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

To satisfy their responsibilities regarding the provision of education to students in pre-kindergarten 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

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 http://www.dos.ny.gov/coog/shldno1.html. 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 coog@dos.ny.gov, and their telephone number is (518) 474-2518.

A. Parents' Rights Under Education Law §2-d relating to Unauthorized Release of Personally Identifiable Information

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

- x The New York State Education Department ("NYSED");
- x Each public school district;
- x Each Board of Cooperative Educational Services or BOCES; and
- x All schools that are:
  - o a public elementary or secondary school;
  - o a universal pre-kindergarten program authorized pursuant to Education Law§3602-e;
  - o an approved provider of preschool special education services;
  - o any other publicly funded pre-kindergarten program;
  - o a school serving children in a special act school district as defined in Education Law 4001; or
  - o 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 confidentiality 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.(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 T

o 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 elements be 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 shall include the following supplemental information:

(A) the exclusive purposes for which the student data, or teacher or principal data, will be used;

(B) how the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;

(C) when the agreement with the third party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;

(D) if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and

(E) 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 such data will be protected, including whether such data will be encrypted.
   a. In addition, the Chief Privacy Officer, with input from parents and other education and expert stakeholders, is required to develop additional elements of the Parents' Bill of Rights to be prescribed in Regulations of the Commissioner.

2. **What protections are required to be in place if an educational agency contracts with a third party contractor to provide services, and the contract requires the disclosure of PII to the third party contractor?**

Education Law §2-d provides very specific protections for contracts with "third party contractors", defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. The term "third party contractor" also includes an educational partnership organization that receives student and/or teacher or principal APPR data from a school district to carry out its responsibilities pursuant to Education Law §211-e, and a not-for-profit corporation or other non-profit organization, which are not themselves covered by the definition of an "educational agency."

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.
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:

- o limit internal access to education records to those individuals that are determined to have legitimate educational interests

- o 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 contractor to the extent they are carrying out the contract, not disclose any PII 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 party provides a notice of the disclosure to NYSED, district 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;

- o maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody; and

- o use encryption technology to protect data while in motion or in its custody from unauthorized disclosure.

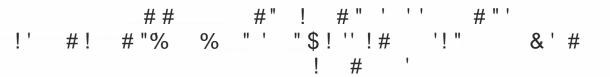1. **What steps can and must be taken in the event of a breach of confidentiality or security?**

Upon receipt of a complaint or other information indicating that a third party contractor may have improperly disclosed student data, or teacher or principal APPR data, NYSED's Chief Privacy Officer or , o egpn 3.35 0o10 (tc -0.006 8p)4-8c94 (p)]3J9 (m)db003,Tcm2.096-2p(prip[gpan)4((t)34(1-2 0)0)(fEJ -08)(2r

any party relating to the alleged improper disclosure of student data or teacher or principal APPR data.

Where there is a breach and unauthorized release of PII by a by a third party contractor or its assignees (e.g., a subcontractor): (i) the third party contractor must notify the educational agency of the breach in the most expedient way possible and without unreasonable delay;
(ii) the educational agency must notify the parent in the most expedient way possible and without unreasonable delay; and (iii) the third party contractor may be subject to certain penalties including, but not limited to, a monetary fine; mandatory training regarding federal and state law governing the confidentiality of

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)

- x 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))

- x 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))

- x 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))

- x To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))

- x To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))

- x To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))

- x To appropriate officials in connection ams;