

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE
Agreement

1. **Purpose**

(a) This Data Sharing and Confidentiality Agreement (DSC Agreement) supplements the Education Consulting Research Analytics Group Software System, (Education Consulting Research Analytics Group) agreement (Education Consulting Research Analytics Group Agreement), to ensure that the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Agreement consists of the terms of this DSC Agreement, a copy of BOCES Parents Bill of Rights for Data Security and Privacy signed by EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, and the Supplemental Information about the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT that is required to be posted on BOCES website.

(b) To the extent that any terms contained within the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, or any terms contained within any other Agreements attached to and made a part of the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, conflict with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect. In the event that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, to the extent that any term of the TOS conflicts with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect.

2. **Definitions**

Any capitalized term used within this DSC Agreement that is also found in the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT will have the same definition as contained within this DSC Agreement.

In addition, as used in this Exhibit:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP receives from a Participating Educational Agency pursuant to the DSC Agreement.

(b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP receives from a Participating Educational Agency pursuant to the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT.

(c) “Protected Data” means Student Data and/or Teacher or Principal Data to the extent applicable to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP’ Product.

(d) “Participating Educational Agency” means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with BOCES, and as a result is licensed to use EDUCATION CONSULTING RESEARCH ANALYTICS GROUP’ Product pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

(a) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP acknowledges that the Protected Data it receives pursuant to the AGREEMENT may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and BOCES policy on data security and privacy. EDUCATION CONSULTING RESEARCH ANALYTICS GROUP acknowledges that BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, and has provided the policy to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP.

4. **Data Security and Privacy Plan**

EDUCATION CONSULTING RESEARCH ANALYTICS GROUP agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with the BOCES Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by EDUCATION CONSULTING RESEARCH ANALYTICS GROUP and is set forth below.

Additional elements of EDUCATION CONSULTING RESEARCH ANALYTICS GROUP’ Data Security and Privacy Plan are as follows:

(a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with BOCES data security and privacy policy, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will: comply with the security requirements herein for the protection of Personally Identifiable Information (PII).

- ECRA is responsible for securing all PII in accordance with federal and state law and data security measures consistent with standards and best practices within the educational

technology industry to protect student data from unauthorized disclosure or acquisition by an unauthorized person;

- ECRA is responsible for securing PII in accordance with BOCES policy on data security and privacy;
- The BOCES Parents Bill of Rights for Data Privacy is adopted and attached as an exhibit to this Master Services Agreement;
- ECRA officers, employees and assignees (sub-contractors) who access PII have been trained on the recognition and requirements for handling PII in accordance with the federal and state laws and BOCES policy governing confidentiality and data security of PII;
- ECRA acknowledges that PII shall only be used for the purposes outlined in this Agreement.
- ECRA shall de-identify data and destroy PII obtained under the Master Service Agreement when it is no longer needed for the purpose for which it was obtained;
- If the Master Services Agreement is terminated, ECRA shall de-identify data and destroy PII.
- The local school district shall establish reasonable procedures by which a parent, legal guardian, or eligible student may request the opportunity to inspect and review student data in the student's records, and seek to amend student data that are inaccurate, misleading or in violation of the student's right of privacy. ECRA shall respond in a timely manner to the local school district's request to view or correct data as necessary. In the event that a parent, legal guardian, or student contacts ECRA to review any of the student data accessed pursuant to services, ECRA shall refer the individual to the local school district, who will follow the necessary and proper procedures regarding the requested information.
- ECRA implements industry standard security to protect computer systems, network devices and data including Advanced Encryption Standard "AES" algorithm.

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT:

- ECRA limits access to education records to persons with a legitimate educational interest;
- ii. ECRA's technologies, safeguards and practices align with the NIST Cybersecurity framework;
 - iii. ECRA will not use PII for any purposes other than those explicitly authorized in the contract;
 - iv. ECRA will not disclose PII to any other person without consent of the parent or eligible student unless required to do so by statute or court order and BOCES must receive notice of the disclosure;
 - v. ECRA will maintain reasonable administrative, technology or methodology specified in guidance issued by the U.S. Secretary of Health and Human Services to implement HIPAA;
 - vi. ECRA will not sell PII nor use or disclose it for any marketing or commercial use.

(c) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will comply with all obligations set forth in BOCES "Supplemental Information about the AGREEMENT" below.

(d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows:

- ECRA officers, employees and assignees (sub-contractors) who access PII have been trained on the recognition and requirements for handling PII in accordance with the federal and state laws and BOCES policy governing confidentiality and data security of PII;

(e) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP [*check one*] _____ will X will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT. In the event that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP engages any subcontractors, assignees, or other authorized agents to perform its obligations under the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in BOCES "Supplemental Information about the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT," below.

(f) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the AGREEMENT is terminated or expires, as more fully described in BOCES "Supplemental Information about the AGREEMENT," below.

5. **Additional Statutory and Regulatory Obligations**

EDUCATION CONSULTING RESEARCH ANALYTICS GROUP acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT and the terms of this Data Sharing and Confidentiality Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors

that need access in order to assist EDUCATION CONSULTING RESEARCH ANALYTICS GROUP in fulfilling one or more of its obligations under the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of EDUCATION CONSULTING RESEARCH ANALYTICS GROUP using the information to carry out EDUCATION CONSULTING RESEARCH ANALYTICS GROUP' obligations under the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice 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;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in BOCES "Supplemental Information about the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP AGREEMENT," below.

(g) Provide notification to BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by EDUCATION CONSULTING RESEARCH ANALYTICS GROUP or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

(a) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP shall promptly notify BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after EDUCATION CONSULTING RESEARCH ANALYTICS GROUP has discovered or been informed of the breach or unauthorized release.

(b) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will provide such notification to BOCES by contacting the BOCES Data Privacy Officer, 518-862-4920.

(c) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will cooperate with

BOCES and provide as much information as possible directly to the Data Protection Officer or designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date EDUCATION CONSULTING RESEARCH ANALYTICS GROUP discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the EDUCATION CONSULTING RESEARCH ANALYTICS GROUP has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for EDUCATION CONSULTING RESEARCH ANALYTICS GROUP representatives who can assist affected individuals that may have additional questions.

(d) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP acknowledges that upon initial notification from EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, BOCES, as the educational agency with which EDUCATION CONSULTING RESEARCH ANALYTICS GROUP contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). EDUCATION CONSULTING RESEARCH ANALYTICS GROUP shall not provide this notification to the CPO directly. In the event the CPO contacts EDUCATION CONSULTING RESEARCH ANALYTICS GROUP directly or requests more information from EDUCATION CONSULTING RESEARCH ANALYTICS GROUP regarding the incident after having been initially informed of the incident by BOCES, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will promptly inform the Data Protection Officer or designees.

(e) EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will consult directly with the Data Protection Officer or designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

BY EDUCATION CONSULTING RESEARCH ANALYTICS GROUP:



Signature

Nanci Perez, Chief
Operating Officer

Title

7-28-2020

Date

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Albany-Schoharie-Schenectady-Saratoga BOCES (BOCES) is committed to protecting the privacy and security of personally identifiable information about students who attend BOCES instructional programs in accordance with applicable law, including New York State Education Law Section 2-d.

To further these goals, BOCES wishes to inform parents of the following:

(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.

(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 for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

(5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints may be directed to the NYS Chief Privacy Officer by writing to the New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be directed to the Chief Privacy Officer via email at: CPO@mail.nysed.gov.

BY EDUCATION CONSULTING RESEARCH ANALYTICS GROUP:



Signature

Nanci Perez, Chief
Operating Officer

Title

7.28.2020

Date

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Albany-Schoharie-Schenectady- Saratoga BOCES AND EDUCATION CONSULTING RESEARCH ANALYTICS GROUP

BOCES has entered into An Agreement (“AGREEMENT”) with EDUCATION CONSULTING RESEARCH ANALYTICS GROUP (“EDUCATION CONSULTING RESEARCH ANALYTICS GROUP”), which governs the availability to Participating Educational Agencies of the following Product(s):

ECRA Group, Inc. will provide the BOCES with student level data services to support the personalization of learning and to support continuous quality improvement of educational programming. ECRA will provide to the District a secure online school intelligence platform containing the following applications:

- **Strategic Dashboard:** The Strategic Dashboard app will organize and make available system level metrics and benchmarks to monitor implementation of the District’s strategic plan, and transparently communicate key performance indicators to the community. The strategic dashboard will not contain student level data.
- **School Improvement:**
The School Improvement app will provide administrators and school improvement teams access to student growth and assessment data, tools to evaluate the impact and return on investment of school improvement initiatives, individual student monitoring, Multi-Tiered Systems of Supports (MTSS), RTI interventions, and other special programming.
- **My Students:**
The My Students app will provide teachers access to student growth and assessment data at the classroom level, based on instructional rosters.
- **Personalized Learner Profile (PLP):** The PLP app provides a reporting platform for a comprehensive set of performance indicators at the individual student level to support personalized learning, individual student monitoring, and college and career readiness. Indicators may include, but are not limited to engagement, assessment, attendance, grades, extra-curricular involvement, interests, and interventions.

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, and EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used:

The exclusive purpose for which EDUCATION CONSULTING RESEARCH ANALYTICS GROUP is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. EDUCATION CONSULTING RESEARCH ANALYTICS GROUP agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, or any of EDUCATION CONSULTING RESEARCH ANALYTICS GROUP' subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the AGREEMENT (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of EDUCATION CONSULTING RESEARCH ANALYTICS GROUP under the AGREEMENT and applicable state and federal law. EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements.

Duration of AGREEMENT and Protected Data Upon Expiration:

- The AGREEMENT commences on July 28, 2020 and expires on June 30, 2024. Upon expiration of the AGREEMENT without renewal, or upon termination of the AGREEMENT prior to expiration, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will securely delete or otherwise destroy any and all Protected Data remaining in the possession of EDUCATION CONSULTING RESEARCH ANALYTICS GROUP or its assignees or subcontractors. If requested by a Participating Educational Agency, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.
- At BOCES request, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will cooperate with BOCES as necessary in order to transition Protected Data to any successor EDUCATION CONSULTING RESEARCH ANALYTICS GROUP prior to deletion.
- EDUCATION CONSULTING RESEARCH ANALYTICS GROUP agrees that neither it nor its subcontractors, assignees, or other authorized agents will retain any copy, summary or extract of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, EDUCATION CONSULTING RESEARCH ANALYTICS GROUP and/or its subcontractors, assignees, or other authorized agents will provide a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to EDUCATION CONSULTING RESEARCH ANALYTICS GROUP by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data EDUCATION CONSULTING RESEARCH ANALYTICS GROUP receives will be stored on systems maintained by EDUCATION CONSULTING RESEARCH ANALYTICS GROUP, or by a subcontractor under the direct control of EDUCATION CONSULTING RESEARCH ANALYTICS

GROUP, in a secure data center facility located within the United States. The measures that EDUCATION CONSULTING RESEARCH ANALYTICS GROUP will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: EDUCATION CONSULTING RESEARCH ANALYTICS GROUP (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.

BY EDUCATION CONSULTING RESEARCH ANALYTICS GROUP:



Signature

Nanci Perez, Chief
Operating Officer

Title

7.28.2020

Date