



# **MASSAPEQUA SCHOOL DISTRICT**

## **EDUCATION LAW 2-d RIDER**

Massapequa School District (“District”) and Bedford, Freeman & Worth Publishing Group, LLC (“Contractor”) have entered into an agreement (which may be a purchase order or price quote), dated 7/17/2023 (together with this Rider, the “Agreement”) whereby the Contractor will provide the District with the product(s) identified in Schedule 1 (attached hereto and made a part hereof) (the “Product(s)”).

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 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 the District and Contractor 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.

The District understands and agrees that the Contractor will process information about the use of the Product(s) by District and its authorized users, including, but not limited to, Protected Data pertaining to users of the Product(s). District hereby grants Contractor a license to use all such information: i) as reasonably required to provide the Product(s); and ii) to de-identify (as defined in FERPA) the Protected Data obtained hereunder and analyze it to improve Contractor’s educational products and services, including to create aggregated or statistical insights and baseline reports that are not identifiable to individuals or institutions for use in other Contractor educational products and services.

“**Protected Data**” includes any information obtained by Contractor from the District through the use of the Product(s) by the District and its authorized users and (i) rendered confidential by State or federal law, including, but not limited to student data, student demographics, scheduling, attendance, grades, health and discipline tracking, and (ii) 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. As applicable, Contractor agrees to comply with District policy(ies) attached hereto 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 caused by Contractor’s breach of its obligations hereunder, or caused by a breach of Contractor’s obligations hereunder by Contractor’s subcontractors, and/or assignees. In the event this Agreement expires, is not renewed or is terminated, Contractor shall destroy personally identifiable information in the Protected Data, in its possession.

### **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 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;
- and;
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 materially 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 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, data protection obligations that are no less stringent than those herein shall be imposed on the third-party contractor by state and federal law and contract between Contractor and 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.

DISTRICT'S PARENT'S BILL OF RIGHTS IS ATTACHED HERETO AND INCORPORATED HEREIN.



# **MASSAPEQUA PUBLIC SCHOOLS** **PARENTS' BILL OF RIGHTS FOR DATA PRIVACY** **AND SECURITY**

Pursuant to New York State Education Law §2-d, parents, legal guardians and persons in parental relation to a student are entitled to certain rights with regard to their child's personally identifiable information, as defined by Education Law §2-d. This document contains a plain- English summary of such rights.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's educational records maintained by the District.
3. State and Federal Laws protect the confidentiality of personally identifiable student information, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by New York State is available for review at the following website:

<http://www.p12.nysed.gov/irs/sirs>

The list may also be made available by writing to:

Office of Information & Reporting Services New  
York State Education Department Room 863 EBA,  
89 Washington Avenue  
Albany, NY 12234

5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to:

Data Protection Officer  
Massapequa Public Schools  
4925 Merrick Road  
Massapequa, NY 11758

**OR**

Chief Privacy Officer  
New York State Education Department  
89 Washington Avenue  
Albany, NY 12234  
Email: [privacy@mail.nysed.gov](mailto:privacy@mail.nysed.gov)

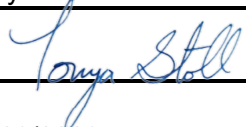
6. Each new contract with a third-party contractor which will receive student data, or teacher or principal data will include information addressing the following:
  - a. The exclusive purposes for which the student data or teacher or principal data will be used;

- b. How the third-party contractor will ensure that the subcontractors, persons or entities that the third-party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
  - c. When the agreement expires and what happens to the student data or teacher and principal data upon expiration of the agreement;
  - d. If and how a parent, student, a student over eighteen years of age, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected and;
  - e. Where the student data or teacher or principal data will be stored, and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
7. Third-party contractors are also required to:
- a. Provide training on federal and state law governing confidentiality to any officers, employees, or assignees who have access to student data or teacher or principal data;
  - b. Limit internal access to education records to those individuals who have a legitimate educational interest in such records;
  - c. Not use educational records for any other purpose than those explicitly authorized in the contract;
  - d. Not disclose personally identifiable information to any other party (i) without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order and the third-party contractor provides a notice of the disclosure to the New York State Education Department, board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
  - e. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody;
  - f. Use encryption technology to protect data while in motion or in its custody from unauthorized disclosure as specified in Education Law §2-d;
  - g. Notify the District of any breach of security resulting in an unauthorized release of student data or teacher or principal data hereunder, in the most expedient way possible and without unreasonable delay and such notice can be sent to the following District individual / email: Yvonne Knott, Director of Information Management, CIO, DPO, yknott@msd.k12.ny.us ;
  - h. Provide a data security and privacy plan outlining how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract and;
  - i. Provide a signed acknowledgement of this Bill of Rights to the District, thereby acknowledging that they are aware of and agree to abide by this Bill of Rights.

8. This Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department's Chief Privacy Officer, as well as emerging guidance documents.

**Contractor's signature below shall constitute an acknowledgement, acceptance, and signature of the NYS Education Law2-d Rider and District's Parents' Bill of Rights in their original forms, without any revisions.**

**PROVIDER**

**PRINT NAME:** Tonya Stoll  
**SIGNATURE:**   
**DATED:** 8/23/2023

**DATA PRIVACY AND SECURITY PLAN**

CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN OR MSD SUPPLEMENTAL INFORMATION DOCUMENT IS ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN.

## SCHEDULE 1

Contractor will use Protected Data to provide the following services, subject to the terms of the Privacy Requirements (***please check all that apply***):

\_\_\_\_\_ **Achieve.** Achieve is a comprehensive set of interconnected teaching and assessment tools. It incorporates the most effective elements from Macmillan's market leading solutions - including Sapling, LaunchPad, iClicker and others - in a single, easy to use platform. Our resources were co-designed with instructors and students, using a foundation of learning research and rigorous testing.

\_\_\_\_\_ **Achieve Read and Practice** Achieve Read & Practice is the marriage of our LearningCurve adaptive quizzing and our mobile, accessible e-book, in one easy-to-use, affordable package. Learning Made Simple.

\_\_\_\_\_ **E-book** At roughly half the cost of the print text, e-books meet students where they already live—online.

\_\_\_\_\_ **Flipt** Flipt is a class preparation system for anybody looking for active learning or simply seeking a way to better prepare students for class.

\_\_\_\_\_ **iClicker.** iClicker's innovative classroom response system makes it easy to track attendance, increase participation, facilitate quizzes, measure performance, and get more out of your classroom.

\_\_\_\_\_ **iOLab** iOLab combines all the measurement devices and components needed for hundreds of physics labs in a single device, linking them to a software solution for gathering data and recording results. With iOLab, students are able to conduct Physics experiments from their own home with just the device and a computer.

\_\_\_\_\_ **Lab Simulations.** Hayden-McNeil Lab Simulations provide students with an authentic experience that moves laboratory learning beyond the classroom. With an editable lab manual, in-lab simulations and post-lab assessment, these interactive simulations allow Biology and Chemistry students to replicate the in-lab experience from the comfort of their own home with just an internet connection.

\_\_\_\_\_ **LaunchPad** LaunchPad is a resource to help students achieve better results by providing a place where they can read, study, practice, complete homework, and more.

**X** \_\_\_\_\_ **Sapling & Sapling Plus** With Sapling Learning, every problem counts; student get wrong answer-specific feedback with nearly every problem so they learn from correct and incorrect answers and instructors get the support and analytics they need.

\_\_\_\_\_ **Writer's Help** With comprehensive content from authors you trust, Writer's Help 2.0 is an online writing resource that answers writers' questions and lets instructors track student achievement.

Contractor will also use Protected Data for customary business purposes, such as providing customer service and support, conducting user surveys, IT management (e.g., user authentication, network security), creating de-identified data sets for analytics and other permitted purposes, for disaster recovery and business continuity, and for legal and regulatory compliance, all of which shall be subject to and used in compliance with the Agreement.