Education Law §2-d

* **§2-d (4): When drafting RFP, always remember that §2-d requires us to use the least intrusive means possible**
	+ We should always be asking whether the disclosure of data is necessary to perform the task; if the Vendor can possibly do the task without PII, then they should.
* **§2-d (1)(k): 3rd Party Contractor**
	+ Everyone *except* Schools, BOCES, Boards of Education, and NYSED.
	+ This includes SUNY, CUNY, other state agencies.
	+ Attachments to go with all contracts with a 3rd party contractor:
		- 2-d (3)(a): Parents Bill of Rights
		- Attachment to BOR – who will fill this out? SED can do 1 & 2, the rest must be done by the Vendor.
		- 2-d (5)(e): Data Security and Privacy Plan.
* **§2-d (1)(k): All data must be provided pursuant to a contract providing services that SED needs/ derives benefit from**
	+ The project/task must be something SED solicited/needed.
	+ This might require a little re-working of language to fit the requirement, contact Counsel’s Office early on if you think the purpose might be a problem.
* **§2-d (2): Everything is subject to change once a Chief Privacy Officer is hired!**
	+ Law contemplates policy and procedure to be implemented by the CPO
		- Develop additional elements of the BOR;
		- Promoting the implementation of sound information practices;
		- Assisting in instances of data breaches;
		- Formulating a procedure within the department whereby info relating to student/teacher/principal data can be requested;
		- Establish protocol for complaints; and
		- Make recommendations re: privacy and security of student data.
	+ CPO may refine, add requirements, etc.
* **§2-d (5)(f)(5): encryption standards; always make sure the 3rd party contractor can meet them.**
	+ The standards are tied to HIPAA.
* **§2-d(6): Penalties for breach and unauthorized release of PII**
	+ Civil fines of either $5,000 or up to $10 per student.
	+ Contractor has an affirmative duty to report a breach to SED, then we have a duty to report to parents; however, Vendor is responsible for the cost of reporting to parents.
	+ Contractors could be banned from future contracts with SED because they are not deemed to be a “responsible bidder.”
		- To this end, our contract unit should be maintaining some sort of list of this info so that we can actively not award to contractors who have been banned.

Education Law §2-d

Flow Chart

If yes

If no, stop here.

§2-d does not apply.

If no, stop here.

§2-d does not apply.

Is it a 3rd party contractor? This is everyone *except* Schools, BOCES, Boards of Education, and NYSED.

\*\*\*SUNY & CUNY are considered 3rd Party Contractors\*\*

Contract must have §2-d attachments, including:

* + - Parents Bill of Rights [§2-d(3)(a)]
		- Attachment to Parents BOR
		- Data Security and Privacy Plan [§2-d (5)(e)]

Contracts also need to have some variation of these Whereas clauses to satisfy the “work is being done at the request of and for the benefit of NYSED” requirement [§2-d(1)(K)]:

**WHEREAS,** NYSED has determined that it would be beneficial to [study/evaluate]  [INSERT SUBJECT] ; and

**WHEREAS**, because NYSED lacks the capacity to perform such a study, it has requested that [NAME], conduct such [study/evaluation] on NYSED’s behalf pursuant to the terms and conditions set forth herein; and

**WHEREAS,**  at the request of NYSED, [NAME] proposes to [Describe project/work/research] in order to [PROJECT GOAL FOR NYSED]  . . . . .

If yes

Does the Agreement contemplate sharing of Personally Identifiable Information (PII)?