ATTACHMENT S PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

To satisfy their responsibilities regarding the provision of education to students in prekindergarten through grade twelve, "educational agencies" (as defined below) in the State of New York collect and maintain certain personally identifiable information from the education records of their students. As part of the Common Core Implementation Reform Act, Education Law §2-d requires that each educational agency in the State of New York must develop a Parents' Bill of Rights for Data Privacy and Security (Parents' Bill of Rights). The Parents' Bill of Rights must be published on the website of each educational agency, and must be included with every contract the educational agency enters into with a "third party contractor" (as defined below) where the third party contractor receives student data, or certain protected teacher/principal data related to Annual Professional Performance Reviews that is designated as confidential pursuant to Education Law §3012-c ("APPR data").

The purpose of the Parents' Bill of Rights is to inform parents (which also include legal guardians or persons in parental relation to a student, but generally not the parents of a student who is age eighteen or over) of the legal requirements regarding privacy, security and use of student data. In addition to the federal Family Educational Rights and Privacy Act (FERPA), Education Law §2-d provides important new protections for student data, and new remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

A. <u>What are the essential parents' rights under the Family Educational Rights and Privacy</u> <u>Act (FERPA) relating to personally identifiable information in their child's student</u> <u>records?</u>

The rights of parents under FERPA are summarized in the Model Notification of Rights prepared by the United States Department of Education for use by schools in providing annual notification of rights to parents. It can be accessed at http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html, and a copy is attached to this Parents' Bill of Rights. Complete student records are maintained by schools and school districts, and not at the New York State Education Department (NYSED). Further, NYSED include:

B. What are parents' rights under the Pgh4M[und

A more detailed description of the PPPL is available from the Committee on Open Government of the New York Department of State. Guidance on what you should know about the PPPL can be accessed at <u>http://www.dos.ny.gov/coog/shldno1.html</u>. The Committee on Open Government's address is Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, suite 650, Albany, NY 12231, their email address is <u>coog@dos.ny.gov</u>, and their telephone number is (518) 474-2518.

A. <u>Parents' Rights Under Education Law §2-d relating to UnauthorizedRelease of</u> <u>PersonallyIdentifiable Information</u>

1. What "educational agencies" are included the requirements of Education Law §2-d?

- The New York State Education Department ("NYSED");
- Each public school district;
- Each Board of Cooperative Educational Services or BOCES; and
- All schools that are:
 - a public elementary or secondary school;
 - o a universal pre-kindergarten program authorized pursuant to Education Law§3602-e;
 - an approved provider of preschool special education services;
 - any other publicly funded pre-kindergarten program;
 - a school serving children in a special act school district as defined in Education Law 4001; or
 - certain schools for the education of students with disabilities an approved private school, a state-supported school subject to the provisions of Education Law Article 85, or a state-operated school subject to Education Law Article 87 or 88.
- 2. What kind of student data is subject to the **o**nfidentiality and security requirements of Education Law §2-d?

The law applies to personally identifiable information contained in student records of an educational agency listed above. The term "student" refers to any person re6 (le)]TJ 0 T (c)1 (t to)-3 (th)-7 (e)e.0 of Et54 Tw -21.t2(of)-b.m(c) 0 TTw (as a)4 (n)]T1in of an2 (Td [(o)-4 (an)3 (o)10 (vi)-2 (1002 Tc -0r)3 (s0.014 Tw

(a) 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

(b) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

1. What kind of student data is *not* subject to the confidentiality and security requirements of EducationLaw §2-d?

The confidentiality and privacy provisions of Education Law §2-d and FERPA extend only to PII, and not to student data that is not personally identifiable. Therefore, de- identified data (e.g., data regarding students that uses random identifiers), aggregated data (e.g., data reported at the school district level) or anonymized data that could not be used to identify a particular student is not considered to be PII and is not within the purview of Education Law §2-d or within the scope of this Parents' Bill of Rights.

2. What are my rights under Education Law § 2-d as a parentegarding my student's PII?

• When appointed, the Chief Privacy Officer of NYSED will also provide a procedure within NYSED whereby parents, students, teachers, superintendents, school board members, principals, and other persons or entities may request information pertaining to student data or teacher or principal APPR data in a timely and efficient manner.

1. Must additional elementsbe included in the Parents' Bill of Rights.?

Yes. For purposes of further ensuring confidentiality and security of student data, as an appendix to the Parents' Bill of Rights each contract an educational agency enters into with a third party contractor

Services of a third party contractor covered under Education Law §2-d include, 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.

When an educational agency enters into a contract with a third party contractor, under which the third party contractor will receive student data, the contract or agreement must include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy.

educational agency's policy on data security and privacy. However, the standards for an educational agency's policy on data security and privacy must be prescribed in Regulations of the Commissioner that have not yet been promulgated. A signed copy of the Parents' Bill of Rights must be included, as well as a requirement that any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

Each third party contractor that enters into a contract or other written agreement with an educational agency under which the third party contractor will receive student data or teacher or principal data shall:

- limit internal access to education records to those individuals that are determined to have legitimate educational interests
- not use the education records for any other purposes than those explicitly authorized in its contract;
- o except for authorized representatives of the third party contracto2</MCID 6hf0.002 TTw 1.5 48k8

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interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the school discloses education records without consent to offt

such as the State educational agency in the parent or eligible student's State (SEA). Disclosures under this provision may be made, subject to the requirements of \$99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (\$\$99.31(a)(3) and 99.35)

- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to §99.38. (§99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))

• To appropriate officials in connection with a health or safety emergency, subject to §99.36. (§99.31(a)(10)

• Information



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