

CONTRACT

In compliance with P.A. 16-189, An Act Concerning Student Data Privacy

AGREEMENT

This Agreement (“Agreement”) is entered into on this 22nd day of March, 2018, between the Berlin Public Schools (the “Board”) and Canyon Creek Software (“Contractor”) (collectively, the “Parties”) for the purpose of identifying the obligations of the Parties relative to the confidentiality of student data.

Article I. Definitions. For purposes of this Agreement, “directory information,” “de-identified student information,” “personally-identifiable information,” “school purposes,” “student information,” “student records,” “student-generated content,” and “targeted advertising,” shall be as defined by Public Act 16-189. “Education records” shall be defined by the Family Educational Rights and Privacy Act of 1974 (“FERPA”), codified at 20 U.S.C § 1232g (as amended); and its implementing regulations, 34 CFR 99.1 - 99.67 (as amended).

Article II. Purpose of Agreement: The Parties agree that the purpose of this Agreement is to detail the obligations of both Parties relative to the safety and confidentiality of student information, student records and student-generated content (collectively, “student data”), which student data may be provided to the Contractor in connection with Contractor’s provision of one or more of the following professional and non-instructional services (check those applicable):

- Medical consultation
- Special education consultation or audit
- Academic program consultation or audit (non-special education)
- Behavior intervention/Positive behavior intervention supports consultation or audit
- Information technology consultation or audit
- Student data storage, maintenance, collection and/or analysis
- Other (explain): Online scheduling of appointments (primarily parent-teacher conferences) using only “directory information”.

Article III. General Provisions

- A. All student data provided or accessed pursuant to this Agreement is and remains under the control of the Board. All student data are not the property of, or under the control of, the Contractor.

- B. The Board may request that the Contractor delete student data in the Contractor's possession by sending such request to the Contractor by electronic mail. The Contractor will delete the requested student data within two (2) business days of receiving such a request.
- C. The Contractor shall not use student data for any purposes other than those authorized in this Agreement, and may not use student data for any targeted advertising.
- D. If the Contractor receives a request to review student data in the Contractor's possession directly from a student, parent, or guardian, the Contractor agrees to refer that individual to the Board and to notify the Board within two (2) business days of receiving such a request. The Contractor agrees to work cooperatively with the Board to permit a student, parent, or guardian to review personally identifiable information in student data that has been shared with the Contractor, and correct any erroneous information therein.

Article IV. Security and Confidentiality of Student Data. The Contractor and the Board shall ensure that they each comply with the FERPA. Further, the Contractor shall take actions designed to ensure the security and confidentiality of student data, including but not limited to:

- A. Using technologies and methodologies consistent with the guidance issued in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, § 13402(h)(2), 42 U.S.C. § 17932;
- B. Maintaining technical safeguards relating to the possession of education records in a manner consistent with 45 C.F.R. 164.312;
- C. Otherwise meeting or exceeding industry standards relating to the safeguarding of confidential information.
- D. Specifically, the "directory information" provided by the Board to the Contractor is stored at professional and secure server facilities located in the U.S. The servers have robust firewall systems in place with built-in redundancy. Physical access to the servers is restricted by physical barriers, identification verification (including passcodes and bio-scans), and live security measures. Logical access is secured by strict login credentials and passwords. Access is controlled via secure User IDs and passwords. Use of the Online Scheduler™ occurs via HTTPS protocols; i.e., the data is encrypted during transmission. We offer two secure methods for the Board to send us data: 1) The www.egnyte.com data file transfer service. Egnyte ensures total confidentiality and protection for data while in transit via: HTTPS or FTP-ES used for secure communication, SSL protocol used for all data transfer sessions, and 256-bit encryption applied to all data in transit; or 2) file transfer protocol over transport layer security (FTP over TLS, or simply FTPS). The FTPS protocol encrypts the data while it is in transit by utilizing our 256 bit encrypted

SSL Extended Validation (EV) certificate issued by an SSL Certificate Authority (CA). The use of either option is at the Board's discretion.

Article V. Prohibited Uses of Student Data

- A. The Contractor shall not use student data for any purposes other than those authorized pursuant to this Agreement.
- B. The Contractor shall not retain, and the Board shall not otherwise make available, any student data upon completion of the contracted services unless a student, or parent or legal guardian of a student chooses to establish or maintain an electronic account with the Contractor for the purpose of storing student-generated content.


Article VI. Data Breaches

- A. Upon the discovery by the Contractor of a breach of security that results in the unauthorized release, disclosure, or acquisition of student data, or the suspicion that such a breach may have occurred, the Contractor shall provide initial notice to the Board as soon as possible, but not more than forty-eight (48) hours after such discovery ("Initial Notice"). The Initial Notice shall be delivered to the Board by electronic mail to Craig Szymanski at cszymanski@berlinschools.org and shall include the following information, to the extent known at the time of notification:
 - 1. Date and time of the breach;
 - 2. Names of student(s) whose student data was released, disclosed or acquired;
 - 3. The nature and extent of the breach;
 - 4. The Contractor's proposed plan to investigate and remediate the breach.
- B. Upon discovery by the Contractor of a breach, the Contractor shall conduct an investigation and restore the integrity of its data systems and, without unreasonable delay, but not later than thirty (30) days after discovery of the breach, shall provide the Board with a more detailed notice of the breach, including but not limited to the date and time of the breach; name(s) of the student(s) whose student data was released, disclosed or acquired; nature and extent of the breach; and measures taken to ensure that such a breach does not occur in the future.
- C. The Contractor agrees to cooperate with the Board with respect to investigation of the breach as required by Public Act 16-189.
- D. Parties agree that the following information shall be included in the Contractor's notice of breach to a student or parent or guardian of a student:
 - 1. Name of the student being notified whose student data was released, disclosed or acquired, which shall not include the names of other students;
 - 2. Date and time of the breach.

Article VIII. Choice of Law, Choice of Forum, Merger, Severability

- A. **Choice of Law.** The parties agree that this agreement and any disputes arising from or relating to this Agreement, including its formation and validity, shall be governed by the laws of the State of Connecticut.
- B. **Choice of Forum.** The parties agree that any and all disputes arising from or relating to this Agreement, including its formation and validity, shall be settled in the State of Connecticut.
- C. **Amendment.** This Agreement may be changed, amended, or superseded, only upon an agreement in writing executed by both parties hereto.
- D. **Severability.** A court finding of invalidity for any provision of this Agreement does not invalidate other provisions or applications that are not affected by the finding.

This Agreement is effective upon execution by both parties and shall continue until June 30, 2019.

 , Pres 3/22/18
Date

Canyon Creek Software, LC

Contractor Name

Authorized Board Representative:

 6/4/2018
Date

Craig E Szymanski District Technology Specialist
Name Title