

**BOARD MEETING:** Regular Meeting  
**DATE:** Wednesday, September 16, 2020  
**TIME:** 6:00 p.m.  
**PLACE:** Naples High School Cafeteria

- I. Meeting Called to Order
- II. Roll Call
- III. Adopt the Agenda of the Special Meeting of September 16, 2020 (Board Action)
- IV. Executive Session (Board Action)
- V. Pledge of Allegiance
- VI. Public Comments: The Board of Education invites you, the residents of our school community, to feel comfortable in sharing matters of interest or concern that you might have with us. The Board President will be happy to recognize those of you who wish to speak. We would ask that you come forward and please identify yourself before presenting your thoughts.  
 Those items brought to the attention of the Board during this time may be taken under consideration for future response or action. (*Individual comments will be limited to three minutes.*)  
 As a matter of courtesy, we ask that issues related to specific School District personnel or students be brought to the attention of the Superintendent of Schools privately. Thank you for this consideration.  
Board Reponse: The Board of Education is committed to keeping communication open and transparent. The Board of Education President will be working with the Board and the Superintendent to make every effort to respond to public comments directed to the Board of Education at previous meetings, during the next scheduled meeting.
- VII. Points of Interest
- VIII. Superintendent Recognitions & Updates
  - Kudos
  - 2020-2021 NYSSBA Resolutions
  - Start of School Report
  - Education Law 2-d
  - Fall Athletics Update
  - Capital Project
  - Budget Report
- IX. Board Reports
  - Budget Committee
- X. Minutes (Board Action)
  - Regular Meeting of September 2, 2020
- XI. Business (Board Action)
  - Leased Storage Containers
  - Policy Update
- XII. Personnel (Board Action)
  - Resignations
    - Cleaner
    - School Bus Monitor
  - Appointments
    - School Bus Monitors
    - School Bus Driver
    - 2020-2021 Extra-Curricular
- XIII. Consent Agenda Items (Board Action)
  - CSE, and 504 Committee Recommendation
  - Substitutes:
    - School Bus Monitor
- XIV. Adjournment (Board Action)

Minutes of a Regular Meeting of the Board of Education of Naples Central School held on Wednesday, September 16, 2020 at 6:03 p.m. in the Naples High School Cafeteria.

Members Present: Robert Brautigam: Arrived at 6:10 p.m. Kelley Louthan  
Joseph Callaghan Steven Mark  
Jacob Hall Gail Musnicki  
Thomas Hawks Maura Sullivan

Members Absent: Carter Chapman

Also Present: Matthew Frahm, Jeffrey Black, Chad Hunt and Pamela Claes.

A quorum being present, the meeting was called to order at 6:03 p.m. by Board President Jacob Hall.

Guest: John McCabe

**Motion: Thomas Hawks**

**2<sup>nd</sup>: Steven Mark**

Resolved, that the Board of Education approves the agenda of the Regular Meeting of September 16, 2020 as presented.

**Voting Yes: 7**

**Motion Carried**

**Voting No: 0**

**Motion: Gail Musnicki**

**2<sup>nd</sup>: Kelley Louthan**

Resolved, that the Board of Education approves calling an executive session at 6:03 p.m. for the purpose of discussing the employment history of a particular person or persons.

**Voting Yes: 7**

**Motion Carried**

**Voting No: 0**

2nd Vice President Robert Brautigam joined the meeting via zoom at 6:10 p.m.

**Time out of Executive Session: 6:30 p.m.**

**Pledge of Allegiance**

**Public Comment: None**

**Board Response: None**

**Points of Interest:**

Board Member Kelley Louthan gave a shout out to staff, stating the facilities look great, especially considering all they have had to deal with.

**Superintendent Recognitions and Updates:**

Kudos: Superintendent Frahm commended the faculty and staff for a really solid start to the school year, noting it took place with a tremendous amount of time and planning, discussing the different processes and protocols set in place for the new school year, adding people have been very positive, creative and innovative in their preparation for the school year. Dr. Frahm stated

the kids have been great as they've come back; engaged, positive and happy to see each other and the teachers. Superintendent Frahm noted that along with the positives it has been very hard and complicated and right now all of the teachers feel like it's their first year teaching, acquiring new skills to apply to our new reality, adding the reality is the faculty and staff are working overtime, at night and weekends to try and make sure we have a safe and engaging time with kids and its really difficult.

Board Member Kelley Louthan asked if there has been a decrease in enrollment. Superintendent Frahm noted there is always a flux in enrollment numbers with new children coming in and children leaving for various reasons such as moving or changing to homeschooling, adding our enrollment is pretty consistent with where it was last year but he will plan to do an enrollment report at the next board meeting.

Board Member Kelley Louthan asked if there would be an alternative to the annual Open House. Superintendent Frahm stated the District will do something but we don't have a specific plan now, adding most districts are looking at having a virtual open house.

Superintendent Frahm noted the board will be discussing the NYSSBA Resolutions at the next board meeting asking the board members to review the resolutions so they can go through them fairly quickly at the next board meeting.

Dr. Frahm shared information on Education Law 2-d, noting the board is required to adopt the Education Law 2-d policy by October 1<sup>st</sup>, which overlaps with existing regulations.

Superintendent Frahm stated that Governor Cuomo had announced as of 09/21/2020 certain athletic sports will be allowed to start, noting they had asked parents to let them know which of their children want to participate in sports and right now the district will offer boys and girls Varsity and Mod A Soccer; Varsity Girls Tennis; Varsity Golf; and Varsity and Modified Cross Country. Our new Athletic Director Greg Parzych met with fall coaches and discussed what needs to be in place with the safety protocols, etc. There will be further discussions as far as masks while in play; spectators; and transportation. Board discussion followed pertaining to information presented.

Director of Facilities and Transportation Chad Hunt presented information on the Capital Project regarding finishing up the final points of the project, adding they had met with Todd LaBarr of Watchdog at the last Facilities Committee meeting, noting they are really trying to get this completed so we can submit our final cost to the state. Chad stated that since Todd LaBarr has stepped in to help us get things done they are speeding through the punch list of what is left to complete such as the hydro seeding; the gate operator; etc., adding they anticipate within the next couple of weeks projects will be completed other than the hydro seeding.

School Business Administrator Jeffrey Black presented the Budget Report stating there hasn't been much movement at the state level since the last Board of Education meeting, noting any changes are contingent on stimulus money from the Federal Government, adding the upcoming election has exacerbated the situation and we are anticipating that we will not see a stimulus package until after the election. Dr. Black stated at this point the state is still sticking to the fact that they will withhold 20% of all of our aid with the exception of Building Aid which would bring the District's state aid down around \$640,000.00 in revenue over the course of the school year. Dr. Black stated in response to the anticipated cuts in state aid, the Budget Committee had decided to hold a little more fund balance over than they normally would, adding they would normally carry 4% of the current year budget, however this year they will carry about 7% over

which is greater than the State Comptroller recommends but the District will be holding it as savings as we do not know what the aid situation will be through the school year. Discussion followed pertaining to information presented.

Superintendent Matthew T. Frahm noted that right now the District is trying to communicate with the staff what is happening with state aid and is asking staff to be thoughtful and maintain the mindset of wants vs needs.

1st Vice President Joseph Callaghan asked if the District will be receiving money to compensate for money spent on COVID related expenses. Director of Facilities and Transportation Chad Hunt stated the total moneys the district has had to spend on COVID related expenses is approximately \$88,000.00, noting we were hopeful that we would be reimbursed about 75% of those expenses from FEMA however FEMA has announced they will not reimburse school districts unless there is a confirmed COVID case. Mr. Hunt noted they will still submit for reimbursement in hopes FEMA will decide to cover some of the expenses. Discussion followed pertaining to information presented.

Board Member Thomas Hawks presented the Budget Committee Report noting the District is looking to refinance two loans. School Business Administrator Jeffrey Black stated the district has three different loans from capital projects, the most current one is for the bus garage and has a great interest rate however the two previous loans are at higher interest rates and have now met the state requirements to be refinanced, adding the board will be required to issue a resolution saying the District would like to refinance and in February the district would lock in on the rate and in March the district would close on the refinancing, noting it will be a savings of about \$250,000 to the district. Dr. Black stated the payment schedule would remain the same however the interest rate would be reduced from about 3.3% down to about 1.4%, adding this will give us a little more flexibility with any future debt.

**Motion: Thomas Hawks**

**2<sup>nd</sup>: Gail Musnicki**

Resolved, that the Board of Education approves the minutes of the following meetings:

- Regular Meeting of September 2, 2020

**Voting Yes: 8 Motion Carried**

**Voting No: 0**

**Motion: Robert Brautigam**

**2<sup>nd</sup>: Joseph Callaghan**

**Resolved, that upon the recommendation of the Superintendent, the Naples Central School District Board of Education approves the following Business resolutions as presented:**

- Resolved, that the Board of Education grants temporary authorization for the one-year lease of four temporary storage containers, reference numbers 43-12-01-04-8-011-001; 43-12-01-04-8-012-001; 43-12-01-04-8-013-001; and 43-12-01-04-8-014-001, to be placed on district property; the lease does not include an option to buy; the lease does includes a provision that the lease shall be void and unenforceable if entered into in violation of section 801 of the General Municipal Law or section 410 of the Education Law; and the lease has an escape clause should the school return to remote only learning or other circumstances.
- Resolved, that the Board of Education approves the following policy as presented:
  - Policy #5676: Privacy and Security for Student Data and Teacher and Principal Data

**Voting Yes: 8 Motion Carried**

**Voting No: 0**

**Motion:** Gail Musnicki

**2<sup>nd</sup>:** Steven Mark

**Resolved, that upon the recommendation of the Superintendent, the Naples Central School District Board of Education approves the following personnel item as presented:**

- Resolved, that the Board of Education approves the following resignation:
  - John P. Bradley, Cleaner, with regret, effective September 19, 2020.
  - Stacy Fleischman, School Bus Monitor, effective September 4, 2020, contingent upon her appointment as a School Bus driver, effective September 4, 2020.
- Resolved, that upon the recommendation of the Superintendent, the Naples Central School District Board of Education approves the following probationary appointments, pending a successful background clearance report provided to the school as a result of the fingerprinting process:
  - Christa DiNatale, 64340 Route 415, Wayland, NY 14572, as a School Bus Monitor, effective September 8, 2020, at the rate of \$11.80/hour.
  - Lisa Drumheller, 5 Academy Street, Naples, NY 14512, as a School Bus Monitor, effective September 8, 2020, at the rate of \$11.80/hour.
  - Stacy Fleischman, 7 Cross Street, Naples, NY 14512, as a School Bus Driver, effective September 4, 2020 at the rate of \$20.69/hour.
- Resolved, that the Board of Education approves the following Extra-Curricular appointments for the 2020-2021 School Year, salary as per negotiated agreement:
  - Model U.N.: Gregory Parzych
  - Yearbook: Co-Advisor: Evelyn Letta
  - Yearbook: Co-Advisor: Cindy Myers

**Voting Yes: 8**

**Motion Carried**

**Voting No: 0**

**Motion:** Kelley Louthan

**2<sup>nd</sup>:** Gail Musnicki

**Resolved, that the Board of Education, upon the recommendation of Superintendent Matthew Frahm, approves the Consent Agenda Items as presented:**

- a. Resolved, that the Board of Education accepts the committee recommendations from the following meetings:
  - Committee on Special Education action of 09/09/2020.
  - 504 Committee actions of 08/31/2020; 09/08/2020; and 09/09/2020.
- b. Resolved, that the Board of Education hereby approves the following Substitute Appointment pending a successful background clearance report provided to the school as a result of the fingerprinting process:

<u>Name</u>	<u>Position</u>	<u>Address</u>
Stacy Fleischman	School Bus Monitor	7 Cross Street, Naples, NY 14512

**Voting Yes: 8**

**Motion Carried**

**Voting No: 0**

**Motion:** Thomas Hawks  
**2<sup>nd</sup>:** Maura Sullivan

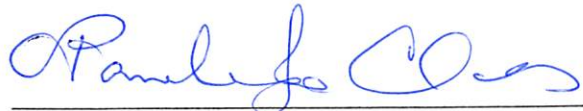
There being no further business, the Regular Meeting of September 16, 2020 is hereby adjourned at 7:32 p.m.

**Voting Yes: 8**

**Motion Carried**

**Voting No: 0**

Dated this 16<sup>th</sup> day of September, 2020



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Pamela Jo Claes, District Clerk



Date: September 8, 2020

Project #s

43-12-01-04-8-011-001	43-12-01-04-8-012-001	43-12-01-04-8-013-001
43-12-01-04-8-014-001		

To: Office of Facilities Planning

For the above referenced temporarily leased storage containers, I acknowledge:

- The leased containers are placed on district property.
- The board has taken proper procedural steps to authorize the lease.
  - The Board of Education resolution is attached.
- The lease does not include an option to buy;
- The lease includes a provision that the lease shall be void and unenforceable if entered into in violation of section 801 of the General Municipal Law or section 410 of the Education Law; and
- The lease has an escape clause should the school return to remote only learning or other circumstances.
- The authorization is temporary.
- The lease(s) must be short-term and one year or shorter.
- The containers promote social distancing during COVID-19.
- No lease aid is available.

Sincerely,

Matt Frahm  
Superintendent

**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA**

The District is committed to 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 in the District and when disclosing or releasing it to others, including, but not limited to, third-party contractors. The District adopts this policy to implement the requirements of Education Law Section

2-d and its implementing regulations, as well as to align the District's data privacy and security practices with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1).

**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.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

- 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

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

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, the District will take steps to minimize its collection, processing, and transmission of PII. Additionally, the District 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 District policy.

Except as required by law or in the case of educational enrollment data, the District 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 District.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)****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 District 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 District 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 District to act to ensure that PII is protected in accordance with laws and regulations, including but not limited to requiring the District to perform a privacy impact and security risk assessment.

**Data Protection Officer**

The District has designated a District employee to serve as the District's Data Protection Officer. The Data Protection Officer for the District is the Director of Technology, Instruction and Professional Development.

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 District.

The District will ensure that the Data Protection Officer has the appropriate knowledge, training, and experience to administer these functions. The Data Protection Officer may perform these functions in addition to other job responsibilities. Additionally, some aspects of this role may be outsourced to a provider such as a BOCES, to the extent available.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)****District Data Privacy and Security Standards**

The District 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 District will protect the privacy of PII by:

- a) Ensuring that every use and disclosure of PII by the District benefits students and the District 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 District affords all protections under FERPA and the Individuals with Disabilities Education Act and their implementing regulations to parents or eligible students, where applicable.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)****Third-Party Contractors**District Responsibilities

The District 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 District, 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 District policy.

In addition, the District 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 District.

The third-party contractor's data privacy and security plan must, at a minimum:

- a) Outline how the third-party contractor will implement all state, federal, and local data privacy and security contract requirements over the life of the contract, consistent with District policy;
- b) Specify the administrative, operational, and technical safeguards and practices the third-party contractor has in place to protect PII that it will receive under the contract;
- c) Demonstrate that the third-party contractor complies with the requirements of 8 NYCRR Section 121.3(c);
- d) Specify how officers or employees of the third-party contractor and its assignees who have access to student data or teacher or principal data receive or will receive training on the laws governing confidentiality of this data prior to receiving access;
- e) Specify if the third-party contractor will utilize subcontractors and how it will manage those relationships and contracts to ensure PII is protected;
- f) Specify how the third-party contractor will manage data privacy and security incidents that implicate PII including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify the District;
- g) Describe whether, how, and when data will be returned to the District, transitioned to a successor contractor, at the District's option and direction, deleted or destroyed by the third-party contractor when the contract is terminated or expires; and
- h) Include a signed copy of the Parents' Bill of Rights for Data Privacy and Security.

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**SUBJECT:   PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**Third-Party Contractor Responsibilities

Each third-party contractor, that enters into a contract or other written agreement with the District under which the third-party contractor will receive student data or teacher or principal data from the District, is required to:

- a) Adopt technologies, safeguards, and practices that align with the NIST Cybersecurity Framework;
- b) Comply with District policy and Education Law Section 2-d and its implementing regulations;
- c) Limit internal access to PII to only those employees or subcontractors that have legitimate educational interests (i.e., they need access to provide the contracted services);
- d) Not use the PII for any purpose not explicitly authorized in its contract;
- e) Not disclose any PII to any other party without the prior written consent of the parent or eligible student:
  - 1. Except for authorized representatives of the third-party contractor such as a subcontractor or assignee to the extent they are carrying out the contract and in compliance with law, regulation, and its contract with the District; or
  - 2. Unless required by law or court order and the third-party contractor provides a notice of the disclosure to NYSED, the Board, or the institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by law or court order;
- f) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of PII in its custody;
- g) Use encryption to protect PII in its custody while in motion or at rest; and
- h) 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.

Where a third-party contractor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the third-party contractor by law and contract apply to the subcontractor.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**Cooperative Educational Services through a BOCES

The District may not be required to enter into a separate contract or data sharing and confidentiality agreement with a third-party contractor that will receive student data or teacher or principal data from the District under all circumstances.

For example, the District may not need its own contract or agreement where:

- a) It has entered into a cooperative educational service agreement (CoSer) with a BOCES that includes use of a third-party contractor's product or service; and
- b) That BOCES has entered into a contract or data sharing and confidentiality agreement with the third-party contractor, pursuant to Education Law Section 2-d and its implementing regulations, that is applicable to the District's use of the product or service under that CoSer.

To meet its obligations whenever student data or teacher or principal data from the District is received by a third-party contractor pursuant to a CoSer, the District will consult with the BOCES to, among other things:

- a) Ensure there is a contract or data sharing and confidentiality agreement pursuant to Education Law Section 2-d and its implementing regulations in place that would specifically govern the District's use of a third-party contractor's product or service under a particular CoSer;
- b) Determine procedures for including supplemental information about any applicable contracts or data sharing and confidentiality agreements that a BOCES has entered into with a third-party contractor in its Parents' Bill of Rights for Data Privacy and Security;
- c) Ensure appropriate notification is provided to affected parents, eligible students, teachers, and/or principals about any breach or unauthorized release of PII that a third-party contractor has received from the District pursuant to a BOCES contract; and
- d) Coordinate reporting to the Chief Privacy Officer to avoid duplication in the event the District receives information directly from a third-party contractor about a breach or unauthorized release of PII that the third-party contractor received from the District pursuant to a BOCES contract.

Click-Wrap Agreements

Periodically, District staff may wish to use software, applications, or other technologies in which the user must "click" a button or box to agree to certain online terms of service prior to using the software, application, or other technology. These are known as "click-wrap agreements" and are considered legally binding "contracts or other written agreements" under Education Law Section 2-d and its implementing regulations.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

District staff are prohibited from using software, applications, or other technologies pursuant to a click-wrap agreement in which the third-party contractor receives student data or teacher or principal data from the District unless they have received prior approval from the District's Data Privacy Officer or designee.

The District will develop and implement procedures requiring prior review and approval for staff use of any software, applications, or other technologies pursuant to click-wrap agreements.

**Parents' Bill of Rights for Data Privacy and Security**

The District will publish its Parents' Bill of Rights for Data Privacy and Security (Bill of Rights) on its website. Additionally, the District will include the Bill of Rights with every contract or other written agreement it enters into with a third-party contractor under which the third-party contractor will receive student data or teacher or principal data from the District.

The District's Bill of Rights will state in clear and plain English terms that:

- a) A student's PII cannot be sold or released for any commercial purposes;
- b) Parents have the right to inspect and review the complete contents of their child's education record;
- c) State and federal laws protect the confidentiality of PII, 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;
- d) A complete list of all student data elements collected by the state is available for public review at the following website <http://www.nysed.gov/student-data-privacy/student-data-inventory> or by writing to the Office of Information and Reporting Services, New York State Education Department, Room 865 EBA, 89 Washington Avenue, Albany, New York 12234; and
- e) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to Privacy Complaint, Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/student-data-privacy/form/report-improper-disclosure>.

The Bill of Rights will also include supplemental information for each contract the District enters into with a third-party contractor where the third-party contractor receives student data or teacher or principal data from the District. The supplemental information must be developed by the District and include the following information:

(Continued)



**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

- a) The exclusive purposes for which the student data or teacher or principal data will be used by the third-party contractor, as defined in the contract;
- b) How the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or principal data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable laws and regulations (e.g., FERPA; Education Law Section 2-d);
- c) The duration of the contract, including the contract's expiration date, and a description of what will happen to the student data or teacher or principal data upon expiration of the contract or other written agreement (e.g., whether, when, and in what format it will be returned to the District, and/or whether, when, and how the data will be destroyed);
- d) If and how a parent, student, eligible student, teacher, or principal may challenge the accuracy of the student data or teacher or principal data that is collected;
- e) Where the student data or teacher or principal data will be stored, described in a manner as to protect data security, and the security protections taken to ensure the data will be protected and data privacy and security risks mitigated; and
- f) Address how the data will be protected using encryption while in motion and at rest.

The District will publish on its website the supplement to the Bill of Rights (i.e., the supplemental information described above) for any contract or other written agreement it has entered into with a third-party contractor that will receive PII from the District. The Bill of Rights and supplemental information may be redacted to the extent necessary to safeguard the privacy and/or security of the District's data and/or technology infrastructure.

**Right of Parents and Eligible Students to Inspect and Review Students' Education Records**

Consistent with the obligations of the District under FERPA, parents and eligible students have the right to inspect and review a student's education record by making a request directly to the District in a manner prescribed by the District.

The District will ensure that only authorized individuals are able to inspect and review student data. To that end, the District will take steps to verify the identity of parents or eligible students who submit requests to inspect and review an education record and verify the individual's authority to do so.

Requests by a parent or eligible student for access to a student's education records must be directed to the District and not to a third-party contractor. The District may require that requests to inspect and review education records be made in writing.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND PRINCIPAL DATA (Cont'd.)**

The District will notify parents annually of their right to request to inspect and review their child's education record including any student data stored or maintained by the District through its annual FERPA notice. A notice separate from the District's annual FERPA notice is not required.

The District will comply with a request for access to records within a reasonable period, but not more than 45 calendar days after receipt of a request.

The District may provide the records to a parent or eligible student electronically, if the parent consents. The District must transmit the PII in a way that complies with laws and regulations. Safeguards associated with industry standards and best practices, including but not limited to encryption and password protection, must be in place when education records requested by a parent or eligible student are electronically transmitted.

**Complaints of Breach or Unauthorized Release of Student Data and/or Teacher or Principal Data**

The District will inform parents, through its Parents' Bill of Rights for Data Privacy and Security, that they have the right to submit complaints about possible breaches of student data to the Chief Privacy Officer at NYSED. In addition, the District has established the following procedures for parents, eligible students, teachers, principals, and other District staff to file complaints with the District about breaches or unauthorized releases of student data and/or teacher or principal data:

- a) All complaints must be submitted to the District's Data Protection Officer in writing.
- b) Upon receipt of a complaint, the District will promptly acknowledge receipt of the complaint, commence an investigation, and take the necessary precautions to protect PII.
- c) Following the investigation of a submitted complaint, the District will provide the individual who filed the complaint with its findings. This will be completed within a reasonable period of time, but no more than 60 calendar days from the receipt of the complaint by the District.
- d) If the District requires additional time, or where the response may compromise security or impede a law enforcement investigation, the District will provide the individual who filed the complaint with a written explanation that includes the approximate date when the District anticipates that it will respond to the complaint.

These procedures will be disseminated to parents, eligible students, teachers, principals, and other District staff.

The District 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).

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)****Reporting a Breach or Unauthorized Release**

The District will report every discovery or report of a breach or unauthorized release of student data or teacher or principal data within the District to the Chief Privacy Officer without unreasonable delay, but no more than ten calendar days after the discovery.

Each third-party contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement entered into with the District will be required to promptly notify the District of any breach of security resulting in an unauthorized release of the data by the third-party contractor or its assignees in violation of applicable laws and regulations, the Parents' Bill of Rights for Student Data Privacy and Security, District policy, and/or binding 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.

In the event of notification from a third-party contractor, the District will in turn notify the Chief Privacy Officer of the breach or unauthorized release of student data or teacher or principal data no more than ten calendar days after it receives the third-party contractor's notification using a form or format prescribed by NYSED.

**Investigation of Reports of Breach or Unauthorized Release by the Chief Privacy Officer**

The Chief Privacy Officer is required to investigate reports of breaches or unauthorized releases of student data or teacher or principal data by third-party contractors. As part of an investigation, the Chief Privacy Officer may require that the parties submit documentation, provide testimony, and may visit, examine, and/or inspect the third-party contractor's facilities and records.

Upon the belief that a breach or unauthorized release constitutes criminal conduct, the Chief Privacy Officer is required to report the breach and unauthorized release to law enforcement in the most expedient way possible and without unreasonable delay.

Third-party contractors are required to cooperate with the District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of PII.

Upon conclusion of an investigation, if the Chief Privacy Officer determines that a third-party contractor has through its actions or omissions caused student data or teacher or principal data to be breached or released to any person or entity not authorized by law to receive this data in violation of applicable laws and regulations, District policy, and/or any binding contractual obligations, the Chief Privacy Officer is required to notify the third-party contractor of the finding and give the third-party contractor no more than 30 days to submit a written response.

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

If after reviewing the third-party contractor's written response, the Chief Privacy Officer determines the incident to be a violation of Education Law Section 2-d, the Chief Privacy Officer will be authorized to:

- a) Order the third-party contractor be precluded from accessing PII from the affected educational agency for a fixed period of up to five years;
- b) Order that a third-party contractor or assignee who knowingly or recklessly allowed for the breach or unauthorized release of student data or teacher or principal data be precluded from accessing student data or teacher or principal data from any educational agency in the state for a fixed period of up to five years;
- c) Order that a third-party contractor who knowingly or recklessly allowed for the breach or unauthorized release of student data or teacher or principal data will not be deemed a responsible bidder or offeror on any contract with an educational agency that involves the sharing of student data or teacher or principal data, as applicable for purposes of General Municipal Law Section 103 or State Finance Law Section 163(10)(c), as applicable, for a fixed period of up to five years; and/or
- d) Require the third-party contractor to provide additional training governing confidentiality of student data and/or teacher or principal data to all its officers and employees with reasonable access to this data and certify that the training has been performed at the contractor's expense. This additional training is required to be performed immediately and include a review of laws, rules, and regulations, including Education Law Section 2-d and its implementing regulations.

If the Chief Privacy Officer determines that the breach or unauthorized release of student data or teacher or principal data on the part of the third-party contractor or assignee was inadvertent and done without intent, knowledge, recklessness, or gross negligence, the Chief Privacy Officer may make a recommendation to the Commissioner that no penalty be issued to the third-party contractor.

The Commissioner would then make a final determination as to whether the breach or unauthorized release was inadvertent and done without intent, knowledge, recklessness or gross negligence and whether or not a penalty should be issued.

**Notification of a Breach or Unauthorized Release**

The District will notify affected parents, eligible students, teachers, and/or principals in the most expedient way possible and without unreasonable delay, but no more than 60 calendar days after the discovery of a breach or unauthorized release of PII by the District or the receipt of a notification of a breach or unauthorized release of PII from a third-party contractor unless that notification would

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**SUBJECT: PRIVACY AND SECURITY FOR STUDENT DATA AND TEACHER AND  
PRINCIPAL DATA (Cont'd.)**

interfere with an ongoing investigation by law enforcement or cause further disclosure of PII by disclosing an unfixed security vulnerability. Where notification is delayed under these circumstances, the District will notify parents, eligible students, teachers, and/or principals within seven calendar days after the security vulnerability has been remedied or the risk of interference with the law enforcement investigation ends.

Notifications will be clear, concise, use language that is plain and easy to understand, and to the extent available, include:

- a) A brief description of the breach or unauthorized release, the dates of the incident and the date of discovery, if known;
- b) A description of the types of PII affected;
- c) An estimate of the number of records affected;
- d) A brief description of the District's investigation or plan to investigate; and
- e) Contact information for representatives who can assist parents or eligible students that have additional questions.

Notification will be directly provided to the affected parent, eligible student, teacher, or principal by first-class mail to their last known address, by email, or by telephone.

Where a breach or unauthorized release is attributed to a third-party contractor, the third-party contractor is required to pay for or promptly reimburse the District for the full cost of this notification.

**Annual Data Privacy and Security Training**

The District 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. The District may deliver this training using online training tools. Additionally, this training may be included as part of the training that the District already offers to its workforce.

**Notification of Policy**

The District will publish this policy on its website and provide notice of the policy to all its officers and staff.

Education Law § 2-d  
8 NYCRR Part 121

Adopted: 09/16/2020