

PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND PRINCIPAL DATA

Elsevier is committed to supporting the BOCES in maintaining the privacy and security of student data and teacher and principal data and will follow all applicable laws and regulations for the handling and storage of this data.

Definitions:

As provided in Education Law Section 2-d and/or its implementing regulations, the following terms, as used in this policy, will mean:

- a) "Breach" means the unauthorized acquisition, access, use, or disclosure of student data and/or teacher or principal data by or to a person not authorized to acquire, access, use, or receive the student data and/or teacher or principal data.
- b) "Building principal" means a building principal subject to annual performance evaluation review under the provisions of Education Law Section 3012-c.
- c) "Classroom teacher" means a teacher subject to annual performance evaluation review under the provisions of Education Law Section 3012-c.
- d) "Commercial or marketing purpose" means the sale of student data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of student data for advertising purposes, or to develop, improve, or market products or services to students.
- e) "Contract or other written agreement" means a binding agreement between an educational agency and a third-party, which includes, but is not limited to, an agreement created in electronic form and signed with an electronic or digital signature or a click-wrap agreement that is used with software licenses, downloaded, and/or online applications and transactions for educational technologies and other technologies in which a user must agree to terms and conditions prior to using the product or service.
- f) "Disclose" or "disclosure" means to permit access to, or the release, transfer, or other communication of personally identifiable information by any means, including oral, written, or electronic, whether intended or unintended.
- g) "Education records" means an education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 USC Section 1232g and 34 CFR Part 99, respectively.
- h) "Educational agency" means a school district, board of cooperative educational services (BOCES), school, or the New York State Education Department (NYSED).
- i) "Eligible student" means a student who is eighteen years or older.

- j) "Encryption" means methods of rendering personally identifiable information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States Department of Health and Human Services in guidance issued under 42 USC Section 17932(h)(2).
- k) "FERPA" means the Family Educational Rights and Privacy Act and its implementing regulations, 20 USC Section 1232g and 34 CFR Part 99, respectively.
- l) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1). A copy of the NIST Cybersecurity Framework is available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.
- m) "Parent" means a parent, legal guardian, or person in parental relation to a student.
- n) "Personally identifiable information (PII)," 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, 20 USC Section 1232g, and, as applied to teacher or principal data, means personally identifying information as this term is defined in Education Law Section 3012-c(10).
- o) "Release" has the same meaning as disclosure or disclose.
- p) "Student" means any person attending or seeking to enroll in an educational agency.
- q) "Student data" means personally identifiable information from the student records of an educational agency.
- r) "Teacher or principal data" means personally identifiable information from the records of an educational agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law Sections 3012-c and 3012-d.
- s) "Third-party contractor" means any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to the educational agency, including 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. This term will include an educational partnership organization that receives student and/or teacher or principal data from a school district to carry out its responsibilities pursuant to Education Law Section 211-e and is not an educational agency, and a not-for-profit corporation or other nonprofit organization, other than an educational agency.
- t) "Unauthorized disclosure" or "unauthorized release" means any disclosure or release not permitted by federal or state statute or regulation, any lawful contract or written agreement, or that does not respond to a lawful order of a court or tribunal or other lawful order.

Data Collection Transparency and Restrictions

As part of its commitment to maintaining the privacy and security of student data and teacher and principal data, and as an educational agency under Education Law Section 2-d, the BOCES will take steps to minimize its collection, processing, and transmission of PII. Additionally, the BOCES will:

- a) Not sell PII nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.
- b) Ensure that it has provisions in its contracts with third-party contractors or in separate data sharing and confidentiality agreements that require the confidentiality of shared student data or teacher or principal data be maintained in accordance with law, regulation, and BOCES policy.

Except as required by law or in the case of educational enrollment data, the BOCES will not report to NYSED the following student data elements:

- a) Juvenile delinquency records;
- b) Criminal records;
- c) Medical and health records; and
- d) Student biometric information.

Nothing in Education Law Section 2-d or this policy should be construed as limiting the administrative use of student data or teacher or principal data by a person acting exclusively in the person's capacity as an employee of the BOCES.

Data Return/Destruction

To the extent that Elsevier stores Customer Data, following a request of the BOCES or upon the termination of this Agreement, Elsevier shall return or destroy Customer Data in its possession, except as Elsevier may be required to maintain for legal, regulatory or accounting purposes.

Incident Handling and Notification.

A. Elsevier shall have in place an incident handling procedure that is documented, tested and updated as appropriate, and which shall comply with all applicable laws. In instances where Elsevier is acting as a “data processor,” as defined by applicable law, it shall notify the data controller without undue delay after becoming aware of a personal data breach.

B. If Elsevier confirms that personal information provided by Customer has been acquired by an unauthorized person (an “Incident”), Elsevier shall ensure the integrity of any impacted systems; and

C. Without disclosing information that is protected by the attorney-client privilege or otherwise confidential, Elsevier shall:

- i. provide a reasonable summary of the circumstances surrounding such Incident to Customer; and
- ii. cooperate reasonably with Customer's requests for information regarding such Incident; and

D. Notify third parties if required by law.

Elsevier will reasonably cooperate with BOCES in an Elsevier Security Event and, upon request, promptly provide Customer with information regarding such Elsevier Security Event. Nothing contained herein shall be construed as requiring Elsevier to disclose information that is protected by the attorney-client privilege or otherwise confidential.

Termination

The obligations of this DPA shall continue and shall not terminate for as long as the Contractor or its sub-contractors retain PII or retain access to PII.

Chief Privacy Officer

The Commissioner of Education has appointed a Chief Privacy Officer who will report to the Commissioner on matters affecting privacy and the security of student data and teacher and principal data. Among other functions, the Chief Privacy Officer is authorized to provide assistance to educational agencies within the state on minimum standards and best practices associated with privacy and the security of student data and teacher and principal data.

The BOCES will comply with its obligation to report breaches or unauthorized releases of student data or teacher or principal data to the Chief Privacy Officer in accordance with Education Law Section 2-d, its implementing regulations, and this policy.

The Chief Privacy Officer has the power, among others, to:

- a) Access all records, reports, audits, reviews, documents, papers, recommendations, and other materials maintained by the BOCES that relate to student data or teacher or principal data, which includes, but is not limited to, records related to any technology product or service that will be utilized to store and/or process PII; and
- b) Based upon a review of these records, require the BOCES to act to ensure that PII is protected in accordance with laws and regulations, including but not limited to requiring the BOCES to perform a privacy impact and security risk assessment.

Data Privacy Officer

The BOCES has designated a BOCES employee to serve as the BOCES' Data Privacy Officer. The Data Privacy 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 ensure that the Data Privacy Officer has the appropriate knowledge, training, and experience to administer these functions. The Data Privacy Officer may perform these functions in addition to other job responsibilities.

BOCES Data Privacy and Security Standards

The BOCES will use the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1) ("Framework") as the standard for its data privacy and security program. The Framework is a risk-based approach to managing cybersecurity risk and is composed of three parts: the Framework Core, the Framework Implementation Tiers, and the Framework Profiles. The Framework provides a common taxonomy and mechanism for organizations to:

- a) Describe their current cybersecurity posture;
- b) Describe their target state for cybersecurity;
- c) Identify and prioritize opportunities for improvement within the context of a continuous and repeatable process;
- d) Assess progress toward the target state; and
- e) Communicate among internal and external stakeholders about cybersecurity risk.

The BOCES will protect the privacy of PII by:

- a) Ensuring that every use and disclosure of PII by the BOCES benefits students and the BOCES by considering, among other criteria, whether the use and/or disclosure will:
 - 1. Improve academic achievement;
 - 2. Empower parents and students with information; and/or
 - 3. Advance efficient and effective school operations.
- b) Not including PII in public reports or other public documents.

The BOCES affords all protections under FERPA and the Individuals with Disabilities Education Act and their implementing regulations to parents or eligible students, where applicable.

Third-Party Contractors

BOCES Responsibilities

The BOCES will ensure that whenever it enters into a contract or other written agreement with a third-party contractor under which the third-party contractor will receive student data or teacher or principal data from the BOCES, the contract or written agreement will include provisions requiring that confidentiality of shared student data or teacher or principal data be maintained in accordance with law, regulation, and BOCES policy. In addition, the BOCES will ensure that the contract or written agreement includes the third-party contractor's data privacy and security plan that has been accepted by the BOCES.

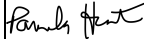
Elsevier will:


- a) Comply with relevant state, federal, and local data privacy and security contract requirements over the life of the contract;
- b) Implement industry-standard administrative, operational, and technical safeguards and practices to protect PII, in alignment with NIST 800-53 and ISO 27001 standards;
- d) Manage and limit access of BOCES data to those who support the business activities and have had appropriate training;
- e) Maintain an incident response program to support data privacy or security incidents;

Products/Services Provided by the BOCES to Other Educational Entities

The BOCES will take steps to ensure that whenever it enters into any contract or other written agreement with a third-party contractor that is intended to govern use of the third-party contractor's product or service by other educational agencies (for example, pursuant to a cooperative service agreement (CoSer) entered into with the BOCES) and where the third-party contractor will receive student data or teacher or principal data from those educational agencies, the contract or written agreement will include provisions required by Education Law Section 2-d and its implementing regulations, including but not limited to the third-party's obligations to maintain the confidentiality and security of the student data or teacher or principal data received from the educational agency.

In these circumstances, the BOCES may also enter into separate data sharing and confidentiality agreements (such as an "addendum" to an existing contract or other written agreement), which will include provisions required by Education Law Section 2-d and its implementing regulations, with certain third party-contractors to the extent needed.

EDUCATIONAL AGENCY	
Signature:	
Printed Name:	Pamela Horton
Title:	Director of Instructional Support Services
Date	11/09/2024

ELSEVIER INC.	
Signature:	 <small>Amanda Leader (Nov 12, 2024 14:22 EST)</small>
Printed Name:	Amanda Leader
Title:	SVP
Date	11/12/2024





Elsevier BOCES DPA

Final Audit Report

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