



**New York State Ed Law 2-d Addendum**

This Addendum (the "Addendum") is hereby incorporated into and is governed by the services agreement entered into between Mimecast North America, Inc. ("Mimecast") and Capital Region BOCES, Northeastern Regional Information Center ("Customer" or "BOCES") made effective on the date of the signed Services Order (the "General Terms").

WHEREAS, the parties wish to amend the Agreement as detailed below in exchange for good and valuable consideration, the sufficiency of which is acknowledged by both parties.

NOW, THEREFORE, this Amendment is hereby entered into by the parties as of the later signature date below.

1. Mimecast agrees that the confidentiality of Customer Data will be handled in accordance with state and federal laws in the Hosting Jurisdiction and the Parents' Bill of Rights as both may be applicable to Mimecast in its provision of Services in the Hosting Jurisdiction and in accordance with the Parents' Bill of Rights (a signed copy of which is Attachment A to this Addendum). Mimecast acknowledges that for purposes of New York State Education Law Section 2-d and the Parents' Bill of Rights, it is a third-party contractor, and that for purposes of any Customer Data that constitutes education records under the Family Education Records and Privacy Act (FERPA) it is deemed a school official with a legitimate educational interest in the educational records.

2. Mimecast agrees that any of its officers or employees, and any assignee of Mimecast who have access to personally identifiable information will receive training on the handling of sensitive data and developments in system security concepts and issues.

3. The exclusive purpose for which Mimecast is being provided access to Customer Data is to provide the Services to Customer as set forth in the General Terms and applicable Services Orders. Customer Data received by Mimecast shall not be sold or used for a commercial or marketing purpose, as defined in 8 NYCRR 121.1(c).

4. In the event that Mimecast subcontracts with or otherwise engages another entity in order to fulfill its obligations under the General Terms, including the purchase, lease, or sharing of server space owned by another entity, that entity shall be deemed to be an "assignee" of Mimecast for the sole purposes of Education Law Section 2-d, and Mimecast represents that it will only share Customer Data with such entities if those entities are contractually bound to observe the same or substantially similar obligations to maintain data privacy and security as required of Mimecast under the General Terms, including this Addendum.

5. Customer may retrieve, or "exgest" Customer Data in two ways: (i) via the administrative console at any time during the Subscription Term, at no additional charge; or (ii) by engaging Mimecast for a professional service project. The parties acknowledge that any such professional services engagement may require an extension of the Subscription Term and will incur separate professional service fees. In the absence of a professional services engagement, Customer may request that Mimecast make Customer Data available to Customer for an additional period following termination, (the length of any additional period agreed shall be at Mimecast's sole discretion) for the purposes of extraction. Any additional period needs to be agreed prior to the date of termination and may incur additional fees. Mimecast shall thereafter securely delete and overwrite any and all Customer Data remaining in the possession of Mimecast 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 Customer Data maintained on behalf of Customer in secure data center facilities. Mimecast shall ensure that no copy, summary or extract of the Customer Data or any related work papers are retained on any storage medium whatsoever by Mimecast, its subcontractors or assignees, or the aforementioned secure data center facilities. To the extent that Mimecast 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), they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.

6. In the event that a parent, student, or eligible student wishes to challenge the accuracy of Customer Data that qualifies as student data for purposes of Education Law Section 2-d, that challenge shall be processed through the

procedures provided by the student's district of enrollment for amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Mimecast will cooperate, to the extent possible given the nature of the Services, with the Customer in retrieving that information to allow Customer to revise such information as necessary. In the event that a parent, student, or eligible student contacts Mimecast directly in relation to this provision, Mimecast shall promptly notify the Customer of such request and Customer shall be responsible for responding to such parent, student, or eligible student.

7. The measures that Mimecast will take to protect the privacy and security of Customer Data while it is in the possession of Mimecast are set forth at <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/technical-organizational-measures/>. Mimecast warrants to Customer that the technical and organizational measures set forth at the aforementioned hyperlink combined with additional obligations placed on Mimecast under the General Terms, including this Addendum, meet the following minimum requirements of 8 NYCRR 121.6: (a) Mimecast outlines how it will implement all applicable state, federal, and local data security and privacy contract requirements over the life of the contract, consistent with the educational agency's data security and privacy policy; (b) Mimecast specifies the administrative, operational and technical safeguards and practices it has in place to protect personally identifiable information that it will receive under the contract; (c) Mimecast specifies how officers or employees of Mimecast and its assignees who have access to student data, or teacher or principal data receive will receive training on the applicable federal and state laws governing confidentiality of such data prior to receiving access; (d) Mimecast specifies if it will utilize sub-contractors and how it will manage those relationships and contracts to ensure personally identifiable information is protected; (e) Mimecast specifies how it will manage data security and privacy incidents that implicate personally identifiable information including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify the educational agency; (f) Mimecast describes whether, how and when data will be returned to the educational agency or, at the educational agency's option and direction, deleted or destroyed by Mimecast when the contract is terminated or expires.

8. Mimecast acknowledges that it has the following obligations with respect to Customer Data , and any failure to fulfill one of these obligations shall be deemed a breach of these General Terms:

a. limit internal access to Customer Data to those individuals that are required to access such Customer Data to provide the Services in accordance with the General Terms and applicable Services Orders;

b. not use Customer Data for any purpose other than those explicitly authorized in these General Terms;

c. not disclose any Personal Data to any other party who is not an authorized representative of Mimecast using the information to carry out Mimecast's obligations under these General Terms, unless (i) that other party has the prior written consent of the parent or eligible student, or (ii) the disclosure is required by statute or court order in accordance with Section 10.2 of the General Terms and Conditions;

d. maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Personal Data in its custody;

e. use encryption technology to protect data while at rest from unauthorized disclosure and provide the Customer with functionality to enable Customer to utilize TLS encryption on transmitted emails at Customer's option;

f. notify the Customer of any breach of security resulting in an unauthorized release of Customer Data by Mimecast or its assignees (as described herein) in violation of state or federal law, or of contractual obligations relating to data privacy and security within 72 hours of learning of such breach.

9. It is understood that Customer provides certain network support services to school districts in its service region, including support of email functions, and that Customer's incorporation of Mimecast Services into its regional support service constitutes a Customer use within the meaning of Section 3.1 of the General Terms and the users of the Services from such school districts are deemed Permitted Users for the purposes of the General Terms (including any addenda or Services Orders related thereto); provided that the Customer retains responsibility and liability for the use of the Services

by such Permitted Users in accordance with the General Terms. Nothing in the General Terms or this Addendum shall imply a direct contractual relationship between Mimecast and such school districts, nor shall Mimecast be directly liable to such school districts under the General Terms or this Addendum or in relation to the provision of the Services. Customer shall pursue any claim on behalf of a school district against Mimecast provided, however, Customer shall not be entitled to recover more than once in respect of the same claim. The Customer shall be responsible for ensuring they have the relevant permissions from the school districts with regards to such Customer Data.

10. This Addendum shall be deemed to be incorporated into and made a part of the General Terms between Mimecast and Customer. To the extent that this Addendum conflicts with or imposes greater obligations on Mimecast than the General Terms or any online terms posted by Mimecast, the terms of this Addendum shall govern.

11. Customer hereby consents to the use of the Third-Party Subcontractors to perform Services. Mimecast agrees that it has a written agreement in place with all Third-Party Subcontractors that contains obligations on the Third-Party Subcontractor that are no less onerous on the relevant Third-Party Subcontractor than the obligations on Mimecast hereunder in respect of the specific Services provided by the Third-Party Subcontractor. If Mimecast appoints a new Third-Party Subcontractor or intends to make any changes concerning the addition or replacement of the Third-Party Subcontractors, it shall provide the Customer with reasonable advance written notice. For the purposes of this Section 11, notice may be provided electronically, including but not limited to posting on the Mimecast administrative console of the Services, a notice on the Trust Center and/or in a e-newsletter sent to Customer (if Customer has subscribed to such e-newsletter via Mimecast's online preference center). For the purposes of this provision, "Third Party Subcontractor" means the third-party subcontractors listed here: <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/sub-processors/>

12. Mimecast shall notify Customer without undue delay (and in no event more than 48 hours, with periodic updates to follow as may be necessary) of a declared breach of security which has led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Data which affects the integrity, availability or confidentiality of Customer Data ("Security Breach"). In the event a Security Breach requires notification by Customer to affected individuals or relevant government agencies, the parties agree to coordinate in good faith on developing the content of any public statements or required notices.

## **Attachment A – Parents’ Bill of Rights**

The parties hereto acknowledge and agree that in the event Mimecast receives any requests or notifications related to the Parents’ Bill of Rights provided below and it is apparent from the nature of the request or notification that the Customer is the applicable “school official” of such PII without the need for independent investigation and is not otherwise prohibited by applicable law, that Mimecast will forward such requests and notifications to Customer and Customer shall be responsible for responding to such requests or notifications.

### **8635E**

#### **PARENTS’ BILL OF RIGHTS FOR STUDENT DATA PRIVACY AND SECURITY**

Capital Region BOCES, in recognition of the risk of identity theft and unwarranted invasion of privacy, affirms its commitment to safeguarding student personally identifiable information (PII) in educational records from unauthorized access or disclosure in accordance with State and Federal law. BOCES establishes the following parental bill of rights:

- Student PII will be collected and disclosed only as necessary to achieve educational purposes in accordance with State and Federal Law.
- A student's personally identifiable information cannot be sold or released for any marketing or commercial purposes by BOCES or any third party contractor. BOCES will not sell student personally identifiable information and will not release it for marketing or commercial purposes, other than directory information released by BOCES in accordance with BOCES policy;
- Parents have the right to inspect and review the complete contents of their child's education record (for more information about how to exercise this right, see 5500-R);
- State and federal laws, such as NYS Education Law §2-d and the Family Educational Rights and Privacy Act, protect the confidentiality of students’ personally identifiable information. Safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred;
- A complete list of all student data elements collected by the State Education Department is available for public review at <http://nysed.gov/data-privacy-security> or by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
- Parents have the right to have complaints about possible breaches and unauthorized disclosures of student data addressed. Complaints should be directed to the Data Protection Officer, (518) 464-5139, [DPO@neric.org](mailto:DPO@neric.org), Capital Region BOCES, 900 Watervliet-Shaker Rd., Albany NY 12205. Complaints can also be directed to the New York State Education Department online at <http://nysed.gov/data-privacy-security> by mail to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234 or by email to [privacy@mail.nysed.gov](mailto:privacy@mail.nysed.gov) or by telephone at 518-474-0937.
- Parents have the right to be notified by BOCES in accordance to applicable laws and regulations if a breach or unauthorized release of their student’s PII occurs.
- Parents can expect that educational agency workers who handle PII will receive annual training on applicable federal and state laws, regulations, educational agency’s policies and safeguards which will be in alignment with industry standards and best practices to protect PII.
- In the event that BOCES engages a third party provider to deliver student educational services, the contractor or subcontractors will be obligated to adhere to State and Federal Laws to safeguard student PII. Parents can request information about third party contractors by contacting the Data Protection Officer, (518)-464-5139,

[DPO@neric.org](mailto:DPO@neric.org), 900 Watervliet-Shaker Rd., Albany NY 12205, or can access the information on BOCES' website <https://www.capitalregionboces.org/>.

**Cross-ref:**

- 8631-Acceptable Use of Electronic Communication Resources – Employees
- 8631-Acceptable Use of Electronic Communication Resources – Non-Employees
- 8631-Acceptable Use of Electronic Communication Resources – Board Members
- 4526/4526R-Acceptable Use of Electronic Communication Resources – Students


Adopted: August 17, 2020

Signed DocuSigned by:  
*Diana E. Mata*  
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For and on behalf of Mimecast

Name Diana E. Mata

Position Senior Legal Counsel

Signed  12/7/2022

For and on behalf of Customer

Name KellyRose Yaeger

Position Data Protection Officer

