

GARDEN CITY UNION FREE SCHOOL DISTRICT

EDUCATION LAW 2-d RIDER

New York State Education Law 2-d was enacted in 2014 to address concerns relative to securing certain personally identifiable information. In order to comply with the requirements of Education Law 2-d, educational agencies and certain third-party contractors who contract with educational agencies must take certain additional steps to secure such data. These steps include enacting and complying with a Parents' "Bill of Rights" relative to protected data, ensuring that each third-party contractor has a detailed data privacy plan in place to ensure the security of such data, and that each third-party contractor sign a copy of the educational agency's Parents' Bill of Rights, thereby signifying that the third-party contractor will comply with such Parents' Bill of Rights. This Agreement is subject to the requirements of Education Law 2-d and ExploreLearning, LLC (the "Contractor") is a covered third-party contractor.

In order to comply with the mandates of Education Law 2-d, and notwithstanding any provision of the Agreement between the GARDEN CITY UNION FREE SCHOOL DISTRICT (the "District") and Contractor (in reference to Contractor Quote Q-348809 and **each existing and subsequent agreement for Contractor's subscriptions and/or services, which are incorporated herein by reference**), to the contrary, Contractor agrees as follows:

Contractor will treat "Protected Data" (as defined below) as confidential and shall protect the nature of the Protected Data by using the same degree of care, but not less than a reasonable degree of care, as the Contractor uses to protect its own confidential data, so as to prevent the unauthorized dissemination or publication of Protected Data to third parties. Contractor shall not disclose Protected Data other than to those of its employees or agents who have a need to know such Protected Data under this Agreement. Contractor shall not use Protected Data for any other purposes than those explicitly provided for in this Agreement. All Protected Data shall remain the property of the disclosing party. As more fully discussed below, Contractor shall have in place sufficient internal controls to ensure that the District's Protected Data is safeguarded in accordance with all applicable laws and regulations, including, but not limited to, the Children's Internet Protection Act ("CIPA"), the Family Educational Rights and Privacy Act ("FERPA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and Part 121 of the Regulations of the Commissioner of Education, as it may be amended from time-to-time if applicable.

"Protected Data" includes any information rendered confidential by applicable State or federal law, including, but not limited to student data, student demographics, scheduling, attendance, grades, health and discipline tracking, and all other data reasonably considered to be sensitive or confidential data by the District. Protected Data also includes any information protected under Education Law 2-d including, but not limited to:

"Personally identifiable information" from student records of the District as that term is defined in § 99.3 of FERPA,

-AND-

"Personally identifiable information" from the records of the District 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 §§3012-c and 3012-d. Contractor and/or any subcontractor, affiliate, or entity that may receive, collect, store, record or display any Protected Data shall comply with New York State Education Law § 2-d.

Notwithstanding this provision, Contractor may use de-identified data for purposes of research, the improvement of Contractor's products and services, and/or the development of new products and services. In no event shall Contractor re-identify or attempt to re-identify any de-identified data or use de-identified data in combination with other data elements or de-identified data in the possession of a third-party affiliate, thereby posing risks of re-identification.

As applicable, Contractor agrees to comply with District policy(ies) on data security and privacy. Contractor shall promptly reimburse the District for the full cost of notifying a parent, eligible student, teacher, or principal of an unauthorized release of

Protected Data by Contractor, its subcontractors, and/or assignees. In the event this Agreement expires, is not renewed or is terminated, Contractor shall destroy all of the District's data unless otherwise provided, including any and all Protected Data, in its possession by secure transmission.

Data Security and Privacy Plan

Contractor and/or any subcontractor, affiliate, or entity that may receive, collect, store, record or display any of the District's Protected Data, shall maintain a Data Security and Privacy Plan which includes the following elements:

1. Specifies the administrative, operational and technical safeguards and practices in place to protect personally identifiable information that Contractor will receive under the contract;
2. Demonstrates Contractor's compliance with the requirements of Section 121.3 of Part 121;
3. Specifies how officers or employees of the Contractor and its assignees who have access to student data, or teacher or principal data receive or will receive training on the applicable federal and state laws governing confidentiality of such data prior to receiving access;
4. Specifies how Contractor will utilize sub-contractors and how it will manage those relationships and contracts to ensure personally identifiable information is protected;
5. Specifies how Contractor 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;
6. Specifies whether Protected Data will be returned to the District, transitioned to a successor contractor, at the District's option and direction, deleted or destroyed by the Contractor when the contract is terminated or expires.

Pursuant to the Plan Contractor will:

1. Have adopted technologies, safeguards and practices that align with the NIST Cybersecurity Framework referred to in Part 121.5(a);
2. Comply with the data security and privacy policy of the District; Education Law§ 2-d; and Part 121;
3. Have limited internal access to personally identifiable information to only those employees or sub-contractors that need access to provide the contracted services;
4. Have prohibited the use of personally identifiable information for any purpose not explicitly authorized in this contract;
5. Have prohibited the disclosure of personally identifiable information to any other party without the prior written consent of the parent or eligible student:
 - a. except for authorized representatives such as a subcontractor or assignee to the extent they are carrying out the contract and in compliance with applicable state and federal law, regulations and its contract with the educational agency; or
 - b. unless required by statute or court order and Contractor has provided a notice of 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 disclosure is expressly prohibited by the statute or court order.

6. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in our custody;
7. Use encryption to protect personally identifiable information in its custody while in motion or at rest; and
8. Not sell personally identifiable information 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.

In the event Contractor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the third-party contractor by applicable state and federal law and contract shall apply to the subcontractor.

Where a parent or eligible student requests a service or product from a third-party contractor and provides express consent to the use or disclosure of personally identifiable information by the third-party contractor for purposes of providing the requested product or service, such use by the third-party contractor shall not be deemed a marketing or commercial purpose prohibited by the Plan.

Contractor's signature below shall also constitute an acknowledgement, acceptance, and signature of the District's Parent Bill of Rights.

ExploreLearning, LLC:

BY: _____ **DATED:** _____

Return to:

Lauren Maguire
Director of Information Technology
Garden City Union Free School District
56 Cathedral Avenue
Garden City, NY 11530
maquirel@gcufsd.net

DATA PRIVACY AND SECURITY PLAN

CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN IS ATTACHED HERETO AND INCORPORATED HEREIN.

Data Security and Privacy Plan

As per the Agreement between the undersigned and the Garden City Public Schools, this plan must be completed by the Service Provider within 10 days of execution of the Agreement.

1. Exclusive Purposes for Data Use

- a. Please list the exclusive purposes for which the student data [or teacher or principal data] will be used by the service provider include.

Product update and enhancement notifications and in a customer service capacity when replying to support inquiries.

Initial _____

2. Data Accuracy/Correction Practices

- a. Parent [student, eligible student, teacher or principal] may challenge the accuracy of the data by...

Should customer have concerns about the veracity of student information, they should submit an inquiry to ExploreLearning support, who will work with the customer to determine whether corrections are warranted & as appropriate implement the changes. Final determination of the corrections shall be the responsibility of the contractor.

Initial _____

3. Subcontractor Oversight Details

- a. This contract has subcontractors: Yes X No _____
b. Describe how the contractor will ensure subcontractors abide by data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations:

All employees and contractors are subject to background checks and annual company privacy policy and security training.
We comply with COPPA and FERPA and have been certified by the Safe-Harbor authority, iKeepSafe. For more information, please refer here.
a. Children's Online Privacy Protection Act (COPPA), per <http://www.coppa.org/coppa.htm>
b. Family Educational Rights and Privacy Act (FERPA), per <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
c. Children's Internet Protection Act (CIPA), per <http://www.fcc.gov/guides/childrens-internet-protection-act>

Initial _____

4. Security Practices

- a. Where is the data stored? (described in such a manner as to protect data security)
Information is stored in our 2 data centers in the United States.

- b. The security protection practices taken to ensure data will be protected include:

All web traffic to our products use the HTTPS protocol. Data is encrypted at AES 128 or higher. Data is encrypted with AES256, AES128 and 3DES in server-preferred order depending on client support. Information is encrypted in transit between our data center and client machines (using HTTPS). Our certificates are from Entrust and connectivity is as follows: TLS 1.2, AES with 256-bit encryption (High); DH with 1024-bit exchange. We use secure FTP (SFTP) when accepting file uploads from school districts..

5. Contract Lifecycle Practices

- a. The agreement expires upon written termination
- b. When the agreement expires,
- i. How long is the student data [or teacher or principal data] retained?
School data is deleted either within a reasonable time frame after contract expiration or on request from a customer.
- ii. How is the student data disposed? We have contracted with a 3rd party to securely dispose of all hard drives.

6. Encryption Practices

- a. Data encryption is applied in accordance with Education Law 2-d 5(f)(5)
Yes X No _____ Initial _____

7. Training Practices

- a. Annual training on federal and state law governing confidentiality is provided for all officers, employees, or assignees who have access to student [or teacher or principal data]
Yes X No _____ Initial _____

ExploreLearning, LLC
Company Name

Julia M Given, VP Finance
Print Name and Title

Signature of Provider

Date

Return to: