

Exhibit H

Vendor Agreement to Confidentiality and Educational Law 2-d

Confidentiality

1. In consideration of disclosing any Confidential Information (as defined below) hereunder, Customer and Vendor will treat such Confidential Information as confidential and shall protect the nature of the Confidential Information by using the same degree of care, but not less than a reasonable degree of care, as the recipient uses to protect its own Confidential Information, so as to prevent the unauthorized dissemination or publication of the Confidential Information to third parties. No party shall disclose Confidential Information other than to those of its employees or agents who need to know such obligations under this Agreement. No party will use Confidential Information for any other purpose without the prior written consent of the discloser of the Confidential Information. All Confidential Information shall remain the property of the disclosing party. Vendor shall have in place sufficient internal controls to ensure that Customer Confidential Information is safeguarded in accordance with all applicable laws and regulations, including, but not limited to, CIPA, FERPA and HIPAA, if applicable.
2. “Confidential Information” shall mean all information marked or identified as confidential or proprietary, or received under circumstances reasonably interpreted as imposing an obligation of confidentiality, which is disclosed pursuant to this Agreement. Vendor Confidential Information includes, but is not limited to, the Product, all intellectual property rights, trade secrets, ideas, concepts, designs, methodologies, technologies and business matters, and Customer Confidential Information includes any information rendered confidential by State or federal law, including, but not limited to student data, student demographics, scheduling, attendance, grades, health and discipline tracking, and all other data reasonably considered to be sensitive or confidential data by the Customer.
3. Confidential treatment shall not apply to information that (a) was lawfully known by the receiving party prior to receipt, (b) is or becomes publicly available through no wrongful act on the part of recipient, (c) is lawfully received by either party from a third party who does not have an obligation of confidentiality, (d) is developed independently without use or knowledge of the Confidential Information, or (e) is required to be disclosed by law, court order or law enforcement or other authorities, provided that notice of any intended disclosure is communicated promptly under the circumstances.
4. In addition to the above, Vendor agrees to comply with the requirements of New York State Education Law §2-d as more fully described in the attached Education Law §2-d Rider, document 4311F.11.
5. Notwithstanding the forgoing, any claim made under this section shall be subject to the limits of liability of this Agreement. Further, any claim made by the Customer regarding student data, student demographics, scheduling, attendance, grades, health and discipline tracking, or would otherwise be subject to New York State Education Law §2-d shall be made under either this Confidentiality clause, or under this Agreement’s New York State Education Law §2-d provisions.



**Education Law
§2-d Rider**

Board of Cooperative Educational Services
First Supervisory District of Suffolk County
201 Sunrise Highway
Patchogue, New York 11772
(631) 289-2200

New York State Education Law §2-d was enacted in 2014 to address concerns relative to securing certain personally identifiable information. In order to comply with the requirements of Education Law §2-d, educational agencies and certain third-party contractors who contract with educational agencies must take certain additional steps to secure such data. These steps include enacting and complying with a Parents' "Bill of Rights" relative to protected data, ensuring that each third-party contractor has a detailed data privacy plan in place to ensure the security of such data, and that each third-party contractor signs a copy of the educational agency's Parents' Bill of Rights, thereby signifying that the third-party contractor will comply with such Parents' Bill of Rights. This Agreement is subject to the requirements of Education Law §2-d, and the Contractor is a covered third-party contractor.

In order to comply with the mandates of Education Law §2-d, and notwithstanding any provision of the contract between ESBOCES and Contractor to the contrary, Contractor agrees as follows:

Contractor will treat "Protected Data" (as defined below) as confidential and shall protect the nature of the Protected Data by using the same degree of care, but not less than a reasonable degree of care, as the Contractor uses to protect its own confidential data, so as to prevent the unauthorized dissemination or publication of Protected Data to third parties. Contractor shall not disclose Protected Data other than to those of its employees or agents who have a need to know such Protected Data under this Agreement. Contractor shall not use Protected Data for any other purposes than those explicitly provided for in this Agreement. All Protected Data shall remain the property of the disclosing party. As more fully discussed below, Contractor shall have in place sufficient internal controls to ensure that ESBOCES and/or Participants' Protected Data is safeguarded in accordance with all applicable laws and regulations, including, but not limited to, CIPA, FERPA and HIPAA, if applicable.

"Protected Data" includes any information rendered confidential by State or Federal law, including, but not limited to, student data, student demographics, scheduling, attendance, grades, health and discipline tracking, and all other data reasonably considered to be sensitive or confidential data by ESBOCES and/or a Participant. Protected Data also includes any information protected under Education Law §2-d, including, but not limited to:

"Personally identifiable information" from student records of ESBOCES and/or its Participants as that term is defined in §99.3 of the Family Educational Rights and Privacy Act (FERPA),

-AND-

Personally identifiable information from the records of ESBOCES and/or its Participants relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law 3012-c.

Contractor and/or any subcontractor, affiliate, or entity that may receive, collect, store, record, or display any Protected Data shall comply with New York State Education Law §2-d. As applicable, Contractor agrees to comply with ESBOCES policy(ies) on data security and privacy. Contractor shall promptly reimburse ESBOCES and/or its Participants for the full cost of notifying a parent, eligible student, teacher, or principal of an unauthorized release of Protected Data by Contractor, its subcontractors, and/or

assignees. In the event this Agreement expires, is not renewed, or is terminated, Contractor shall return all ESBOCES and/or its Participants' data, including any and all Protected Data, in its possession by secure transmission.

Data Security and Privacy Plan

Contractor and/or any subcontractor, affiliate, or entity that may receive, collect, store, record, or display any ESBOCES and/or its Participant's Protected Data shall maintain a Data Security and Privacy Plan that includes the following elements:

1. a provision incorporating the requirements of ESBOCES Parents' Bill of Rights for data security and privacy, to the extent that any of the provisions in the Bill of Rights applies to Contractor's possession and use of Protected Data pursuant to this Agreement;
2. an outline of how all State, Federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the Contractor's policy on data security and privacy;
3. an outline of the measures taken by Contractor to secure Protected Data and to limit access to such data to authorized staff;
4. an outline of how Contractor will use "best practices" and industry standards with respect to data storage, privacy, and protection, including, but not limited to, encryption, firewalls, passwords, protection of off-site records, and limitations of access to stored data to authorized staff; and
5. an outline of how Contractor will ensure that any subcontractors, persons, or entities with which Contractor will share Protected Data, if any, will abide by the requirements of Contractor's policy on data security and privacy, and the contractual obligations with respect to Protected Data set forth herein.

DATA PRIVACY AND SECURITY PLAN

1. CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN IS ATTACHED HERETO AND INCORPORATED HEREIN.
2. CONTRACTOR MUST PROVIDE A SIGNED COPY OF ESBOCES PARENTS' BILL OF RIGHTS.

**EASTERN SUFFOLK BOCES
PARENTS' BILL OF RIGHTS
FOR DATA SECURITY AND PRIVACY**

Eastern Suffolk BOCES (ESBOCES) is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, parents, legal guardians, and persons in parental relation to a student are entitled to certain rights with regard to their child's personally identifiable information. ESBOCES wishes to inform the school community of the following rights:

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record maintained by ESBOCES.
3. State and Federal laws protect the confidentiality of personally identifiable information. Safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by the State is available for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to:

Claudy Damus-Makelele
Associate Superintendent for Educational Services
Eastern Suffolk BOCES
201 Sunrise Highway
Patchogue, NY 11772
cdamus@esboces.org

or

Chief Privacy Officer
New York State Education Department
89 Washington Avenue
Albany, NY 12234
CPO@mail.nysed.gov.

Supplemental Information Regarding Third-Party Contractors

In the course of complying with its obligations under the law and providing educational services, ESBOCES has entered into contracts with certain third-party contractors. Pursuant to such contracts, third-party contractors may have access to "student data" and/or "teacher or principal data." Each contract ESBOCES

enters into with a third-party contractor where the third-party contractor receives student data or teacher or principal data will include information addressing the following:

1. the exclusive purposes for which the student data or teacher or principal data will be used;
2. how the third-party contractor will ensure that the subcontractors, persons, or entities with whom the third-party contractor will share the student data or teacher or principal data, if any, will abide by data protection and security requirements;
3. when the contract expires and what happens to the student data or teacher or principal data upon expiration of the contract;
4. If and how a parent, student, eligible student, teacher, or principal may challenge the accuracy of the student data or teacher or principal data collected; and
5. where the student data or teacher or principal data will be stored (described in such a manner as to protect data security) and the security protections taken to ensure that such data will be protected, including whether such data will be encrypted.

Requirements of Third-Party Contractors

Third-party contractors are required to:

1. provide training on Federal and State law governing confidentiality to any officers, employees, or assignees who have access to student data or teacher or principal data;
2. limit internal access to educational records to those individuals who have a legitimate educational interest in such records;
3. not use educational records for any other purpose than those explicitly authorized in the contract;
4. not disclose personally identifiable information to any other party (i) without the prior written consent of the parent or eligible student or (ii) unless required by statute or court order and the third-party contractor provides a notice of the disclosure to the New York State Education Department, Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
5. maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
6. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure as specified in Education Law §2-d;
7. notify ESBOCES of any breach of security resulting in an unauthorized release of student data or teacher or principal data in the most expedient way possible and without unreasonable delay;
8. provide a data security and privacy plan outlining how all State, Federal, and local data security and privacy contract requirements will be implemented over the life of the contract; and

9. provide a signed copy of this Parents' Bill of Rights to ESBOCES, thereby acknowledging that they are aware of and agree to abide by this Parents' Bill of Rights.

This Parents' Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department's Chief Privacy Officer, as well as emerging guidance documents.

Contractor hereby acknowledges that it is aware of and agrees to abide by the terms of this Parents' Bill of Rights. A copy of this signed document must be made a part of Contractor's Data Security and Privacy Plan.

SIGNATURE:

DATE: February 15, 2023

TITLE: Director, Client Services