DATA PROTECTION AGREEMENT

This Data Protection Agreement (the “Agreement”) is entered into by and between the New York State Education Department, with offices located at 89 Washington Avenue, Albany, New York 12234 (“NYSED”) and the Office of Mental Health, and its partner the Research Foundation for Mental Hygiene with offices at 44 Holland Ave, 8th Floor, Albany, New York 12229 (“Contractor”).

WHEREAS, NYSED is a state educational agency authorized to collect and maintain student educational records and to receive information from local educational agencies consistent with applicable state and federal laws including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”), as authorized by 20 USC § 1232g(b) and 34 CFR Part 99; and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (“WIOA”), 34 CFR 361.38 (d); and New York Education Law § 2-d; and

WHEREAS, NYSED’s Office of Adult, Career and Continuing Education Services - Vocational Rehabilitation (“ACCES-VR”) has statewide administrative responsibilities for adult education, GED testing, vocational rehabilitation, independent living and proprietary schools, including administering a vocational rehabilitation program and providing and/or facilitating services for individuals who are Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) beneficiaries; and

WHEREAS, the Ticket to Work (TTW) and Self-Sufficiency Program (Ticket to Work program) administered through the Social Security Administration (SSA) is a program for people with disabilities who receive benefits under the Social Security Administration's (SSA) Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) program based on disability.

WHEREAS, 20 CFR Section 411.585 allows NYSED and Contractor to serve the same individual; and

WHEREAS, NYSED has determined that it would be beneficial to form this cooperative agreement with Contractor to provide employment services under the SSA Ticket to Work Program; and

WHEREAS, NYSED has requested that Contractor work cooperatively with NYSED to provide employment services under the SSA TTW Program pursuant to the terms and conditions set forth herein; and

WHEREAS, in assisting NYSED to provide such services, Contractor requires access to certain data that includes personally identifiable student information as defined in 34 CFR §99.3 (the “Confidential Information”); and
WHEREAS, the purpose of this Agreement is to document the terms under which NYSED is authorized to provide the Contractor with such access to Confidential Information; and

NOW THEREFORE, in consideration of the promises and the mutual covenants set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Data Confidentiality Requirements.
   a. NYSED will designate a contact person to work with the Contractor to provide appropriate data for the project, as outlined in the “Work Plan,” attached hereto as Exhibit “A”.
   b. The list of data to be provided by NYSED to the Contractor pursuant to this Agreement (the “Data”), including any Confidential Information, is set forth on the attached Exhibit “B”. The list of Data provided may be amended upon mutual agreement of both parties, as evidenced in a signed writing, upon a determination by NYSED that additional data are necessary for the project and the work set forth herein.
   c. The Contractor will comply with the requirements outlined below and in the Data Security and Privacy Plan”, attached hereto as Exhibit “C”.
   d. Access to the Data shall be granted only to Contractor, authorized employees of Contractor, or other authorized persons working directly with and under the control of the Contractor on work related solely to the activities set forth herein. Contractor will provide a list of all individuals that will be granted access to the Confidential Information to NYSED prior to being provided the Confidential Information or being granted access.
   e. Except as otherwise provided in this Agreement, the Contractor agrees that the individuals with access to the Confidential Information will not disclose any Data that could reasonably be used to identify a particular individual. For purposes of this Agreement, disclosure shall include releasing individual record data, or aggregated data that has less than five (5) data elements per cell, or for which the data elements per cell comprise 100% of the subject population.
   f. The Contractor must obtain written assurances from the any subcontractor, and/or other persons who have access to the Data that they will abide by the confidentiality and privacy provisions of this Agreement and all appendices. If any such person discontinues his or her association with the subcontractor, Contractor shall notify NYSED in writing within 15 days of such occurrence and include a certification that the exiting person will no longer have access to the Data and will not disclose any information that could reasonably be used to identify an individual person, in violation of this Agreement. Contractor must also provide NYSED with the names of any new subcontractor that will have access to Confidential Information.

2. Deliverables. Contractor shall assist and work cooperatively with NYSED with the activities as more specifically described in the Workplan and provide the deliverables set forth therein which shall be delivered to NYSED as follows:
a. Deliverable 1: Contractor shall provide NYSED with an annual report of all milestone payments received by the Research Foundation - OMH from the Social Security Administration under the Ticket to Work Program as a result of assigning the Ticket to a participant after ACCES-VR case closure under the Partnership Plus option.
   i. Research Foundation – OMH shall provide NYSED with an annual report of all outcome payments received by the Research Foundation OMH from the Social Security Administration under the Ticket to Work Program as a result of assigning the Ticket to a participant after ACCES-VR case closure under the Partnership Plus option. OMH will provide to NYSED, a report outlining data on shared clients on a schedule as mutually agreed upon.

3. Compliance with Data Security and Privacy.
   a. Consistent with FERPA, NYSED may disclose personally identifiable information from students’ educational records to its authorized representative without written consent for use in connection with an audit or evaluation of federal or state supported education programs as permitted by 34 CFR §99.35(a)(2)(i).
   b. NYSED hereby designates the Contractor as its authorized representatives for the purposes of disclosing the Confidential Information for use in auditing and evaluating a federal or state supported education program as permitted by 34 CFR §99.35(a)(3).
   c. Confidential Information disclosed by NYSED during the term of this Agreement and any Amendment(s) to the Agreement, is the sole property of NYSED. By disclosing Confidential Information to Contractor, NYSED is in no way assigning ownership of the Confidential Information to Contractor.
   d. The Confidential Information disclosed by NYSED during the term of this Agreement may only be used for the purposes of facilitating the work which is necessary for the audit and evaluation of a federal or state supported education program. The Confidential Information cannot be used by Contractor for any purpose other than the project contemplated under this Agreement, nor may Contractor release or otherwise disclose Confidential Information to any third party. Contractor agrees that the Confidential Information is protected by federal and state law and agrees to immediately notify NYSED if any Confidential Information is disclosed to an unauthorized party, either intentionally or inadvertently.
   e. In addition to the terms and conditions set forth in this Paragraph 4, Contractor hereby acknowledges and agrees that it shall at all times adhere to, and be bound by, the terms, conditions and penalties of NYSED’s “Data Security and Privacy Plan”.
   f. Contractor hereby acknowledges that pursuant to New York State Education Law §2-d, a “Parents’ Bill of Rights for Data Privacy and Security”, which includes an Attachment containing certain specific information regarding the type and use of the Confidential Information shared under this Agreement, is attached hereto as Exhibit “E”.
   g. NYSED hereby reserves the right to decline, or fail to comply with, a request for data if NYSED determines, in its sole and absolute discretion, that providing the
data requested would not be in the best interest of current or former students in New York schools or NYSED.

4. **Term.** This Agreement takes effect upon signature by each party and will remain in effect until December 31, 2025. The parties further understand that NYSED, in its sole and absolute discretion, may cancel this Agreement at any time, upon written notice to Contractor.

5. **Destruction of Confidential Information.** When the term of this Agreement expires, Contractor shall destroy the Confidential Information according to the destruction protocols and requirements set forth in Paragraph 4 of the “Data Security and Privacy Plan.”

6. **Status of Contractor.** The parties agree that the Contractor is not an officer, employee or subdivision of NYSED and Contractor will neither falsely represent nor claim to be an officer, employee or subdivision of NYSED nor make any claim, demand or application to or for any right based on any different status.

7. **Indemnification.** The Contractor shall indemnify and hold harmless NYSED and the State of New York, and their officers and employees, from claims, suits, actions, damages and costs of every nature arising out of any violation by Contractor of the terms of this Agreement or of any State or federal law or regulation pertaining to the confidentiality of the Confidential Information.

8. **Enforceable Agreement.** This Agreement is, upon signature of the parties, a legally enforceable contract, and is intended to be the final, complete and exclusive expression of all terms of the parties’ agreement relating to disclosure or use of the Confidential Information by the Contractor in the course of the project referenced above.

9. **Non-Assignment.** This Agreement and all rights and obligations hereunder shall not be assigned (whether through merger, consolidation, operation of law, or otherwise) without the prior written consent of the other party. Any and all assignments made without such prior consent shall be null and void.

10. **Amendments.** This Agreement shall only be modified in a writing signed by each of the parties.

11. **Choice of Law and Forum Selection.** The parties agree that this Agreement shall be governed by the laws of the State of New York. Any disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must be heard in a court of competent jurisdiction of the State of New York. The parties hereto consent to the sole and exclusive jurisdiction of the state and federal courts sitting in the County of Albany, State of New York.

12. **Counterparts.** This Agreement may be signed in multiple originals, which together will constitute one fully executed Agreement.
IN WITNESS WHEREOF, the parties hereto have each duly executed this Agreement as of the day and year first written above.

NEW YORK STATE EDUCATION DEPARTMENT

By: [Signature]
Name: Elizabeth R. Berlin
Title: Executive Deputy Commissioner
Date: 8/10/18

CONTRACTOR:

The Office of Mental Health

By: [Signature]
Name: Christopher Tavella
Title: Executive Deputy Commissioner
Date: 9/4/18

The Research Foundation for Mental Hygiene at the Office of Mental Health

By: [Signature]
Name: Robert F. Burke
Title: Managing Director
Date: 9/10/16
EXHIBIT “A”
Work Plan

The Ticket to Work (TTW) and Self-Sufficiency Program (Ticket to Work program) administered through the Social Security Administration is a program for people with disabilities who receive benefits under the Social Security Administration’s (SSA) Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) program based on disability. It is a voluntary program for people who are ages 18 through 64 and interested in going to work. The TTW program provides access to the services and supports necessary to obtain, maintain and advance in employment. It is aimed at allowing individuals with disabilities to be more financially independent through earnings.

1. **Partnership Plus.** Partnership Plus (20 CFR Section 411.585) allows ACCES-VR and the Research Foundation - OMH for Mental Hygiene Administrative Employment Network (hereinafter referred to as "Research Foundation - OMH") to form this cooperative agreement to provide employment services under the SSA Ticket to Work Program. Under this agreement, an individual who has a Ticket to Work may receive vocational rehabilitation (VR) services through ACCES-VR to meet his or her intensive up-front service needs. Upon closure of the VR case, ACCES-VR will facilitate assignment of the Ticket to the Research Foundation - OMH to enable the individual to receive ongoing services and supports. These ongoing services and supports may help the individual to maintain the job, advance in the job or build skills in order to increase earnings. Thus, for the purposes of Ticket assignment and TTW payments, a ticket holder can be served by ACCES-VR and the Research Foundation - OMH, although the Ticket assignment must be sequential, starting with ACCES-VR followed by assignment to the Research Foundation - OMH.

2. **Purpose.** The purpose of this agreement is to continue the Partnership Plus model in New York State that:

   (a) Establishes effective procedures for the reciprocal referrals of SSI/SSDI beneficiaries between ACCES-VR and the RFMH which will assist individuals with disabilities to secure quality employment services;

   (b) Builds on and strengthens the existing infrastructure and cooperative partnerships among ACCES-VR and the State agencies, one-stop centers, community rehabilitation providers, independent living programs, and other community resources committed to the employment of individuals with disabilities to maximize employment, economic self-sufficiency, independence and inclusion through the Ticket to Work Program;

   (c) Assures that individuals who participate in the TTW program are provided with information and support services to assist them in exercising informed choice throughout the process of receiving employment services from all involved parties to this agreement and their respective network of providers, consistent with section 102(d) of the Rehabilitation Act and the Ticket to Work and Work Incentives Improvement Act of 1999;
(d) Engages in a cross-systems assessment of each individual's vocational rehabilitation and employment service needs in order to assure that Ticket to Work assignment options are based on each individual's needs relative to achieving competitive employment consistent with their unique strengths, abilities, capabilities, interests and informed choice;

(e) Expands service options and the overall capacity of New York State's workforce investment activities and vocational rehabilitation services to enable individuals with disabilities to achieve employment outcomes, decreasing reliance on public benefits while increasing their personal economic assets and resources; and,

(f) Maximizes the overall attainment of TTW revenue received from SSA collectively available to New York State through the Research Foundation - OMH under the TTW EN Program and ACCES-VR under the Cost Reimbursement Program in an equitable way commensurate to the respective actual service expenditures to beneficiaries. This will permit the recovery of costs incurred in service delivery and thereby help to sustain and expand the overall service capacity of the cooperative partnership.

3. ACCES-VR Roles and Responsibilities ACCES-VR shall:

(a) Inform ACCES-VR applicants and eligible individuals who are SSI/SSDI beneficiaries about TTW Program;

(b) Provide information about resources where VR eligible individuals can receive a complete benefits analysis including long-term work incentives management if needed;

(c) Review the results of any benefits analysis with the eligible individual and discuss options for using available work incentives, including the SSA Section 301 (Continued Payment Under a Vocational Rehabilitation Program) provision, the Plan to Achieve Self-Support (PASS), Expedited Reinstatement of Benefits, Partnerships Plus and any other available options that need to be considered in order to achieve the employment goal identified in the Individualized Plan for Employment (IPE);

(d) Inform all SSDI/SSI beneficiaries of the benefits of having Continuing Disability Review (CDR) Protection while they are working with ACCES-VR and the Ticket assignment is in use-SVR;

(e) Maintain a TTW Liaison who will coordinate Ticket assignment issues on behalf of Ticket holder with the Research Foundation - OMH;

(f) Prior to VR case closure, provide the Ticket holder with information regarding the potential advantages of assigning the Ticket to a community provider of the Research Foundation - OMH after VR services have been completed. ACCES-VR will inform individuals about the Partnership Plus option available to beneficiaries prior to VR case closure and highlight the assistance available to secure ongoing supports, job retention and career advancement services. ACCES-VR will make a formal referral in writing as appropriate, in accordance with the applicable law and policy, based on the informed choice of the individual; and,

(g) Guide individuals in making a specific choice to assign their Ticket to the Research Foundation - OMH network of providers to ensure that the Research
Foundation - OMH maximizes the TTW reimbursements for milestones/outcomes subsequent to VR cost reimbursement.

Note: A TTW that is assigned to the Research Foundation - OMH prior to the development of the Individualized Plan for Employment (IPE) under ACCES-VR is considered a comparable benefit. For VR services to be provided under an ACCES-VR IPE, the person must un-assign the Ticket from the Research Foundation - OMH in order to have the Ticket considered in-use SVR upon development of the IPE. At the conclusion of ACCES-VR services, the Ticket can be assigned or re-assigned to the Research Foundation - OMH.

4. Roles and Responsibilities of the Research Foundation - OMH. The Research Foundation - OMH, directly or through its network of community providers, shall:
   (a) Ensure, upon referral to ACCES-VR, that the Ticket has been taken out of assignment with the Research Foundation - OMH so that it is available to be placed In Use- SVR with ACCES-VR upon implementation of the IPE;
   (b) Offer the beneficiary, subsequent to ACCES-VR case closure, services under an Individual Work Plan, which may include ongoing support and post-employment services to retain and advance in employment, increase work hours and earnings, manage benefits, avoid "overpayments" and sustain necessary well-being/health care, housing and transportation supports that are critical to maintaining employment: and,
   (c) Offer the beneficiary, support in maintaining section 301 protection, according to section DI 14505.010 of SSA's Program Operations Manual System 9POMS) to ensure they receive the benefits of being enrolled in any of the State recognized rehabilitation programs.

Note: If the Ticket is assigned to the Research Foundation - OMH through an Individual Work Plan prior to ACCES-VR involvement and Ticket to Work phase II outcome payments have been secured by the Research Foundation - OMH, then the beneficiary and the Research Foundation - OMH community provider have determined that employment can be attained exclusively through the resources of the Research Foundation - OMH without the provision of ACCES-VR services.

5. Joint Roles and Responsibilities. The Research Foundation - OMH and ACCES-VR are jointly committed to the following:
   (a) ACCES-VR and the Research Foundation - OMH, together with all community providers under the auspices of the Research Foundation - OMH, will assure that individuals participating in these programs have exercised informed consent for the release of information:
   (b) The Research Foundation - OMH community provider and the local ACCES-VR office will work cooperatively with each individual to determine the rehabilitation needs and how to best guide the individual related to Ticket assignment consistent with the services required by that individual to secure employment:
   (c) For individuals who are SSI and/or SSDI participants, the local community provider, acting under the auspices of the Research Foundation - OMH, and the
local ACCES-VR Office will work cooperatively with the beneficiary to determine the best service options for the SSA beneficiary under an Individualized Plan for Employment (IPE) or an Individual Work Plan (IWP);

(d) Prior to Ticket assignment, the local community provider, acting under the auspices of the Research Foundation - OMH, and the ACCES-VR office will follow a uniform process for advising beneficiaries on Ticket assignment to either the local community provider, Research Foundation - OMH or ACCES-VR, under the Partnership Plus option. This will be based on the capacity of the local community provider and ACCES-VR office to support the provision of the full range of services to the SSI/SSDI beneficiary which may be necessary to assist the individual in achieving and sustaining an employment outcome at earning levels above substantial gainful activity (SGA);

(e) ACCES-VR and the Research Foundation - OMH community providers can jointly deliver services through the ACCES-VR IPE until the individual completes VR services after a minimum of 90 days of employment. During this time period, the TTW will be In Use – SVR.

(f) ACCES-VR and the Research Foundation - OMH agree to coordinate the collection and sharing of employment-related data, including personal demographic information, Ticket status, types of employment services, service plans, and job and wage information.
EXHIBIT “B”
Data Elements

For Ticket to Work Partnership Plus collaboration, ACCES-VR will provide the following information through a weekly data exchange with RFHM:

- Status 1: All current ACCES-VR applicants, including Last Name, First Name, full Social Security Number, and Date of Birth. All ACCES-VR Participants who are determined eligible.
- Status 2: All ACCES-VR participants who have an IPE (Statuses 12, 14, 16, 18).
- Status 3: All ACCES-VR Participants who have exited the VR program and no longer receiving VR services and the corresponding closure status including, but not limited to Status 26, 28 and 30.

ACCES-VR Data Definitions for RFMH Promise Project

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<td>Status 12 Date</td>
<td>Date IPE Finalized</td>
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<td>Case Service Code, including Pre-Employment Transition Services for Students</td>
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EXHIBIT “C”

DATA SECURITY AND PRIVACY PLAN

1. The individually identifiable data provided to or stored by the Contractor pursuant to this Data Protection Agreement are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.

2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.

3. The Contractor's security measures must also include:

   a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;

   b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls; or in a “cloud” that serves as an extension of the Contractor’s data center provided such “cloud” is FedRAMP compliant.

   c. Access to computer applications and Data are managed through appropriate userID/password procedures;

   d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor’s security practices if NYSED feels it is necessary;

   e. That Contractor have a disaster recovery plan that is acceptable to the State;

   f. Satisfactory power and fiber infrastructure provisions; and

   g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.

4. The Data must be returned to NYSED or securely destroyed, at the sole discretion of NYSED, upon termination or expiration of this Agreement or at such point that the Data
are no longer needed for either the purpose(s) referenced in this Agreement or for the purposes of auditing and/or litigation. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.

5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:

   a. 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;
   b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
   c. not use the education records for any other purposes than those explicitly authorized in its contract;
   d. except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any 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 party provides a notice of the disclosure to the department, 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;
   e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
   f. use encryption technology consistent with Education Law §2-d and any implementing regulations.

6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.

7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED’s
express prior approval.

8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.

9. If applicable, hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.

    a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.

    b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.

    c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d(6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.

    d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State’s receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.
EXHIBIT “D”

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 and 3012-d (“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. What are the essential parents’ rights under the Family Educational Rights and Privacy Act (FERPA) relating to personally identifiable information in their child’s student records?

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 would need to establish and implement a means to verify a parent’s identity and right of access to records before processing a request for records to the school or school district. Therefore, requests to access student records will be most efficiently managed at the school or school district level.

Parents’ rights under FERPA include:

1. The right to inspect and review the student’s education records within 45 days after the day the school or school district receives a request for access.
2. The right to request amendment of the student’s education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA. Complete student records are maintained by schools and school districts and not at NYSED, which is the secondary repository of data, and NYSED make amendments to school or school district records. Schools and school districts are in the best position to make corrections to students’ education records.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student’s education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the school or school district with legitimate educational interests; (ii) officials of another school for purposes of enrollment or transfer; (iii) third party contractors providing services to, or performing functions for an educational agency; (iv) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (iv) (v) organizations conducting studies for or on behalf of educational agencies) and (vi) the public where the school or school district has designated certain student data as “directory information” (described below). The attached FERPA Model Notification of Rights more fully describes the exceptions to the consent requirement under FERPA).

4. Where a school or school district has a policy of releasing “directory information” from student records, the parent has a right to refuse to let the school or school district designate any all of such information as directory information. Directory information, as defined in federal regulations, includes: the student’s name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received and the most recent educational agency or institution attended. Where disclosure without consent is otherwise authorized under FERPA, however, a parent’s refusal to permit disclosure of directory information does not prevent disclosure pursuant to such separate authorization.

5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA.

B. What are parents’ rights under the Personal Privacy Protection Law (PPPL), Article 6-A of the Public Officers Law relating to records held by State agencies? The PPPL (Public Officers Law §§91-99) applies to all records of State agencies and is not specific to student records or to parents. It does not apply to school districts or other local educational agencies. It imposes duties on State agencies to have procedures in place to protect from disclosure of “personal information,” defined as information which because of a name, number, symbol, mark or other identifier, can be used to identify a “data subject”
(in this case the student or the student’s parent). Like FERPA, the PPPL confers a right on the data subject (student or the student’s parent) to access to State agency records relating to them and requires State agencies to have procedures for correction or amendment of records.

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.

C. 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?

- 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;
  - 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 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 attending or seeking to enroll in an educational agency, and the term “personally identifiable information” (“PII”) uses the definition provided in FERPA. Under FERPA, personally identifiable information or PII includes, but is not limited to:
(a) The student’s name;
(b) The name of the student’s parent or other family members;
(c) The address of the student or student’s family;
(d) A personal identifier, such as the student’s social security number, student number, or biometric record;
(e) Other indirect identifiers, such as the student’s date of birth, place of birth, and Mother’s Maiden Name;
(f) 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
(g) 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.

3. What kind of student data is not subject to the confidentiality and security requirements of Education Law §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.

4. What are my rights under Education Law § 2-d as a parent regarding my student’s PII?

Education Law §2-d ensures that, in addition to all of the protections and rights of parents under the federal FERPA law, certain rights will also be provided under the Education Law. These rights include, but are not limited to, the following elements:

(A) A student’s PII cannot be sold or released by the educational agency for any commercial or marketing purposes.

○ PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.

○ However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.

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* Please note that NYSED does not collect certain information defined in FERPA, such as students’ social security numbers, biometric records, mother’s maiden name (unless used as the mother’s legal name).
(B) Parents have the right to inspect and review the complete contents of their child’s education record including any student data stored or maintained by an educational agency.

- This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student’s educational record.

- NYSED will develop policies for annual notification by educational agencies to parents regarding the right to request student data. Such policies will specify a reasonable time for the educational agency to comply with such requests.

- The policies will also require security measures when providing student data to parents, to ensure that only authorized individuals receive such data. A parent may be asked for information or verifications reasonably necessary to ensure that he or she is in fact the student’s parent and is authorized to receive such information pursuant to law.

(C) State and federal laws protect the confidentiality of PII, and 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.

Education Law §2-d also specifically provides certain limitations on the collection of data by educational agencies, including, but not limited to:

(A) A mandate that, except as otherwise specifically authorized by law, NYSED shall only collect PII relating to an educational purpose;

(B) NYSED may only require districts to submit PII, including data on disability status and student suspensions, where such release is required by law or otherwise authorized under FERPA and/or the New York State Personal Privacy Law; and

(C) Except as required by law or in the case of educational enrollment data, school districts shall not report to NYSED student data regarding juvenile delinquency records, criminal records, medical and health records or student biometric information.

(D) Parents may access the NYSED Student Data Elements List, a complete list of all student data elements collected by NYSED, at http://www.nysed.gov/common/nysed/files/programs/student-data-privacy/collected-data-elements.pdf, or may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234; and
(E) Parents have the right to file complaints with an educational agency about possible breaches of student data by that educational agency’s third party contractors or their employees, officers, or assignees, or with NYSED. Complaints to NYSED should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, email to CPO@mail.nysed.gov. The complaint process is under development and will be established through regulations to be proposed by NYSED’s Chief Privacy Officer, who has not yet been appointed.

- Specifically, the Commissioner of Education, after consultation with the Chief Privacy Officer, will promulgate regulations establishing procedures for the submission of complaints from parents, classroom teachers or building principals, or other staff of an educational agency, making allegations of improper disclosure of student data and/or teacher or principal APPR data by a third party contractor or its officers, employees or assignees.

- 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.

5. **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.

- 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.

6. 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 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:

- 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;
- 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.

7. 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 is authorized to investigate, visit, examine and inspect the third party
contractor's facilities and records and obtain documentation from, or require the testimony
of, 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 expeditious way possible and without
unreasonable delay; (ii) the educational agency must notify the parent in the most
expeditious 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 student data, or
teacher or principal APPR data; and preclusion from accessing any student data, or teacher
or principal APPR data, from an educational agency for a fixed period up to five years.

8. Data Security and Privacy Standards

Upon appointment, NYSED’s Chief Privacy Officer will be required to develop, with input
from experts, standards for educational agency data security and privacy policies. The
Commissioner will then promulgate regulations implementing these data security and
privacy standards.

9. No Private Right of Action

Please note that Education Law §2-d explicitly states that it does not create a private right
of action against NYSED or any other educational agency, such as a school, school
district or BOCES.
ATTACHMENT

Model Notification of Rights under FERPA for Elementary and Secondary Schools

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student’s education records within 45 days after the day the [Name of school ("School")]] receives a request for access.

   Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student’s education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA.

   Parents or eligible students who wish to ask the [School] to amend a record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

   One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official
has a legitimate educational 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 officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student’s enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

[Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

FERPA permits the disclosure of PII from students’ education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in §99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, §99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student –

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in §99.31(a)(1)(i)(B)(I) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))

- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student’s enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))
• To authorized representatives of the U.S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, 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 the school has designated as “directory information” under §99.37. (§99.31(a)(11))
Exhibit “E”
ATTACHMENT TO PARENTS’ BILL OF RIGHTS
FOR CONTRACTS INVOLVING DISCLOSURE OF
CERTAIN PERSONALLY IDENTIFIABLE INFORMATION

Education Law §2-d, added by Ch. 56 of the Laws of 2014, requires that a Parents’ Bill of Rights be attached to every contract with a third-party contractor (as defined in the law) which involves the disclosure of personally identifiable information (PII) derived from student education records (“Student Data”), or certain teacher/principal information regarding annual professional performance evaluations that is confidential pursuant to Education Law §§ 3012-c and 3012-d (“APPR Data”). Each such Contract must include this completed Attachment to provide specific information about the use of such data by the Contractor.

1. Specify whether this Contract involves disclosure to the Contractor of Student Data, APPR Data, or both.

Contractor will receive information on individuals served by ACCES-VR, both students and adults, as specified in Exhibit B Data Elements that specifies their status and services received through ACCES-VR only.

2. Describe the exclusive purposes for which the Student Data or APPR Data will be used in the performance of this contract.

The Data Elements as described in Exhibit B are those required for the successful administration of two programs. First, through the Social Security Administration’s (SSA) Ticket to Work Program’s partnership plus option, to ensure that beneficiaries of these supports (students and adults) are afforded the full array of employment supports that are available in New York State. Second through the U.S. Department of Education’s Office of Special Education Programs PROMISE initiative for a specific purpose of conducting research on promoting opportunities for youth receiving supplemental security income under SSA to participate in early career development services.

3. Identify any subcontractors or other persons/entities with whom the Contractor will share the Student Data or APPR in the performance of this Contract, and describe how the Contractor will ensure that such persons/entities will abide by the data protection and security requirements of the Contract.

Cornell University Yang-Tan Institute on Employment and Disability and Mathematica are the state and national entities that are authorized under the U.S. Department of Education’s Office of Special Education Program’s PROMISE grant to conduct the state and national data analysis respectively.
4. Specify the expiration date of the Contract, and explain what will happen to the Student Data or APPR Data in the Contractor’s possession, or the possession of any person/entity described in response to Paragraph 3, upon the expiration or earlier termination of the Contract.

   a. Contract expiration date: December 31, 2025

   b. Contractor will destroy any individually identifiable information that was received under this agreement.

5. State whether the Contractor will be collecting any data from or pertaining to students derived from the student’s education record, or pertaining to teachers or principals’ annual professional performance evaluation pursuant to the Contract, and explain if and how a parent, student, eligible student (a student eighteen years or older), teacher or principal may challenge the accuracy of the Student Data or APPR data that is collected.

   None - Student Data

   None - APPR Data

   *Any challenges to the accuracy of any of the Student Data or APPR Data shared pursuant to this Contract should be addressed to the school, educational agency or entity which produced, generated or otherwise created such data.*

6. Describe where the Student Data or APPR Data will be stored (in a manner that does not jeopardize data security), and the security protections taken to ensure that the data will be protected, including whether such data will be encrypted.

Data Received from ACCES-VR comes encrypted to the Office of Mental Health (OMH) via a secure file. OMH utilizes an automated batch process to run, find, decrypt data so it can be stored on the secure OMH warehouse server. The server files are periodically deleted by ITS controlled process. Access to this warehouse server is restricted through a Request For Access (RFA) or ITSM2 Request for Access process. Currently, the original files are archived on this server. OMH then utilizes scripts processes to ensure that ACCES-VR clients are not being sent for TTW assignment until the case is closed.