acting on its behalf, to monitor, evaluate and measure performance of federally-subsidized school food programs subject to certain privacy protections.
16. To any caseworker or representative of a state or local child welfare agency or tribal organization who has the right to access a student's case plan, where the agency or

organization is legally responsible for the care and protection of the student, not to be redisclosed except as permitted by law.

NEW NOTE: We suggest adding the paragraph below to better reflect that the use or disclosure of student personally identifiable information (PII), even if permitted under FERPA, must also comply with Education Law §2-d.

However, even if the district is permitted under FERPA to release student information (including directory information), state Education Law §2-d and regulations 8 NYCRR Part 121 only permit the district to use or disclose student PII if it benefits students and the district (e.g., improves academic achievement, empowers parents and students with information, and/or advances efficient and effective school operations), except for disclosure required by federal law of the names, addresses and telephone numbers of secondary students to the military and institutions of higher education. The Superintendent, the district's Data Protection Officer, and the district's attorney, if necessary will assist in determining whether complying with a request for student PII can be done in conformance with the law.

The district will use reasonable methods to provide access to student educational records to only those authorized under the law and to authenticate the identity of the requestor. The district will use an array of methods to protect records, including physical controls (such as locked cabinets), technological controls (**include those that are applicable:** such as role-based access controls for electronic records, password protection, firewalls, encryption), and administrative procedures. The district will document requests for and release of records, and retain the documentation in accordance with law.

If the district enters into a contract with a third party that calls for receipt of student PII by the contractor, the agreement will include a data security and privacy plan that includes a signed copy of the Parents' Bill of Rights and addresses the following, among other contractual elements:

1. training of vendor employees regarding confidentiality requirements;
2. limiting access to PII to those individuals who have a legitimate educational interest or need access to provide the contracted services;
3. prohibiting the use of PII for any other purpose than those authorized under the contract
4. prohibiting the disclosure of PII without the prior written consent of the parent/guardian or eligible student, unless it is to a subcontractor in carrying out the contract, or unless required by statute or court order, in which case they must provide notification to the district (unless notice is prohibited by the statute or court order)
5. maintaining reasonable administrative, technical and physical safeguards to protect PII
6. using encryption technology to protect PII while in motion or in its custody to prevent unauthorized disclosure;
7. breach and notification procedures.

The district will, via written agreements, designate authorized representatives who have access to educational records. The written agreement will specify how the work falls within the exception, what personally identifiable information is to be disclosed, how the educational record will be used, and that the records will be destroyed by the authorized representative once they are no longer needed for that purpose or the agreement expires.

Section 6. Whenever a student record or any material contained therein is to be made available to third persons, other than those covered by the exceptions authorized by FERPA, the parent/guardian or eligible student must file a written consent to such action. The written consent must specify the records to be released, the reasons for such release, and to whom. If the parent or eligible student so requests, the district will provide them with a copy of the records disclosed. In addition, if the parent of a student who is not an eligible student so requests, the district will provide the student with a copy of the records disclosed.

Section 7. Unless specifically exempted by FERPA, all persons requesting access to such records will be required to sign a written form which indicates the legitimate educational interest that such person

has in inspecting the records. Such form will be kept with the student's file and will be maintained with the student's file as long as the file is maintained.

Additional Rights Under New York State Law Related to the Protection of Student Data and Third-Party Contractors

New York State Law offers parents additional rights beyond FERPA in regard to third party contractors and student PII. The district will post on its website and distribute a 'Parents' Bill of Rights for Data Privacy and Security.' The 'Parents' Bill of Rights' will establish the following:

- Educational purpose: The use of student personally identifiable information (PII) is for educational or related purposes only.
- Transparency: Disclosure of third party contracts and their privacy provisions.
- Authorization: Assurance that proper authorization will be secured prior to the release of PII
- Security: A description of the measures in place to protect PII, without compromising the security plan.
- Data Breach Notification: An explanation of the procedures in the event of a data breach.
- Complaint Procedure: The district offers a complaint procedure in the event that a parent suspects a breach of student data by a third party contractor and provides information about lodging a complaint with the New York State Education Department's Chief Privacy Officer.

See policy 8635 (and regulation 8635-R), Information and Data Privacy, Security, Breach and Notification for more information on data security and breaches of PII, and 8635-E for the Parent's Bill of Rights for Data Privacy and Security.

Retention and Disposition of Student Records

The Board has adopted the Records Retention and Disposition Schedule LGS-1 issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, which contains the legal minimum retention periods for district records. The Board directs all district officials to adhere to the schedule and all other relevant laws in retaining and disposing of student records. In accordance with Article 57-A, the district will dispose of only those records described in the schedule after they have met the minimum retention periods set forth in the schedule. The district will dispose of only those records that do not have sufficient administrative, fiscal, legal or historical value to merit retention beyond the established legal minimum periods.

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STUDENT PRIVACY

(X) Required
(X) Local
(X) Notice

NEW NOTE: We have clarified the provisions of this policy with respect to the greater restrictions of Education Law §2-d and its implementing regulations 8 NYCRR Part 121. We have made other changes to better reflect the provisions of the Protection of Pupil Rights Act (PPRA). Changes are noted below.

OLD NOTE: Under the federal Protection of Pupil Rights Act, school boards must develop policies to protect student privacy in connection with student surveys, physical examinations, and the collection of personal information for marketing purposes. They must offer parents an opportunity to inspect materials and exclude their children from participation in such activities. Boards are further required to develop and adopt this policy "in consultation with parents." However, such consultation is not further defined in the law. A school district may use funds provided under part A of title IV of the Elementary and Secondary Education Act (ESEA) to enhance parental involvement in areas affecting the in-school privacy of students.

The Board recognizes its responsibility under the federal Protection of Pupil Privacy Rights Act (PPRA) to enact policies that protect student privacy, in accordance with law. This is particularly relevant in the context of the administration of surveys that collect personal information, the disclosure of personal information for marketing purposes and in conducting physical exams.

For purposes of this policy, "parent/guardian" includes a legal guardian or person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

Surveys

NOTE: If a U.S. DOE-funded survey, analysis, or evaluation would reveal certain information enumerated in the law, then prior written parental consent must be obtained before minor students are required to participate in that survey. The rights provided to parents under PPRA transfer from the parent to the student when the student turns 18 years old or is an emancipated minor under applicable State law. Items one through eight below are taken directly from 20 USC §1232h(b). If a survey is funded by another source, then the law requires that the district offer an opportunity to "opt out." In order to simplify and clarify the process, NYSSBA recommends that the Board treat all surveys that gather sensitive information (as defined below) in the same manner, and require prior parental consent.

The Board of Education recognizes that student surveys are a valuable tool in determining student needs for educational services. In accordance with law and Board policy, ~~parental~~ parent/guardian consent is required ~~for~~ before requiring minors to take part in surveys which gather any of the following information:

1. political affiliations or beliefs of the student or the student's parent/guardian;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating or demeaning behavior;

5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians and ministers;
7. religious practices, affiliations or beliefs of the student or the student's parent/guardian; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

In the event that the district plans to survey students to gather information included in the list above, the district will obtain written consent from the parent/guardian in advance of administering the survey. The notification/consent form will also apprise the parent/guardian of their right to inspect the survey prior to their child's participation. In addition, the district will notify parents/guardians that they may inspect any survey created by a third party before the survey is administered or distributed to students. Prior written consent and the right to inspect surveys transfers to students once they turn 18 years old or are emancipated.

NEW NOTE: The policy must address applicable procedures for granting requests by parents for reasonable access to surveys by third parties within a reasonable time period.

All requests to inspect third party surveys must be made to the Building Principal **(insert time frame, such as within X days after the notice was sent, or within X days prior to the date of the survey).**

NEW NOTE: The policy must address the protection of student privacy regarding surveys about the enumerated list items. We suggest the following paragraph.

The district will limit access to information collected by any survey that contains the items listed above to those school officials who have a legitimate educational interest. The terms "school official" and "legitimate educational interest" are defined in district policy 5500, Student Records.

NEW NOTE: Education Law 2-d and Part 121 prohibit districts from selling, using and disclosing personally identifiable information for commercial and marketing purposes, facilitating its use or disclosure by another party for such purposes, or permitting another party to do so. It is more restrictive than what is allowed under PPRA.

~~It is the policy of the Board not to collect, disclose, or use personal information gathered from students for the purpose of marketing. Under state Education Law §2-d and its implementing regulations (8 NYCRR Part 121), the district is prohibited from disclosing or using "personally identifiable information" for marketing or commercial purposes, or selling that information, or providing it to others for that purpose (see district policies 5500 and 8635, and their accompanying administrative regulations, for more information). This does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to students or educational institutions such as:~~

- ~~a. College or other postsecondary education recruitment, or military recruitment;~~
- ~~b. Book clubs, magazines and programs providing access to low-cost literary products;~~
- ~~c. Curriculum and instructional materials used in schools;~~
- ~~d. Tests and assessments used to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information for students or to generate other statistically useful data for the purpose of securing such tests and assessments, and the subsequent analysis and public release of the aggregate data from such tests and assessments;~~
- ~~e. Student recognition programs; and~~
- ~~f. The sale by students of products or services to raise funds for school-related activities.~~

In the event that such data is collected by the district, All disclosure or use of student personal information will be protected by the district pursuant to the requirements of the Family Educational Rights and Privacy Act (FERPA), Individuals with Disabilities Education Act (IDEA), Protection of Pupil Rights Amendment (PPRA), the National School Lunch Act, Children's Online Privacy Protection Act

(COPPA), and NY Education Law §2-d [For guidance regarding the disclosure of “~~directory information,~~” rather than personal student information, see ~~policy~~policies 5500, Student Records, and 8635, Information and Data Privacy, Security, Breach and Notification].

Inspection of Instructional Material

Parents/guardians ~~shall~~ have the right to inspect, upon request, any instructional material, used as part of the educational curriculum for students. “Instructional material” is defined as: “instructional content that is provided to a student, regardless of format including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). It does not include tests or academic assessments.” The right to inspect instructional materials transfers to students once they turn 18 years old or are emancipated.

NOTE: The law requires that the parent/guardian be provided with reasonable access in a reasonable period of time and that the policy specify the procedures for providing such access. The paragraph below was drafted to comply with this requirement but may be revised to reflect district practice. The law did not identify a “reasonable period of time” -- we have designated 30 calendar days; however, until there is more guidance on this matter, the district is free to identify any period of time it deems reasonable.

A parent/guardian (or student who is at least 18 years old or is emancipated) who wishes to inspect and review such instructional material ~~shall~~ must submit a request in writing to the Building Principal. Upon receipt of such request, ~~arrangements shall be made to the district will~~ provide access to such material to within 30 calendar days after the request has been received.

Invasive Physical Examinations

REVISED NOTE: This section on invasive physical examinations sometimes causes confusion, so we recommend clarification. The term “invasive physical examination” means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injecting into the body, but does not include a hearing, vision, or scoliosis screening. It does not apply to any physical examination or screening required or permitted under State law, including those permitted without parental notification (20 USC §§ 1232h(c)(4)(B); (6)(B)). For example, each student must have a physical exam given by the school doctor or family physician upon entrance to school (including Pre-K) and at grades 1, 3, 5, 7, 9 and 11 in accordance with Section 903 of the state Education Law and commissioners regulation 8 NYCRR §136.3(b). The law also requires each school district to state its policy on the administration of physical examinations or screenings that the school may administer to a student, but this does not apply to physical examinations or screenings permitted or required by state law. If the district administers other physical exams, that should either be included here or cross-referenced to the appropriate policy.

Prior to the administration of any non-emergency, invasive physical examination or screening that is required as a condition of attendance, administered by the school and scheduled by the school in advance, which are not necessary to protect the immediate health or safety of the student or other students and not otherwise permitted or required by state law, a student’s parent/guardian will be notified and given an opportunity to opt their child out of the exam.

“Invasive physical examination” is defined in federal law as any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body. Hearing, vision and scoliosis screenings are not included in this definition and are not subject to prior notification, nor are any physical examinations that are permitted or required by state law, including those which are permitted without parent/guardian notification.

Notification

NEW NOTE: The PPRA does not use the term “eligible student,” and that term has a specific and slightly different meaning under FERPA.

The district will notify parents/guardians and eligible students who are at least 18 years old or who are emancipated ~~shall be notified~~ at least annually, at the beginning of the school year, and when enrolling students for the first time in district schools, of their rights under this policy. The school district ~~shall~~ will also notify parents/guardians within a reasonable period of time after any substantive change to this policy.

NEW NOTE: We suggest adding a cross-reference to the district's Data Privacy policy, revising the citation label from No Child Left Behind to the original PPRA, and adding citations to §2-d and Part 121.

Cross-ref:

5420, Student Health Services

5500, Student Records

8635, Information and Data Privacy, Security, Breach and Notification

Ref:

20 USC §1232h (~~No Child Left Behind Act~~ Protection of Pupil Rights Amendment, as amended)

34 CFR Part 98

Education Law ~~§§2-d~~; 903

8 NYCRR §136.3(b); Part 121

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INFORMATION AND DATA PRIVACY, SECURITY, BREACH AND NOTIFICATION REGULATION

NEW NOTE: Based on a determination by the State Chief Data Privacy Officer, we suggest modifying the definition of personally identifiable information (see section I.A.) to include student and parent telephone numbers.

NOTE: This regulation covers protection of student and teacher/principal "personally identifiable information" under Education Law §2-d as well as protection of "private information" under State Technology Law §208 (as amended by the SHIELD Act (Ch. 117 of the Laws of 2019)). While both laws address data breach and notification, they apply to different types of information. To keep all information about data breaches in one location, but distinct from each other, we have organized this regulation to address the §2-d protections in a separate section.

This regulation addresses information and data privacy, security, breach and notification requirements for student and teacher/principal personally identifiable information under Education Law §2-d, as well as private information under State Technology Law §208.

NOTE: The following paragraph is optional, but reflects a good practice for ensuring the district can meet the requirements of Education Law §2-d and State Technology Law §208, and aligns with NIST CSF 1.1.

The district will inventory its computer programs and electronic files to determine the types of information that is maintained or used by the district, and review the safeguards in effect to secure and protect that information.

I. *Student and Teacher/Principal "Personally Identifiable Information" (PII) under Education Law §2-d*

A. Definitions

"Biometric record," as applied to student PII, means one or more measurable biological or behavioral characteristics that can be used for automated recognition of person, which includes fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

"Breach" means the unauthorized acquisition, access, use, or disclosure of student PII and/or teacher or principal PII by or to a person not authorized to acquire, access, use, or receive the student and/or teacher or principal PII

"Disclose" or Disclosure mean to permit access to, or the release, transfer, or other communication of PII by any means, including oral, written, or electronic, whether intended or unintended.

"Personally Identifiable Information" (PII) as applied to students means the following information for district students:

1. the student's name;
2. the name of the student's parent or other family members;
3. the address of the student or student's family;

4. a personal identifier, such as the student's social security number, student number, or biometric record;
5. other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. information requested by a person who the district reasonably believes knows the identity of the student to whom the education record relates.

Additionally, the State Chief Privacy Officer has determined that student and parent phone numbers are considered PII.

"Personally Identifiable Information" (PII) as applied to teachers and principals means results of Annual Professional Performance Reviews that identify the individual teachers and principals, which are confidential under Education Law §§3012-c and 3012-d, except where required to be disclosed under state law and regulations.

NOTE: Note that third-party contractors would include any internet website or mobile app when student PII is provided and a district staff member accepts the terms of service.

"Third-Party Contractor" means any person or entity, other than an educational agency (i.e., a school, school district, BOCES or State Education Department), that receives student or teacher/principal PII from the educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of the educational agency, or audit or evaluation of publicly funded programs. This includes an educational partnership organization that receives student and/or teacher/principal PII from a school district to carry out its responsibilities pursuant to Education Law §211-e (for persistently lowest-achieving schools or schools under registration review) and is not an educational agency. This also includes a not-for-profit corporation or other nonprofit organization, other than an educational agency.

B. Complaints of Breaches or Unauthorized Releases of PII

NOTE: Districts must establish and communicate a complaint procedure for suspected breaches of PII. Technically, the regulations require districts to receive complaints from only "eligible" students, not all students. Because valid information on data breaches may be obtained by students under age 18, the district may wish to extend its complaint process to all students, without requiring them to go through their parent/guardian. The district may require that complaints be in writing, as noted below. There is no requirement to submit complaints to any particular person. We suggest that complaints be received by all employees, who are then required to notify the Data Protection Officer. Your district can develop a different process.

If a parent/guardian, eligible student, teacher, principal or other district employee believes or has evidence that student or teacher/principal PII has been breached or released without authorization, they must submit this complaint in writing to the district. Complaints may be received by the Data Protection Officer *or insert other title*, but may also be received by any district employee, who must immediately notify the Data Protection Officer. This complaint process will be communicated to parents, eligible students, teachers, principals, and other district employees.

NOTE: The regulations require "prompt" acknowledgement of complaints, but do not define a timeframe or require the district to set one. We recommend that districts discuss with their attorney whether or not to set a timeframe for acknowledging complaints.

The district will acknowledge receipt of complaints promptly, commence an investigation, and take the necessary precautions to protect personally identifiable information.

Following its investigation of the complaint, the district will provide the individual who filed a complaint with its findings within a reasonable period of time. This period of time will be no more than 60 calendar days from the receipt of the complaint.

If the district requires additional time, or if the response may compromise security or impede a law enforcement investigation, the district will provide the individual who filed a complaint with a written explanation that includes the approximate date when the district will respond to the complaint.

The district will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule LGS-1.

C. Notification of Student and Teacher/Principal PII Breaches

If a third-party contractor has a breach or unauthorized release of PII, it will promptly notify the Data Protection Officer *or insert other title* in the most expedient way possible, without unreasonable delay, but no more than seven calendar days after the breach's discovery.

The Data Protection Officer *or insert other title* will then notify the State Chief Privacy Officer of the breach or unauthorized release no more than 10 calendar days after it receives the third-party contractor's notification using a form or format prescribed by the State Education Department.

The Data Protection Officer *or insert other title* will report every discovery or report of a breach or unauthorized release of student, teacher or principal data to the Chief Privacy Officer without unreasonable delay, but no more than 10 calendar days after such discovery.

The district will notify affected parents, eligible students, teachers and/or principals in the most expedient way possible and without unreasonable delay, but no more than 60 calendar days after the discovery of a breach or unauthorized release or third-party contractor notification.

However, if notification would interfere with an ongoing law enforcement investigation or cause further disclosure of PII by disclosing an unfixed security vulnerability, the district will notify parents, eligible students, teachers and/or principals within seven calendar days after the security vulnerability has been remedied or the risk of interference with the law enforcement investigation ends.

Notifications will be clear, concise, use language that is plain and easy to understand, and to the extent available, include:

- a brief description of the breach or unauthorized release,
- the dates of the incident and the date of discovery, if known;
- a description of the types of PII affected;
- an estimate of the number of records affected;
- a brief description of the district's investigation or plan to investigate; and
- contact information for representatives who can assist parents or eligible students with additional questions.

Notification must be directly provided to the affected parent, eligible student, teacher or principal by first-class mail to their last known address; by email; or by telephone.

Where a breach or unauthorized release is attributed to a third-party contractor, the third-party contractor will pay for or promptly reimburse the district for the full cost of such notification.

The unauthorized acquisition of student social security numbers, student ID numbers, or biometric records, when in combination with personal information such as names or other identifiers, may also constitute a breach under State Technology Law §208 if the information is not encrypted, and the acquisition compromises the security, confidentiality, or integrity of

personal information maintained by the district. In that event, the district is not required to notify affected people twice, but must follow the procedures to notify state agencies under State Technology Law §208 outlined in section II of this regulation.

II. "Private Information" under State Technology Law §208

NOTE: This section reflects amendments to the State Technology Law §208 under the SHIELD Act. The definition of "private information" has been expanded, and this law now applies whenever "private information" has been accessed, in addition to when it has been acquired. We have also removed references to requiring the same level of notification for releases of hard copy data, as it is not covered by State Technology Law §208.

A. Definitions

"Private information" means either:

1. personal information consisting of any information in combination with any one or more of the following data elements, when either the data element or the personal information plus the data element is not encrypted or encrypted encryption key that has also been accessed or acquired:
 - Social security number;
 - Driver's license number or non-driver identification card number;
 - Account number, credit or debit card number, in combination with any required security code, access code, password or other information which would permit access to an individual's financial account;
 - account number or credit or debit card number, if that number could be used to access a person's financial account without other information such as a password or code; or
 - biometric information (data generated by electronic measurements of a person's physical characteristics, such as fingerprint, voice print, or retina or iris image) used to authenticate or ascertain a person's identity; or
2. a user name or email address, along with a password, or security question and answer, that would permit access to an online account.

"Private information" does not include information that can lawfully be made available to the general public pursuant to federal or state law or regulation;

"Breach of the security of the system" means unauthorized acquisition or acquisition without valid authorization of physical or computerized data which compromises the security, confidentiality, or integrity of personal information maintained by the district. Good faith acquisition of personal information by an officer or employee or agent of the district for the purposes of the district is not a breach of the security of the system, provided that the private information is not used or subject to unauthorized disclosure.

B. Procedure for Identifying Security Breaches

In determining whether information has been acquired, or is reasonably believed to have been acquired, by an unauthorized person or a person without valid authorization, the district will consider:

1. indications that the information is in the physical possession and control of an unauthorized person, such as removal of lost or stolen computer, or other device containing information;
2. indications that the information has been downloaded or copied;
3. indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; and/or
4. any other factors which the district shall deem appropriate and relevant to such determination.

C. Notification of Breaches to Affected Persons

Once it has been determined that a security breach has occurred, the district will take the following steps:

NOTE: In item 1 below, we removed the word "reasonable" from the phrase "restore the [reasonable] integrity of the system," due to changes under the SHIELD Act.

1. If the breach involved computerized data *owned or licensed* by the district, the district will notify those New York State residents whose private information was, or is reasonably believed to have been accessed or acquired by a person without valid authorization. The disclosure to affected individuals will be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and to restore the integrity of the system. The district will consult with the New York State Office of Information Technology Services to determine the scope of the breach and restoration measures.
2. If the breach involved computer data *maintained* by the district, the district will notify the owner or licensee of the information of the breach immediately following discovery, if the private information was or is reasonably believed to have been accessed or acquired by a person without valid authorization.

NOTE: The paragraph below reflects the specific information that must be provided in item (d). The notification requirement may be delayed if a law enforcement agency determines that such notification impedes a criminal investigation. The required notification must be made after the law enforcement agency determines that such notification does not compromise the investigation.

The required notice will include (a) district contact information, (b) a description of the categories information that were or are reasonably believed to have been accessed or acquired without authorization, (c) which specific elements of personal or private information were or are reasonably believed to have been acquired and (d) the telephone number and website of relevant state and federal agencies that provide information on security breach response and identity theft protection and prevention. This notice will be directly provided to the affected individuals by either:

1. Written notice
2. Electronic notice, provided that the person to whom notice is required has expressly consented to receiving the notice in electronic form; and that the district keeps a log of each such electronic notification. In no case, however, will the district require a person to consent to accepting such notice in electronic form as a condition of establishing a business relationship or engaging in any transaction.
3. Telephone notification, provided that the district keeps a log of each such telephone notification.

However, if the district can demonstrate to the State Attorney General that (a) the cost of providing notice would exceed \$250,000; or (b) that the number of persons to be notified exceeds 500,000; or (c) that the district does not have sufficient contact information, substitute notice may be provided. Substitute notice would consist of all of the following steps:

1. E-mail notice when the district has such address for the affected individual;
2. Conspicuous posting on the district's website, if they maintain one; and
3. Notification to major media.

However, the district is not required to notify individuals if the breach was inadvertently made by individuals authorized to access the information, and the district reasonably determines the breach will not result in misuse of the information, or financial or emotional harm to the affected persons. The district will document its determination in writing and maintain it for at least five years, and will send it to the State Attorney General within ten days of making the determination.

Additionally, if the district has already notified affected persons under any other federal or state laws or regulations regarding data breaches, including the federal Health Insurance Portability and Accountability Act, the federal Health Information Technology for Economic and Clinical Health (HI TECH) Act, or New York State Education Law §2-d, it is not required to notify them again. Notification to state and other agencies is still required.

D. Notification to State Agencies and Other Entities

Once notice has been made to affected New York State residents, the district shall notify the State Attorney General, the State Department of State, and the State Office of Information Technology Services as to the timing, content, and distribution of the notices and approximate number of affected persons.

If more than 5,000 New York State residents are to be notified at one time, the district will also notify consumer reporting agencies as to the timing, content and distribution of the notices and the approximate number of affected individuals. A list of consumer reporting agencies will be furnished, upon request, by the Office of the State Attorney General.

If the district is required to notify the U.S. Secretary of Health and Human Services of a breach of unsecured protected health information under the federal Health Insurance Portability and Accountability Act (HIPAA) or the federal Health Information Technology for Economic and Clinical Health (HI TECH) Act, it will also notify the State Attorney General within five business days of notifying the Secretary.

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