

New York State Data Privacy: SUMMARY of REQUIREMENTS for New York Charter Schools

On January 13, 2020, the New York State Board of Regents adopted Part 121 of the Regulations of the Commissioner. The Part 121 Regulations implement Education Law § 2-d, a New York State law that strengthens existing protections over the personally identifiable information (PII) of students, and also safeguards certain PII of classroom teachers and principals.

The Part 121 Regulations are applicable to New York State charter schools and clarify that charter schools are subject to Ed Law 2-d.¹

The following is a general overview of the Ed Law 2-d and Part 121 requirements. Please contact us to discuss specific requirements and/or if you have any questions about Ed Law 2-d, the Part 121 Regulations, or student data privacy in general.

A. Designate a Data Protection Officer:

1. Data Protection Officer shall be:
 - point of contact for data security and privacy
 - responsible for implementation of Data Security and Privacy Policy (see below) and related policies and procedures
2. Must have appropriate training
3. Can be current employee with other job responsibilities
4. Register with NYSED

B. Adopt a Parent's Bill of Rights for Data Privacy and Security:

For a sample Bill of Rights, please see NYSED's Parents Bill of Rights (**Note:** this must be adapted by each charter school).²

C. Adopt a Data Security and Privacy Policy:

Must be aligned with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1) (Framework) (NIST CSF) and include the following elements:

1. *Policy Statement:*
 - the charter school will not sell PII or use or disclose PII, or facilitate or permit the disclosure of PII, by another party for any marketing or commercial purpose.

¹ Please note that in this Summary, we do not address the requirements of Federal laws, such as the Family Educational Rights and Privacy Act ("FERPA"), Children's Online Privacy Protection Act ("COPPA"), Protection of Pupil Rights Amendment ("PPRA") and the Individuals with Disabilities Education Act ("IDEA"), along with their implementing regulations, that govern student data privacy and are applicable to New York charter schools.

² NYSED's Bill of Rights can be found here (http://www.nysed.gov/common/nysed/files/programs/data-privacy-security/parents-bill-of-rights_2.pdf) and also as Exhibit A (page 9) to NYSED's **Model Data Privacy Agreement for Educational Agencies** (Model Agreement), found here (click on Model DPA): <http://www.nysed.gov/data-privacy-security/model-forms-and-policies> (last visited 11.1.2020).

- the charter school will take steps to minimize its collection, processing and transmission of PII.
- 2. *Commitment to include confidentiality provisions in third party contracts:*
 - the charter school shall include provisions in its contracts with third party contractors or in separate data sharing and confidentiality agreements³ that require the confidentiality of PII in accordance with Federal and State law and the charter school’s Data Security and Privacy Policy.
- 3. *Data Privacy Protections* – the Policy must address:
 - how the charter school will determine that every proposed use and disclosure of PII will benefit students and the school; and
 - how the charter school will ensure that PII will not be included in public reports or other public documents.
- 4. *Complaint procedures:*
 - for complaints by parents, eligible students, teachers, principals or other staff about breaches or unauthorized releases of student data and/or teacher or principal data
 - must include the following:
 - i. requirement to promptly acknowledge receipt of complaint, commence an investigation and take precautions to protect PII
 - ii. provide complainant with findings no more than sixty (60) calendar days from receipt of complaint (timeline subject to limited exceptions)
 - iii. may require complaints to be submitted in writing
 - maintain a record of all complaints and their disposition in accordance with applicable data retention policies (e.g., ED-1)
- 5. *Right of parents and eligible students to inspect and review student education records:*
 - charter schools may comply with this requirement by including their annual FERPA Notification of Rights⁴ in their Data Privacy and Security Policy
 - include a commitment to verify the identity of those making requests to ensure that only authorized individuals are able to inspect and review student data
 - records may be provided electronically only if the parent or eligible student consents to such delivery method AND if safeguards (e.g., encryption and password protection) are in place
- 6. *Commitment to annual data privacy and security awareness training for employees*

D. Charter School Responsibilities for Contracts⁵ with Third-Party Contractors Receiving PII:

1. Include provisions in the contract that require the confidentiality of PII in accordance with Federal and State law and the charter school’s Data Security and Privacy Policy.
 - Alternatively, charter schools can choose to use NYSED’s Model Agreement (see FN2), which also includes numbers 2, 3, and 4, below as exhibits to the agreement.

³ See Model Agreement for provisions suggested by NYSED.

⁴ Charter schools still must distribute the annual FERPA Notice for Directory Information.

⁵ Charter schools should develop and implement procedures requiring prior review and approval for staff use of any software, applications, or other technologies pursuant to “click-wrap” agreements.

2. Include *Parents Bill of Rights*.
3. Include *Supplemental Information to Parents Bill of Rights*, developed by the charter school. For a sample Supplement, see Model Agreement at Exhibit B (pp. 10-11).
3. Ensure that the third-party contractor's *Data Security and Privacy Plan*,⁶ acceptable to the charter school, is included in the contract. For a sample Plan, see Model Agreement at Exhibit C (pp. 12-13).

E. Post the following on your Website:

1. Parents Bill of Rights for Data Privacy and Security
2. Each Supplement to Parents Bill of Rights for Data Privacy and Security
3. Data Security and Privacy Policy

F. Conduct Annual Data Privacy and Security Awareness Training for Officers and Employees

G. Reports and Notifications of Breach and Unauthorized Access:

1. Charter schools must report every discovery or report of a breach or unauthorized release of PII, including the receipt of notification of such breach or unauthorized release from a third-party contractor:
 - no more than ten (10) calendar days after such discovery, report or notification
 - to the Chief Privacy Officer (NYSED)
 - using the form provided by NYSED:
<http://www.nysed.gov/common/nysed/files/programs/data-privacy-security/nysed-cpo-data-incident-reporting-form.pdf>
2. Charter schools must notify affected parents, eligible students, teachers and/or principals in the most expedient way possible and without unreasonable delay:
 - no more than sixty (60) calendar days after the discovery or report or receipt of notification of a breach or unauthorized release of PII (timeline is subject to limited exceptions)
 - provided directly to the affected parent, eligible student, teacher or principal by:
 - first class mail
 - email, or
 - telephone
 - to the extent available, the notice shall include the following in plain language:
 - brief description of the breach or unauthorized release
 - date of incident
 - date of discovery
 - description of the types of PII affected
 - estimate of the number of records affected
 - brief description of the charter school's investigation or plan to investigate
 - contact information for representatives who can answer questions

⁶ Ed Law 2-d and the Part 121 Regulations impose obligations on third-party contractors who will receive PII; please contact us with any questions about these requirements.

HARLEM HEBREW LANGUAGE ACADEMY CHARTER SCHOOL

DATA SECURITY AND PRIVACY POLICY

The Board of Trustees (the “Board”) of Harlem Hebrew Language Academy Charter School (“HHLA” or the “School”) adopts this Data Security and Privacy Policy to implement the requirements of New York Education Law Section 2-d and the Part 121 Regulations of the New York State Education Commissioner. This Policy aligns with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1) (NIST CSF), which the New York State Education Department (NYSED) has adopted as the standard for data security and privacy for educational agencies, such as the School.

HHLA is subject to and complies with Federal laws governing student data privacy, including but not limited to the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA), along with their implementing regulations. New York Education Law Section 2-d and the Part 121 Regulations of the Commissioner strengthen these existing protections over student personally identifiable information and safeguard certain personally identifiable information of classroom teachers and principals.

HHLA is committed to protecting personally identifiable information from unauthorized use or disclosure, as required by and in compliance with the law.

A. Policy Statement

HHLA will 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.

HHLA will take steps to minimize its collection, processing, and transmission of personally identifiable information.

This Data Security and Privacy Policy includes all of the protections afforded to parents/guardians or eligible students, as applicable, under FERPA, IDEA and the Federal regulations implementing those statutes.

B. Data Security and Privacy Standard

HHLA will utilize NIST CSF as the standard for data security and privacy at HHLA.

C. Parents Bill of Rights for Data Privacy and Security

HHLA has adopted a Parents Bill of Rights for Data Privacy and Security (Parents Bill of Rights), which can be found here: <https://harlemhebrewcharter.org/forparents/policies>

D. Data Protection Officer

HHLA has designated the Director of Operations, IT and Student Information Systems to serve as HHLA's Data Protection Officer (DPO). The DPO is responsible for the implementation and oversight of this Policy and any related policies and procedures, and will serve as the main point of contact for data security and privacy at HHLA.

The contact information for the DPO is as follows: Matthew McSorley, Director of IT and Student Information Systems - mmcsorley@hebrewpublic.org.

E. Data Privacy Protections

HHLA has established a data governance team, led by the DPO, which will manage the use of HHLA's data that is protected by law. The DPO and the data governance team will determine whether a proposed use of personally identifiable information would benefit students and HHLA – e.g., improve academic achievement, empower parents and students with information, and/or advance efficient and effective school operations – and will ensure that personally identifiable information is not included in public reports or other public documents.

F. Agreements with Third-Party Contractors

HHLA will ensure that its written agreements with third-party contractors who will receive student and/or teacher/principal personally identifiable information include provisions that require the confidentiality of personally identifiable information in accordance with Federal and State laws and regulations, and this Policy. Alternatively, HHLA will require third-party contractors to sign a separate data sharing and confidentiality agreement containing such provisions.

Additionally, HHLA will ensure that its agreements with third-party contractors include:

- HHLA's Parents Bill of Rights for Data Privacy and Security;
- Supplemental Information to Parents Bill of Rights (this information is available here: harlemhebrewcharter.org/forparents/policies); and
- The third-party contractor's Data Privacy and Security Plan that is accepted by HHLA and must outline how the third-party contractor will ensure that the confidentiality of HHLA's data is maintained in accordance with Federal and State laws and regulations and this Policy.

G. Right of Parents/Guardians and Eligible Students to Inspect and Review Student Education Records or Request Amendments

HHLA's 2020-2021 annual FERPA Notification of Rights, which sets forth the rights of parents/guardians and eligible students to inspect and review student education records and request amendments, can be found here: [harlemhebrewcharter.org/forparents/policies].

All requests to inspect and review education records must be made in writing and addressed to HHLA, as set forth in the FERPA Notification of Rights, and not to any third party contractor.

HHLA shall ensure that only authorized individuals are able to inspect and review student data. To that end, HHLA shall take steps to verify the identity of parents/guardians and eligible students who submit requests to inspect and review education records and verify the individual's authority to do so.

If the parent/guardian or eligible student consents, HHLA may provide requested records electronically. HHLA will transmit the personally identifiable information in a way that complies with Federal and State laws and regulations. HHLA will put in place safeguards associated with industry standards and best practices, including but not limited to encryption and password protection, when education records requested by a parent/guardian or eligible student are electronically transmitted.

H. Complaint Procedures

Parents/guardians, eligible students, teachers, principals, or other staff have the right to submit complaints about any breach or unauthorized release of personally identifiable information in accordance with the following procedures:

1. All complaints must be submitted to the DPO in writing, utilizing a complaint form available:harlemhebrewcharter.org/forparents/policies
2. Upon receipt of a complaint, the DPO will promptly acknowledge receipt of the complaint, commence an investigation, and take precautions to protect personally identifiable information.
3. HHLA will provide the complainant with its findings within a reasonable time period but no more than sixty (60) calendar days from the receipt of the complaint by HHLA.
4. If HHLA requires additional time, or where the response may compromise security or impede a law enforcement investigation, HHLA will provide the complainant with a written explanation that includes the approximate date when HHLA anticipates that it will respond to the complaint.

HHLA 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.

I. Reports and Notifications of Breach or Unauthorized Release

Report to NYSED's Chief Privacy Officer

The DPO will report every discovery or report of a breach or unauthorized release of personally identifiable information, including the receipt of notification of such breach or unauthorized release from a third-party contractor, to NYSED's Chief Privacy Officer without unreasonable delay but no more than ten (10) calendar days after such discovery, report or notification.

Notification to Affected Person(s) of a Breach or Unauthorized Release

The DPO will notify affected parents/guardians, eligible students, teachers, and/or principals in the most expedient way possible and without unreasonable delay, but no more than sixty (60) calendar days after the discovery or report of a breach or unauthorized release of personally identifiable information, unless that notification would interfere with an ongoing investigation by law enforcement or cause further disclosure of personally identifiable information by disclosing an unfixed security vulnerability. Where notification is delayed under these circumstances, HHLA shall notify parents, eligible students, teachers and/or principals within seven (7) calendar days after the security vulnerability has been remedied or the risk of interference with the law enforcement investigation ends.

The notice shall be provided directly to the affected parent, eligible student, teacher or principal by:

- first class mail,
- email, or
- telephone.

The notice shall be clear, concise, use language that is plain and easy to understand, and to the extent available, include:

- a brief description of the breach or unauthorized release,
- the dates of the incident,
- the date of discovery, if known,
- a description of the types of personally identifiable information affected,
- an estimate of the number of records affected,
- a brief description of HHLA's investigation or plan to investigate, and
- contact information for representatives who can assist parents or eligible students that have additional questions.

The DPO will report annually to the Board of Trustees the number and disposition of reported breaches, if any, and a summary of any complaints submitted pursuant to this Policy.

J. Annual Data Privacy and Security Awareness Training

HHLA will annually provide data privacy and security awareness training to its officers and employees with access to personally identifiable information. This training will include, but not be limited to, training on the State and Federal laws that protect personally identifiable information and how employees can comply with these laws and regulations.

K. Distribution of Policy and Notice to Officers and Employees

HHLA will publish this Data Security and Privacy Policy on its website and provide notice of the Policy to all of its officers and employees.

Board Chair Signature

Vanessa Goldberg-Drossman

Harlem Hebrew Language Academy Charter School

Parents Bill of Rights for Data Privacy and Security

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 or Marketing purpose. PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("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 Harlem Hebrew Language Academy Charter School. 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, 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); and 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 at www.nysed.gov/data-privacy-security/student-data-inventory and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of PII addressed. (i) Complaints must be submitted to Harlem Hebrew Language Academy Charter School's Data Protection Officer ("DPO") in writing, utilizing a complaint form available here: issues@hebrewpublic.org. The contact information for the DPO is as follows: Matthew McSorley, Director of IT and Student Information Systems - mmcsorley@hebrewpublic.org. (ii) Complaints may also be submitted to the NYS Education Department at www.nysed.gov/data-privacy-security/report-improper-disclosure, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to 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 PII occurs.
8. Harlem Hebrew Language Academy Charter School workers that handle PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. Harlem Hebrew Language Academy Charter School contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

Board Chair Signature

Vanessa Goldberg-Drossman