

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into this 28th day of July, 2023, by and between Elida Local Schools (referred to as "Business Associate") and the Allen County Board of Developmental Disabilities (referred to as "Agency").

WHEREAS, Agency will make available and/or transfer to Business Associate confidential, personally identifiable health information in conjunction with the health oversight and service provision functions of the parties; and

WHEREAS, such information may be used or disclosed only in accordance with the privacy regulations [45 CFR §§ 164.502; 164.504(e)] and the security regulations [45 CFR §§ 164.308; 164.314] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400 *et seq.*] and the terms of this Agreement, or more stringent provisions of the law of the State of Ohio;

NOW THEREFORE, the parties agree as follows:

1. Definitions.

- 1.1. **Protected Health Information ("PHI")** means individually identifiable information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined in 45 CFR § 164.501, and any amendments thereto, received from or on behalf of the Agency.
- 1.2. **Unsecured PHI** is PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services pursuant to 45 CFR 164.402.
- 1.3. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- 1.4. **Individual** means the person who is the subject of the PHI, as defined in 45 CFR § 160.103, and includes the person's personal representative.
- 1.5. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and Part 164, Subparts A and E, and any amendments thereto.

2. Permitted Use. The Business Associate agrees that it shall not receive, create, use or disclose PHI except as follows:

- 2.1. **Covered Functions.** To carry out the legal responsibilities of each party to govern and oversee the provision of services and supports within the developmental disabilities system.
- 2.2. **Disclosure Restrictions.** If necessary for the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, PHI may only be disclosed to another person/entity for such purposes if:

- 2.2.1. Disclosure is required by law; or
 - 2.2.2. Business Associate subcontracts for the purposes of carrying out the legal responsibilities of the parties under Ohio law and in accordance with 45 CFR 160.103.
- 3. **Minimize Use of PHI.** The Business Associate agrees that it will not request, use or release more than the minimum necessary amount of PHI to accomplish the purpose of the use, disclosure or request.
- 4. **Business Associate Safeguards.** The Business Associate will use appropriate safeguards to prevent any unauthorized use or disclosure of PHI and shall implement the administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of the Agency. The Business Associate will use all appropriate safeguards under 45 CFR 164 Subpart C including those identified as addressable. The Business Associate will comply with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. With regard to electronic PHI not covered by the Guidance published at 74 FR 19006, the Business Associate will protect electronic PHI at rest and in transit through encryption that complies with State of Ohio IT Standard, ITS-SEC-01 Data Encryption and Cryptography.
- 5. **Unauthorized Disclosure and Incident Reporting and Remediation and Privacy and Security Breach Notification.**
 - 5.1. **Incident Reporting.**
 - 5.1.1. Business Associate shall report to the Agency the following:
 - 5.1.1.1. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law of which it becomes aware, including breaches of unsecured protected health information as required by 45 CFR 164.410; and
 - 5.1.1.2. Any security incident of which it becomes aware. For purposes of this Agreement, "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
 - 5.1.2. Within 24 hours of discovery of a suspected reportable incident as described in 5.1.1 above, Business Associate shall notify the Agency of the existence and nature of the incident as understood at that time. Business Associate shall immediately investigate the incident and within 72 hours of discovery shall provide the Agency, in writing, a report describing the results of Business Associate's investigation, including:
 - 5.1.2.1. What data elements were involved, the extent of the data involved in the incident, and the identification of affected individuals, if applicable;

- 5.1.2.2. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI, or to have been responsible for the incident;
- 5.1.2.3. A description of where the PHI is believed to have been improperly transmitted, sent, or utilized, if applicable;
- 5.1.2.4. A description of the probable causes of the incident;
- 5.1.2.5. A description of the proposed plan for preventing similar future incidents, including ongoing risk remediation plan approval; and
- 5.1.2.6. Whether the Business Associate believes any federal or state laws requiring notifications to individuals are triggered.

- 5.1.3. Reporting and other communications made to the Agency under this section must be made to the Agency's HIPAA privacy officer at:

Allen County Board of Developmental Disabilities
ATTN: Lisa Kirk
2500 Ada Road
Lima, Ohio 45801
lkirk@acbdd.org

5.2. Business Associate Mitigation. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and report its mitigation activity back to the Agency. Business Associate shall preserve evidence.

5.3. Coordination. Business Associate will coordinate with the Agency to determine additional, specific actions that will be required of the Business Associate for mitigation of the Breach, which may include notification to the individuals, entities or other authorities. Notifications, if any, will be made at the direction of the Agency.

5.4. Incident costs. Business Associate shall bear all costs associated with the incident. This may include, but not be limited to, costs associated with notifying affected individuals. It also may include the cost of investigation, remediation, and assistance to individuals including services such as a standard level of credit-monitoring such as Debix's standard service or other comparable service available to Ohio agencies under state term schedules.

- 6. Subcontractor Obligations.** Business Associate shall ensure that all of its subcontractors and agents are bound, in writing, by the same restrictions and obligations contained herein, including but not limited to the obligation to implement reasonable and appropriate safeguards to protect the information, whenever PHI is made accessible to such subcontractors or agents. The Business Associate shall obtain Agency approval prior to entering into such agreements.
- 7. Access to PHI.** Business Associate shall make all PHI and related information maintained by Business Associate or its agents or subcontractors available as soon as practicable following a request for PHI, but within fifteen (15) days, to the extent necessary to fulfill the following obligations:

- 7.1. Inspection and Copying.** Make the PHI maintained by Business Associate or its agents or subcontractors available to Agency for inspection and copying to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- 7.2. Accounting.** To maintain and make available the information required to provide an accounting of disclosures of PHI to Agency in accordance with the provisions of the Privacy Rule, including, but not limited to 45 CFR § 164.528 and the HITECH Act; and shall make all PHI in its possession available to Agency as soon as practicable following a request for PHI, but within fifteen (15) days, to fulfill Agency's obligation to amend PHI and related information in accordance with 45 CFR § 164.526, and shall, as directed by Agency, incorporate any amendments or related statements into the information held by the Business Associate and any subcontractors or agents.
- 8. Compliance and HHS Access.** The Business Associate shall make available to the Agency and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, records and compliance reports related to the use and disclosure of PHI received from the Agency, or created or received by the Business Associate on behalf of the Agency. Business Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of the policies, procedures or practices of Agency or Business Associate.
- 9. Non Compliance:** Any non-compliance by the Business Associate with the terms of this Agreement or the privacy and security regulations shall be a breach of this Agreement if the Business Associate knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Business Associate agrees that Agency has the right to immediately terminate this Agreement and seek relief if Agency determines that the Business Associate has violated a material term of the Agreement.
- 10. Ownership and Destruction of Information.** The PHI and any related information created or received from or on behalf of Agency is and shall remain the property of the Agency. The Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information. Upon termination of this Agreement, Business Associate agrees, at the option of Agency, to return or securely destroy all PHI created or received from or on behalf of Agency following 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. The Business Associate agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, the Business Associate agrees to provide Agency with appropriate documentation or certification evidencing such destruction. If return or destruction of all PHI and all copies of PHI is not feasible, the Business Associate agrees to extend the protections of this Agreement to such information for as long as it is maintained and to limit further uses and disclosures to those which make return or destruction infeasible. Termination of this Agreement shall not affect any of its provisions that, by wording or nature, are intended to remain effective and to continue in operation.

- 11. Termination.** Any non-compliance by the Business Associate or its subcontractor with the terms of this Agreement, or of the privacy and security regulations, shall be a breach of this Agreement if the Business Associate knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Business Associate agrees that the State has the right to immediately terminate this agreement, and seek relief, if the State determines that the Business Associate has violated a material term of the agreement.
- 12. Survivorship.** The obligations to safeguard the confidentiality, privacy and security of PHI imposed herein shall survive the termination of this Agreement.
- 13. Injunctive Relief.** Notwithstanding any rights or remedies under this Agreement or provided by law, Agency retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by the Business Associate, any of its subcontractors or agents, or any third party who has received PHI from the Business Associate.
- 14. Binding Effect.** Subject to the limitations on assignment provided elsewhere in this Agreement, the Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Associate.
- 15. Ambiguities, Strict Performance and Priorities.** Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with HIPAA, regulations promulgated thereunder and HITECH. Any conflicts in the security and privacy terms and conditions of this agreement with those in the underlying agreement shall be interpreted to favor of the terms and conditions that promote greater degree of security and privacy. The parties agree that any modifications to those laws shall modify the obligations of the parties hereunder without the need for formal amendment of the Agreement. Any other amendments to this Agreement shall not be effective without the written agreement of both parties. This Agreement will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party. The headings in this Agreement are for convenience only and will not affect the interpretation of any of the Agreement terms and conditions. If at any time either party fails to demand strict performance by the other party of any of the terms of this Agreement, such failure will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- 16. Notice.** For any notice under this Agreement, other than the notice required in Paragraph 5, to be effective the notice must be made in writing and sent to the address of the appropriate contact provided below. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:

To Agency:

Allen County Board of Developmental Disabilities
ATTN: Superintendent
2500 Ada Road
Lima, Ohio 45801
tschnipke@acbdd.org

To Business Associate:

Elida Local Schools
Attn: Superintendent
4380 Sunnydale Ave
Elida, OH 45807

IN WITNESS WHEREOF, the parties hereto agree to the foregoing,

**For: Allen County Board of
Developmental Disabilities**

Elida Local Schools



Representative

Representative

Superintendent
Title

Title

Date: 7/28/2023

Date: _____



Allen County Board of Developmental Disabilities

Memorandum of Understanding

Between

Elida Local Schools and

Allen County Board of Developmental Disabilities

The parties of this Memorandum of Understanding (MOU) are **Elida Local Schools** and the Allen County Board of Developmental Disabilities, in relation to the Behavior Support Consultant (BSC) program.

Purpose: The purpose of this agreement is to establish roles and responsibilities of both parties for the provision of behavior support consultation to local school districts. Ideas and strategies provided by the BSC are intended to be collaborative in nature, utilizing positive behavioral intervention strategies to strengthen positive interactions between the student, educational team, and peers. This service is available to any school age student who is a resident of Allen County, Auglaize County, or Hardin County, regardless of eligibility or diagnosis.

Roles and Responsibilities:

- Responsibilities of the BSC:
 - Student Observation – Observation of a student; technical assistance services to provide the educational team with ideas and strategies to assist students in the educational environment.
 - Teacher Consultation – Collaboration with teachers on positive behavioral interventions to increase positive interactions, observe environmental modifications, and assist with general classroom management ideas.
 - Behavior Support Training – Presentation on Behavior Support topics to large educational groups, focusing on the functions of behavior support with ideas and strategies to assist educational teams.
 - Contact within 48 hours to discuss referral.
 - Community referrals, as appropriate.

- Responsibilities of School District:

- Gain consent from the parent/guardian of referred student, as reflected in the district policy for sharing information to a third party.
- Completing the referral form for the BSC program.
- Participating in discussion of ideas/strategies in person or virtually.
- Feedback to the BSC on implementation of ideas and strategies.

Funding for the Behavior Support Consultant program: The Allen County Board of Developmental Disabilities provides these services under contract from the Mental Health and Recovery Services Board of Allen, Auglaize, and Hardin Counties. These services are at no cost to the school district.

Duration and Termination: This agreement is for the period beginning August 15, 2023 through June 7, 2024; the 2023-2024 school year.

Whole Agreement: This MOU contains the entire agreement between the parties with respect to the subject matter set forth herein but may be changed or modified with the written consent of both parties. In WITNESS WHEREOF, the parties have caused this agreement to be executed by their authorized representatives.



Superintendent
Allen County Board of Developmental Disabilities



Date

Superintendent
Elida Local Schools

Date

2500 Ada Road
Lima, Ohio 45801
Phone: (419) 221-1385
Fax: (419) 221-1296
www.acbdd.org



Mental Health &
Recovery Services
Board of
Allen, Auglaize and
Hardin Counties
www.wecarepeople.org



Allen County Board of
Developmental Disabilities

7/28/2023

Greetings,

My name is Tyson Goings, and I am the Behavior Support Consultant with the Allen County Board of Developmental Disabilities (ACBDD). This letter is to inform you of the Behavior Support Consultant (BSC) program that is a joint collaboration between the ACBDD and the Mental Health and Recovery Services Board of Allen, Auglaize, and Hardin Counties. This program provides behavior support consultation services to educational teams, which include the following: behavior support training for teachers and staff, individualized teacher training and student observation. The goal of this program is to support children and school personnel in response to behavioral concerns in the school system, regardless of the presence of a diagnosis that would make them eligible for ACBDD services.

This program saw great success and was a wonderful resource to educational teams during the two previous years of the program, which was during 2021-2022 and 2022-2023 school years. We worked with a wide variety of principals, general education teachers, educational aides, intervention specialists, paraprofessionals, and therapists to find creative ways to assist students with behavioral concerns and achieve successful outcomes in the educational environment. Please review the attached flier for more information and distribute to your teams. I would be happy to meet with any teams to discuss this program before or at the beginning of the upcoming school year.

As we look forward to the 2023-2024 school year, we are reaching out to all school districts. Attached is a Memorandum of Understanding (MOU) and Business Associate Agreement (BAA) for your review. Please sign, keep a copy of the MOU and BAA for your records and return in the addressed envelope provided. If you have any questions about the MOU or BAA, please contact Tyson Goings, Behavior Support Consultant either via phone at 419-221-1385 ext. 2080 or via email at tgoings@acbdd.org

Sincerely,

Tyson Goings
Behavior Support Consultant
Allen County Board of DD

RECEIVED

JUL 31 2023

SUPERINTENDENT

BEHAVIOR SUPPORT CONSULTANT SERVICES

The Mental Health and Recovery Services Board of Allen, Auglaize and Hardin Counties, in partnership with the Allen County Board of Developmental Disabilities, offers schools consultation, training, and support to meet behavioral and safety needs of students in the classroom.

SERVICES PROVIDED:

- Consultation within 48 hours of referral
- Classroom observation and technical assistance
- Training to school personnel in positive behavior support strategies, trauma informed approach, and crisis intervention
- Support to the child, parents, and school personnel, including strategies and tools to meet behavioral and safety needs
- Community referrals, as appropriate

SERVICES AVAILABLE TO:

- Any school-age child, regardless of the presence of a diagnosis or eligibility.
- Allen & Auglaize Counties: Student observation, classroom observation, or staff training at any public or private school.
- Hardin County: Staff training at any public or private school. (email to set up)

For information and referrals, contact Tyson Goings at (419) 302-1299 or tgoings@acbdd.org

