

Padlet



Educational
Technology Service
Genesee Valley
Wayne-Finger Lakes

CONTRACT ADDENDUM

Protection of Student Personally Identifiable Information

1. Applicability of This Addendum

The Wayne-Finger Lakes BOCES/EduTech and Wallwisher, Inc (d/b/a Padlet) (“Vendor”) are parties to a contract dated 28 February 2024 (“the underlying contract”) governing the terms under which BOCES accesses, and Vendor provides, Padlet (“Product”). Wayne-Finger Lakes BOCES/EduTech use of the Product results in Vendor receiving student personally identifiable information as defined in New York Education Law Section 2-d and this Addendum. The terms of this Addendum shall amend and modify the underlying contract and shall have precedence over terms set forth in the underlying contract and any online Terms of Use or Service published by Vendor.

2. Definitions

- 2.1. “Protected Information”, as applied to student data, means “personally identifiable information” as defined in 34 CFR Section 99.3 implementing the Family Educational Rights and Privacy Act (FERPA) where that information is received by Vendor from BOCES or is created by the Vendor’s product or service in the course of being used by BOCES.
- 2.2. “Vendor” means Wallwisher, Inc (d/b/a Padlet)
- 2.3. “Educational Agency” means a school BOCES, board of cooperative educational services, school, or the New York State Education Department; and for purposes of this Contract specifically includes Wayne-Finger Lakes BOCES/EduTech.
- 2.4. “BOCES” means the Wayne-Finger Lakes BOCES/EduTech.
- 2.5. “Parent” means a parent, legal guardian, or person in parental relation to a student.
- 2.6. “Student” means any person attending or seeking to enroll in an educational agency.
- 2.7. “Eligible Student” means a student eighteen years or older.
- 2.8. “Assignee” and “Subcontractor” shall each mean any person or entity that receives, stores, or processes Protected Information covered by this Contract from Vendor for the purpose of enabling or assisting Vendor to deliver the product or services covered by this Contract.
- 2.9. “This Contract” means the underlying contract as modified by this Addendum.

3. Vendor Status

Vendor acknowledges that for purposes of New York State Education Law Section 2-d it is a third-party contractor, and that for purposes of any Protected Information that constitutes education records under the Family Educational Rights and Privacy Act (FERPA) it is a school official with a legitimate educational interest in the educational records.

4. Confidentiality of Protected Information

Vendor agrees that the confidentiality of Protected Information that it receives, processes, or stores will be handled in accordance with all state and federal laws that protect the confidentiality of Protected Information, and in accordance with the BOCES Policy on Data Security and Privacy, a copy of which is Attachment B to this Addendum.



5. Vendor Employee Training

Vendor agrees that any of its officers or employees, and any officers or employees of any Assignee of Vendor, who have access to Protected Information will receive training on the federal and state law governing confidentiality of such information prior to receiving access to that information.

6. No Use of Protected Information for Commercial or Marketing Purposes

Vendor warrants that Protected Information received by Vendor from BOCES or by any Assignee of Vendor, shall not be sold or used for any commercial or marketing purposes; shall not be used by Vendor or its Assignees for purposes of receiving remuneration, directly or indirectly; shall not be used by Vendor or its Assignees for advertising purposes; shall not be used by Vendor or its Assignees to develop or improve a product or service; and shall not be used by Vendor or its Assignees to market products or services to students. Notwithstanding the preceding, Vendor may aggregate and anonymize Protected Information in accordance with applicable law and use such resulting data set for its purposes.

7. Ownership and Location of Protected Information

- 7.1. Ownership of all Protected Information that is disclosed to or held by Vendor shall remain with BOCES. Vendor shall acquire no ownership interest in education records or Protected Information.
- 7.2. BOCES shall have access to the BOCES's Protected Information at all times through the term of this Contract. BOCES shall have the right to import or export Protected Information in piecemeal or in its entirety at their discretion, without interference from Vendor.
- 7.3. Vendor is prohibited from data mining, cross tabulating, and monitoring data usage and access by BOCES or its authorized users, or performing any other data analytics other than those required to provide the Product to BOCES. Vendor is allowed to perform industry standard back-ups of Protected Information. Documentation of back-up must be provided to BOCES upon request.
- 7.4. All Protected Information shall remain in the continental United States (CONUS) or Canada. Any Protected Information stored, or acted upon, must be located solely in data centers in CONUS or Canada. Services which directly or indirectly access Protected Information may only be performed from locations within CONUS or Canada.

8. Purpose for Sharing Protected Information

The exclusive purpose for which Vendor is being provided access to Protected Information is to provide the product or services that are the subject of this Contract to Wayne-Finger Lakes BOCES/EduTech.

9. Downstream Protections

Vendor agrees that, in the event that Vendor subcontracts with or otherwise engages another entity in order to fulfill its obligations under this Contract, including the purchase, lease, or sharing of server space owned by another entity, that entity shall be deemed to be an "Assignee" of Vendor for purposes of Education Law Section 2-d, and Vendor will only share Protected Information with such entities if those entities are contractually bound to observe the same obligations to maintain the privacy and security of Protected Information as are required of Vendor under this Contract and all applicable New York State and federal laws.



10. Protected Information and Contract Termination

- 10.1. The expiration date of this Contract is defined by the underlying contract.
- 10.2. Upon expiration of this Contract without a successor agreement in place, Vendor shall assist BOCES in exporting all Protected Information previously received from, or then owned by, BOCES.
- 10.3. Vendor shall thereafter securely delete and overwrite any and all Protected Information remaining in the possession of Vendor or its assignees or subcontractors (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies of shared data) as well as any and all Protected Information maintained on behalf of Vendor in secure data center facilities.
- 10.4. Vendor shall ensure that no copy, summary or extract of the Protected Information or any related work papers are retained on any storage medium whatsoever by Vendor, its subcontractors or assignees, or the afore mentioned secure data center facilities.
- 10.5. To the extent that Vendor and/or its subcontractors or assignees may continue to be in possession of any de-identified data (data that has had all direct and indirect identifiers removed) derived from Protected Information, they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.
- 10.6. Upon request, Vendor and/or its subcontractors or assignees will provide a certification to BOCES from an appropriate officer that the requirements of this paragraph have been satisfied in full.

11. Data Subject Request to Amend Protected Information

- 11.1. In the event that a parent, student, or eligible student wishes to challenge the accuracy of Protected Information that qualifies as student data for purposes of Education Law Section 2-d, that challenge shall be processed through the procedures provided by the BOCES for amendment of education records under the Family Educational Rights and Privacy Act (FERPA).
- 11.2. Vendor will cooperate with BOCES in retrieving and revising Protected Information, but shall not be responsible for responding directly to the data subject.

12. Vendor Data Security and Privacy Plan

- 12.1. Vendor agrees that for the life of this Contract the Vendor will maintain the administrative, technical, and physical safeguards described in the Data Security and Privacy Plan set forth in Attachment C to this Contract and made a part of this Contract.
- 12.2. Vendor warrants that the conditions, measures, and practices described in the Vendor's Data Security and Privacy Plan:
 - 12.3. align with the NIST Cybersecurity Framework 1.0;
 - 12.4. equal industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls;
 - 12.5. outline how the Vendor will implement all state, federal, and local data security and privacy contract requirements over the life of the contract, consistent with the BOCES data security and privacy policy (Attachment B);
 - 12.6. specify the administrative, operational and technical safeguards and practices it has in place to protect Protected Information that it will receive under this Contract;
 - 12.7. demonstrate that it complies with the requirements of Section 121.3(c) of this Part;
 - 12.8. specify how officers or employees of the Vendor and its assignees who have access to Protected Information receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access;



- 12.9. specify if the Vendor will utilize sub-contractors and how it will manage those relationships and contracts to ensure Protected Information is protected;
- 12.10. specify how the Vendor will manage data security and privacy incidents that implicate Protected Information including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify BOCES; and
- 12.11. describe whether, how and when data will be returned to BOCES, transitioned to a successor contractor, at BOCES's option and direction, deleted or destroyed by the Vendor when the contract is terminated or expires.

13. Additional Vendor Responsibilities

Vendor acknowledges that under Education Law Section 2-d and related regulations it has the following obligations with respect to any Protected Information, and any failure to fulfill one of these statutory obligations shall be a breach of this Contract:

- 13.1 Vendor shall limit internal access to Protected Information to those individuals and Assignees or subcontractors that need access to provide the contracted services;
- 13.2 Vendor will not use Protected Information for any purpose other than those explicitly authorized in this Contract;
- 13.3 Vendor will not disclose any Protected Information to any party who is not an authorized representative of the Vendor using the information to carry out Vendor's obligations under this Contract or to the BOCES unless (1) Vendor has the prior written consent of the parent or eligible student to disclose the information to that party, or (ii) the disclosure is required by statute or court order, and notice of the disclosure is provided to BOCES no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order;
- 13.4 Vendor will maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Information in its custody;
- 13.5 Vendor will use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under P.L. 111-5, Section 13402(H)(2);
- 13.6 Vendor will notify the BOCES of any breach of security resulting in an unauthorized release of student data by the Vendor or its Assignees in violation of state or federal law, or of contractual obligations relating to data privacy and security in the most expedient way possible and without unreasonable delay but no more than seven calendar days after the discovery of the breach; and

Where a breach or unauthorized disclosure of Protected Information is attributed to the Vendor, the Vendor shall pay for or promptly reimburse BOCES for the full cost incurred by BOCES to send notifications required by Education Law Section 2-d provided that Vendor's aggregate liability hereunder shall not exceed the limitation of liability provisions in the Terms of Use.



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Signatures

For Wayne-Finger Lakes BOCES/EduTech

For Wallwisher, Inc (d/b/a Padlet)

Kelli Ackard

Zohab Jamal

Date

Date 28 February 2024

3/6/24



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Attachment A – Parent Bill of Rights for Data Security and Privacy

Wayne-Finger Lakes BOCES (EduTech)

Parents' Bill of Rights for Data Privacy and Security

The Wayne-Finger Lakes BOCES (EduTech) seeks to use current technology, including electronic storage, retrieval, and analysis of information about students' education experience in the BOCES, to enhance the opportunities for learning and to increase the efficiency of our BOCES and school operations.

The Wayne-Finger Lakes BOCES (EduTech) seeks to insure that parents have information about how the BOCES stores, retrieves, and uses information about students, and to meet all legal requirements for maintaining the privacy and security of protected student data and protected principal and teacher data, including Section 2-d of the New York State Education Law.

To further these goals, the Wayne-Finger Lakes BOCES (EduTech) has posted this Parents' Bill of Rights for Data Privacy and Security.

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. The procedures for exercising this right can be found in Board Policy 5500 entitled Family Educational Rights and Privacy Act (FERPA).
3. State and federal laws protect the confidentiality of personally identifiable information, 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.
4. A complete list of all student data elements collected by the State is available at <http://www.nysed.gov/data-privacy-security/student-data-inventory> and a copy may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

Revised October 2019

Signatures

For Wayne-Finger Lakes BOCES/EduTech

For Wallwisher, Inc (d/b/a Padlet)

Date

Date 28 February 2024



Attachment B – Wayne-Finger Lakes BOCES/EduTech Data Privacy and Security Policy

In accordance with New York State Education Law §2-d, the BOCES hereby implements the requirements of Commissioner’s regulations (8 NYCRR §121) and aligns its data security and privacy protocols with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or “NIST CSF”).

In this regard, every use and disclosure of personally identifiable information (PII) by the BOCES will benefit students and the BOCES (for example, improving academic achievement, empowering parents and students with information, and/or advancing efficient and effective school operations). PII will not be included in public reports or other documents.

The BOCES also complies with the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). Consistent with FERPA’s requirements, unless otherwise permitted by law or regulation, the BOCES will not release PII contained in student education records unless it has received a written consent (signed and dated) from a parent or eligible student. For more details, see Policy 6320 and any applicable administrative regulations.

In addition to the requirements of FERPA, the Individuals with Disabilities Education Act (IDEA) provides additional privacy protections for students who are receiving special education and related services. For example, pursuant to these rules, the BOCES will inform parents of children with disabilities when information is no longer needed and, except for certain permanent record information, that such information will be destroyed at the request of the parents. The BOCES will comply with all such privacy provisions to protect the confidentiality of PII at collection, storage, disclosure, and destruction stages as set forth in federal regulations 34 CFR 300.610 through 300.627.

The Board of Education values the protection of private information of individuals in accordance with applicable law and regulations. Further, the BOCES Director of Educational Technology is required to notify parents, eligible students, teachers and principals when there has been or is reasonably believed to have been a compromise of the individual's private information in compliance with the Information Security Breach and Notification Act and Board policy and New York State Education Law §2-d

a) "Private information" shall mean **personal information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted or encrypted with an encryption key that has also been acquired:

1. Social security number.
2. Driver's license number or non-driver identification card number; or
3. Account number, credit or debit card number, in combination with any required security code, access code, or password, which would permit access to an individual's financial account.
4. Any additional data as it relates to administrator or teacher evaluation (APPR)

"Private information" does not include publicly available information that is lawfully made available to the general public from federal, state or local government records.

***"Personal information" shall mean any information concerning a person, which, because of name, number, symbol, mark or other identifier, can be used to identify that person.



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- b) Personally Identifiable Information, as applied to student data, means 40 personally identifiable information as defined in section 99.3 of Title 34 of the Code of 41 Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 42 U.S.C 1232-g, and as applied to teacher and principal data, means personally 43 identifying information as such term is defined in Education Law §3012-c(10).
- c) Breach means the unauthorized access, use, or disclosure of student data 9 and/or teacher or principal data. Good faith acquisition of personal information by an employee or agent of the BOCES for the purposes of the BOCES is not a breach of the security of the system, provided that private information is not used or subject to unauthorized disclosure.

Notification Requirements

a) For any data owned or licensed by the BOCES that includes private information, the BOCES shall disclose any breach of the security of the system following discovery or notification of the breach to any resident whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization. The disclosure to affected individuals shall be made in the within 60 days, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. The BOCES shall consult with the New York State Cyber Incident Response Team and the New York State Chief Privacy Officer to determine the scope of the breach and restoration measures.

b) For any data maintained by the BOCES that includes private information that the BOCES does not own, the BOCES shall notify the owner or licensee of the information of any breach of the security of the system within 60 days following discovery, if the private information was, or is reasonably believed to have been, acquired by a person without valid authorization.

The notification requirement may be delayed if a law enforcement agency determines that such notification impedes a criminal investigation. The required notification shall be made after the law enforcement agency determines that such notification does not compromise the investigation.

Methods of Notification

The required notice shall be directly provided to the affected persons and/or their guardians by one of the following methods:

- a) Written notice;
- b) Secure electronic notice, provided that the person to whom notice is required has expressly consented to receiving the notice in electronic form; and a log of each such notification is kept by the BOCES when notifying affected persons in electronic form. However, in no case shall the BOCES require a person to consent to accepting such notice in electronic form as a condition of establishing any business relationship or engaging in any transaction;



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Regardless of the method by which notice is provided, the notice shall include contact information for the notifying BOCES and a description of the categories of information that were, or are reasonably believed to have been, acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired. This notice shall take place 60 days of the initial discovery.

In the event that any residents are to be notified, the BOCES shall notify the New York State Chief Privacy Officer, the New York State Cyber Incident Response Team, the office of Homeland Security, and New York State Chief Security Officer as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected residents.

The Superintendent or his/her designee will establish and communicate procedures for parents, eligible students, and employees to file complaints about breaches or unauthorized releases of student, teacher or principal data (as set forth in 8 NYCRR §121.4). The Superintendent is also authorized to promulgate any and all other regulations necessary and proper to implement this policy.

Data Protection Officer

The BOCES has designated a BOCES employee to serve as the BOCES's Data Protection Officer.

The Data Protection Officer is responsible for the implementation and oversight of this policy and any related procedures including those required by Education Law Section 2-d and its implementing regulations, as well as serving as the main point of contact for data privacy and security for the BOCES.

The BOCES will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule ED-1 (1988; rev. 2004).

Annual Data Privacy and Security Training

The BOCES will annually provide data privacy and security awareness training to its officers and staff with access to PII. This training will include, but not be limited to, training on the applicable laws and regulations that protect PII and how staff can comply with these laws and regulations.

References:

Education Law §2-d

8 NYCRR §121

Family Educational Rights and Privacy Act of 1974, 20 USC §1232(g), 34 CFR 99

Individuals with Disabilities Education Act (IDEA), 20 USC §1400 et seq., 34 CFR 300.610–300.627



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Attachment C – Vendor’s Data Security and Privacy Plan

The Wayne-Finger Lakes BOCES Parents Bill of Rights for Data Privacy and Security, which is included as Attachment B to this Addendum, is incorporated into and make a part of this Data Security and Privacy Plan.

PADLET DATA SECURITY AND PRIVACY PLAN

Wallwisher Inc. (d/b/a Padlet) (hereinafter the “Provider”, “We”, “our” or “us”) and Wayne-Finger Lakes BOCES (hereinafter referred to as “LEA”, “Customer”) hereby agree to make this Data Security and Privacy Plan part of their Agreement, dated January 29, 2022, for products and services pursuant to the Service Agreement.

1. **Definitions:** Terms used in this Data and Security Privacy Plan (hereinafter the “Plan”) shall have the same meanings as those found in Education Law Section 2-d(1) and the Regulations of the Commissioner of Education at Section 121.1 of Title 8 of the New York Codes, Rules and Regulations (8 NYCRR § 121.1)
1. Outline how the Provider will implement all state, federal and local data security and privacy requirements over the term of the Agreement in a manner that is consistent with the data security and privacy policies of LEA that purchase Provider’s products and/or services pursuant to the Agreement.

Padlet implements all state, federal and local security and privacy requirements by:

- (a) implementing encryption of data 'at rest' with AES 256 bit encryption and while in transit with at least TLS 1.2 encryption
- (b) tracking and logging of personnel interactions with School District data,
- (c) limiting the access to Padlet systems to authorized users only
- (d) updating the systems as new requirements are promulgated.
- (e) providing data privacy and security training for all employees who have access to School District data
- (f) conducting criminal background checks on all employees where the laws permit
- (g) requiring that all employees and contractors execute confidentiality agreements to protect School District data
- (h) committing to use personal data in line with terms of the DPA.

1. Specify the administrative, operational and technical safeguards and practices the Provider has in place to protect personally identifiable information that it receives, maintains, stores, transmits or generates pursuant to the Agreement.



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The security of your personal information is important to us. We maintain administrative, technical and physical safeguards to protect against loss, theft, unauthorized use, disclosure, or retrieval of personal information. In particular:

- We perform application security testing; penetration testing; conduct risk assessments; and monitor compliance with security policies
- We periodically review our information collection, storage and processing practices, including physical security measures, to guard against unauthorized access to systems
- We continually develop and implement features to keep your personal information safe
- When you enter any information anywhere on the Service, we encrypt the transmission of that information using secure socket layer technology (SSL/TLS) by default
- We ensure passwords are stored and transferred securely using encryption and salted hashing
- The Service is hosted on servers at a third-party facility, with whom we have a contract providing for enhanced security measures. For example, personal information is stored on a server equipped with industry standard firewalls. In addition, the hosting facility provides a 24x7 security system, video surveillance, intrusion detection systems and locked cage areas
- We operate a 'bug bounty' security program to encourage an active community of third-party security researchers to report any security bugs to us
- We restrict access to personal information to authorized Padlet employees, agents or independent contractors who need to know that information in order to process it for us, and who are subject to strict confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.
- We require sub-processors to comply with security requirements via separate data processing agreements
- We use a Password Manager to secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by Article 4.3 of NIST 800-63-3. We require 2FA authentication to be enabled for all services where applicable.

1. Describe how officers and employees of the Provider and its subcontractors and assignees who will have access to the student, teacher or principal data of the Customers have received or will receive training on the federal and state laws governing the confidentiality of such data prior to receiving access to the data.

We provide periodic security training to employees and others who operate or have access to the system. The training includes text and video tutorials on the applicable data protection laws including but not limited to FERPA, COPPA, GDPR. The employees are also asked to take a quiz to confirm their understanding.

1. Will the Provider utilize sub-contractors in the performance of the Agreement?

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If Yes, how will the Provider manage the sub-contractors to ensure personally identifiable data and information is protected?

We enter into written agreements whereby Sub-processors agree to secure and protect Student Data in a manner consistent with the terms of the Agreement. We periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with the Agreement and may discipline or terminate them if they fail to meet these obligations.

1. How will the Provider manage data privacy and security incidents that involve personally identifiable data or information?



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In the event that Personally Identifiable Data is accessed or obtained by an unauthorized individual, we shall provide notification to LEA within a reasonable amount of time of the incident.

a. We shall provide the following information:

- i.** The name and contact information of the reporting LEA subject to this section.
- ii.** A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
- iii.** If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
- iv.** Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
- v.** A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

b. At LEA's discretion, the security breach notification may also include any of the following:

- i.** Information about what the LEA has done to protect individuals whose information has been breached.
- ii.** Advice on steps that the person whose information has been breached may take to protect himself or herself.

c. As a result of a breach of the security system, we shall assist LEA with any official notifications required by State agencies.

d. At the request and with the assistance of the District, we shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above.