

## 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 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 Washington, Saratoga, Hamilton, Warren Essex BOCES & Component Districts ("DISTRICT") and **Microsoft Corporation** ("VENDOR") to the contrary, **VENDOR** agrees as follows as to Flipgrid software and services ("Service"):

**VENDOR** 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 **VENDOR** uses to protect its own confidential data, so as to prevent the unauthorized dissemination or publication of Protected Data to third parties. **VENDOR** 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. **VENDOR** 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.

"**Protected Data**" includes any information that is linked or reasonably linkable to a student including, but not limited to student data, student demographics, scheduling, attendance, grades, health and discipline tracking. 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 and/or its Participants as that term is defined in 34 CFR §99.3, which implements the Family Educational Rights and Privacy Act ("FERPA"),

-AND-

Personally identifiable information from the records of the DISTRICT and/or its Participants 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.

**VENDOR** shall comply with New York State Education Law § 2-d and shall contractually require any subcontractor that may receive, collect, store, record or display any Protected Data on its behalf to do the same. As applicable, **VENDOR** agrees to comply with the DISTRICT policy(ies) on data security and privacy provided such policies are attached to this Agreement. **VENDOR** shall promptly reimburse DISTRICT and/or its Participants for the full cost of notifying a parent, eligible student, teacher, or principal of an unauthorized release of Protected Data by **VENDOR** its subcontractors, and/or assignees. In the event this Agreement expires, is not renewed or is terminated, **VENDOR** shall return all of DISTRICT and/or its Participants' data, including

any and all Protected Data, in its possession by secure transmission or delete all Protected Data as directed by DISTRICT. Either party may terminate this Agreement with 30 days' notice to the other party.

**VENDOR** shall be under the direct control and supervision of the DISTRICT via an individual educator who has signed-up for the Service pursuant to the DISTRICT's policies and processes using a DISTRICT issued email address ("DISTRICT Educator"), with respect to **VENDOR's** use of Protected Data generated through or submitted in connection with the account of a DISTRICT Educator. The DISTRICT agrees that such DISTRICT Educators are authorized agents of the DISTRICT and that DISTRICT will exercise any and all of its rights under this Agreement via a DISTRICT Educator.

## **Data Security and Privacy Plan**

**VENDOR** and/or any subcontractor, affiliate, or entity that may receive, collect, store, record or display any of DISTRICT and/or its Participant's Protected Data, pursuant to this agreement and for the specific purpose of providing the Flipgrid software and services to representatives of DISTRICT and students, including purposes compatible with providing those services, and shall maintain a Data Security and Privacy Plan that includes the following elements:

1. A provision incorporating the requirements of New York Parents' Bill of Rights for data security and privacy, to the extent that any of the provisions in the Bill of Rights applies to **VENDOR's** possession and use of Protected Data pursuant to this Agreement.
2. An outline of how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the **VENDOR's** policy on data security and privacy.
3. An outline of the measures taken by **VENDOR** to secure Protected Data and to limit access to such data to authorized staff.
4. An outline of how **VENDOR** will use "best practices" and industry standards with respect to data storage, privacy and protection, including, but not limited to encryption, firewalls, passwords, protection of off-site records, and limitations of access to stored data to authorized staff.
5. An outline of how **VENDOR** will ensure that any subcontractors, persons or entities with which **VENDOR** will share Protected Data, if any, will abide by the requirements of **VENDOR's** policy on data security and privacy, and the contractual obligations with respect to Protected Data set forth herein.

## EXHIBIT A

### Washington-Saratoga-Warren-Hamilton-Essex BOCES EDUCATION LAW §2-d Bill of Rights for Data Security and Privacy

The **Washington-Saratoga-Warren-Hamilton-Essex BOCES** is committed to protecting the privacy and security of student data and teacher and principal data. In accordance with New York Education Law Section 2-d and its implementing regulations, the District informs the school community of the following:

Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A student's personally identifiable information (PII) cannot be sold or released for any commercial purpose. PII, as defined by Education Law § 2-d and FERPA, includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Commissioner of Education's Regulations at 8 NYCRR Part 121, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); protect the confidentiality of a student's identifiable information.
4. Safeguards associated with industry standards and best practices including but not limited to encryption, firewalls and password protection must be in place when student PII is stored or transferred.
5. A complete list of all student data elements collected by NYSED is available for public review at [www.nysed.gov/data-privacy-security](http://www.nysed.gov/data-privacy-security), and by writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of student data addressed.
  - Contact WSWHE BOCES Data Protection Officer: Ceilia Dansereau-Rumley, Director for Data Privacy & Professional Learning, by email: [cdansereau-rumley@swheboces.org](mailto:cdansereau-rumley@swheboces.org), or by phone: 518-581-3518. Complaints should be submitted in writing using the form that is available on the BOCES website and in the BOCES offices.
  - Complaints may also be submitted to NYSED online at [www.nysed.gov/data-privacy-security](http://www.nysed.gov/data-privacy-security), by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, by email to [privacy@nysed.gov](mailto:privacy@nysed.gov), or by telephone at 518-474-0937.

7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.

8. Educational agency workers that handle PII will receive training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect PII.

9. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

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**BY THE VENDOR:**

Deb McFadden

**Name (Print)**

Flip General Manager

**Title**

*Deb McFadden*

**Signature**

Jan 29, 2023

**Date**

**EXHIBIT B: SUPPLEMENTAL INFORMATION**

Pursuant to Education Law § 2-d and Section 121.3 of the Commissioner’s Regulations, the Educational Agency (EA) is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

<b>Name of Contractor and Product</b>	Microsoft, Flipgrid
<b>Description of the purpose(s) for which Contractor will receive/access PII</b>	Flipgrid collects information to perform our Service under the Flipgrid Terms of Use and process this information in accordance with our privacy policy located at: <a href="#">Terms &amp; Privacy   Flipgrid</a>
<b>Type of PII that Contractor will receive/access</b>	Flipgrid receives and access information per our privacy policy located at: <a href="#">Terms &amp; Privacy   Flipgrid</a>
<b>Contract Term</b>	These Terms will remain in effect for the use of the Service.
<b>Subcontractor Written Agreement Requirement</b>	Contractor will not utilize subcontractors without a written contract that requires the subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract. (check applicable option) <input type="checkbox"/> Contractor will not utilize subcontractors. <input checked="" type="checkbox"/> Contractor will utilize subcontractors.
<b>Data Transition and Secure Destruction</b>	Flipgrid performs data destruction and secure destruction per our privacy policy at: <a href="#">Terms &amp; Privacy   Flipgrid</a>
<b>Challenges to Data Accuracy</b>	Parents, teachers or principals who seek to challenge the accuracy of PII will do so by contacting the EA.
<b>Secure Storage and Data Security</b>	Please describe where PII will be stored and the protections taken to ensure PII will be protected: (check all that apply) <input checked="" type="checkbox"/> Using a cloud or infrastructure owned and hosted by a third party.  <input checked="" type="checkbox"/> Using Contractor owned and hosted solution <input type="checkbox"/> Other:
<b>Encryption</b>	Information can be found at: <a href="#">Privacy &amp; Security Commitments to Schools – Flipgrid Help Center</a>

**SIGNATURE PAGE**

<b>Microsoft</b>	<b>School District</b>
Signature: <i>Deb McFadden</i>	Signature: <i>[Handwritten Signature]</i>
Name: Deb McFadden	Name: <i>Anthony Muller, WSWHE BOXES</i>
Title: Flip General Manager	Title: <i>Senior Executive Officer</i>
Date: Jan 29, 2023	Date: <i>10/31/2022</i>




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