



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK**

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Interim Commissioner of Education  
President of the University of the State of New York  
89 Washington Avenue, Room 111  
Albany, New York 12234

E-mail: [commissioner@nysed.gov](mailto:commissioner@nysed.gov)  
Twitter: @NYSEDNews  
Tel: (518) 474-5844  
Fax: (518) 473-4909

June 4, 2020

Ms. Carmen Ayala, Vice President  
Hempstead Union Free School District  
185 Peninsula Boulevard  
Hempstead, NY 11550

Dear Ms. Ayala:

In accordance with Chapter 19 of the Laws of 2020, I write to inform you that I am appointing Dr. William H. Johnson as an independent monitor to the Hempstead Union Free School District (“Hempstead UFSD” or “the District”) effective July 1, 2020. As you are aware, the Board of Regents and the New York State Education Department (NYSED or “the Department”) have grown increasingly concerned regarding the long-standing academic and fiscal issues in the Hempstead UFSD. Additionally, the fiscal distress of the District has been exacerbated by the Coronavirus pandemic.

In light of the above, the Board of Regents and Department believe that the District will benefit from the appointment of a monitor who will provide oversight, guidance, and technical assistance to the District, the Board of Education (“Board”), and the Superintendent of Schools of the District (“Superintendent”).

The monitor shall perform the following duties and responsibilities of a monitor:

- a) Provide oversight, guidance and technical assistance related to the academic and fiscal policies, practices and decisions of the District, the Board and the Superintendent;
- b) Serve as a non-voting ex-officio member of the Board, and as such, attend all District Board of Education meetings, including executive and emergency sessions;
- c) The Board in consultation with the monitor shall adopt a conflict of interest policy that complies with all existing applicable laws, rules, and regulations and that ensures board members and administrators act in the District’s best interest and comply with applicable legal requirements;
- d) Schedule three public hearings, which may be conducted remotely, to be held within 60 days of his or her appointment, which shall allow public comment from the District’s residents, students, employees, parents, board members and administration;
- e) In conjunction with the Board, develop a proposed financial plan for the District no later than November 1, 2020 for the 2020-21 school year and the four subsequent school years. The financial plan shall ensure that the annual aggregate operating expenses of the District do not exceed annual operating revenues for such school year and that the major operating funds of the district be balanced in accordance with generally accepted accounting principles. The financial plan shall include

- statements of all estimated revenues, expenditures, and cash flow projections of the district. Once the proposed financial plan has been approved by the Board, the monitor shall submit such plan to the Commissioner for approval following a public hearing thereon conducted by the Board. Where the Board and the monitor do not agree on the elements of the proposed financial plan, the monitor shall submit the proposed financial plan, his amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner no later than December 1, 2020 following a public hearing thereon conducted by the Board;
- f) In conjunction with the Board, develop an academic improvement plan for the District no later than November 1, 2020 for the 2020-21 school year and the four subsequent school years. The academic improvement plan shall contain a series of programmatic recommendations designed to improve academic performance over the period of the plan in those academic areas that the Commissioner deems to be in need of improvement which shall include addressing the provisions contained in any action plan set forth by the Department. Once the proposed academic plan has been approved by the Board, the monitor shall submit such plan to the Commissioner for approval following a public hearing thereon conducted by the Board. Where the Board and the monitor do not agree on the elements of the proposed academic improvement plan, the monitor shall submit the proposed academic improvement plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner no later than December 1, 2020 following a public hearing thereon conducted by the Board;
  - g) Starting with the proposed budget for the 2021-22 school year, annually review the District's proposed budget to ensure that it is balanced within the context of revenue and expenditure estimates and mandated programs and to ensure that it, to the greatest extent possible, is consistent with the District's academic improvement plan and financial plan. The monitor shall present his findings to the Board and the Commissioner no later than 45 days prior to the date scheduled for the school district's annual budget vote. In the event of a revote, the monitor in conjunction with the Board shall develop and submit the District's proposed budget for the next succeeding school year to the Commissioner no later than 7 days prior to the budget hearing;
  - h) Provide semi-annual reports to the Board of Regents, Commissioner, the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the academic, fiscal, and operational status of the District. Such reports shall include all the contracts the district entered into throughout the year;
  - i) Work with the District's shared decision-making committee as defined in 8 NYCRR Part 100.11, in developing the academic improvement plan, financial plan, district goals, implementation of district priorities and budgetary recommendations; and
  - j) Assist in resolving any disputes and conflicts, including but not limited to, those between the Superintendent and the Board and among members of the Board.

Additionally, the monitor shall have the following powers as monitor for the District:

- a) The monitor shall be provided access to any necessary documents and records of the district including access to electronic information systems, databases and

- planning documents, consistent with all applicable State and federal statutes including, but not limited to, the federal Family Education Rights and Privacy Act (“FERPA”) (20 USC §1232g) and New York State Education Law §2-d;
- b) The monitor shall have the authority to disapprove travel outside the State paid for by the District;
  - c) The monitor may recommend, and the Board shall consider by vote of a resolution at the next scheduled meeting of the Board, cost saving measures including, but not limited to, shared service agreements; and
  - d) The monitor may notify the Board in writing when he or she deems the District is violating an element of the financial plan or academic improvement plan.

Pursuant to Chapter 19 of the Laws of 2020, Dr. Johnson is considered a consultant to the Hempstead UFSD and his services will be a charge upon the district, which shall also reimburse him for the reasonable and necessary expenses he incurs in performing his duties as a monitor, which shall be offset by any State appropriation for such monitor. Additionally, Dr. Johnson shall be entitled to defense and indemnification by the District to the same extent as a District employee. Please be reminded that a fingerprinting and criminal history record check of Dr. Johnson is to be conducted by the District. The contract entered into by the district and Dr. Johnson must be submitted no later than July 1, 2020 for my review and approval. I have included the following attachments to assist the monitor and the District to implement the provisions of the law:

- Attachment B: Draft Conflict of Interest Policy
- Attachment C: Conduct of Required Public Hearings
- Attachment D: Development of Financial Plan
- Attachment E: Development of Academic Improvement Plan
- Attachment F: Fiscal and Operational Oversight

Should you have questions regarding this appointment, please contact Deputy Commissioner for P-12 Kim Wilkins at [kim.wilkins@nysed.gov](mailto:kim.wilkins@nysed.gov) or 518-474-4817.

We look forward to supporting efforts to improve educational outcomes for all students in the Hempstead UFSD.

Sincerely,



Shannon L. Tahoe  
Interim Commissioner

Enclosure

c: Regina Armstrong, Superintendent  
Patricia Wright, District Clerk  
William H. Johnson  
John D'Agati  
Kim Wilkins

## **Attachment A: Draft Independent Monitor Contract**

### **AGREEMENT FOR SERVICE OF INDEPENDENT MONITOR**

WHEREAS, Pursuant to Education Law §305(2), the Commissioner of Education of the State of New York (“Commissioner”) has the responsibility of supervising all schools and institutions that are subject to the provisions of the Education Law, or any statute relating to education and is required to advise and guide the school officers of all districts and cities of the State in relation to their duties and the general management of the schools under their control; and

WHEREAS, Pursuant to Education Law §308, the Commissioner has the power and duty to institute proceedings or processes necessary to properly enforce and give effect to any provision of the Education Law or any statute relating to the school system of the State or to any school district and to enforce any rule or direction of the Board of Regents (“Regents”); and

WHEREAS, Pursuant to Education Law §215, the Regents, the Commissioner, or their representatives may visit, examine into and inspect any institution in the University of the State of New York (“USNY”) and any school or institution under the educational supervision of the State, and may require, as often as desired, duly verified reports providing such information and in such form as the Regents or the Commissioner shall prescribe; and

WHEREAS, Chapter 19 of the Laws of 2020 provides for the appointment of a monitor to the Hempstead Union Free School District (“Hempstead UFSD” or “the District”) by the Commissioner to provide oversight, guidance and technical assistance related to the educational and fiscal policies, practices, programs and decisions of the District, the Board of Education, and the Superintendent of Schools of the District (“Superintendent”); and

WHEREAS, because the District is under significant educational and fiscal stress and continues to require assistance in making progress towards corrective action, the Commissioner, by

letter dated June 4, 2020 appointed William H. Johnson as the monitor for the Hempstead UFSD in accordance with Chapter 19 of the Laws of 2020; and

WHEREAS, the appointed monitor will carry out the roles and responsibilities set forth in Chapter 19 of the Laws of 2020 in accordance with this Agreement; and

WHEREAS, pursuant to Chapter 19 of the Laws of 2020, the reasonable and necessary expenses incurred by the monitor while performing his or her official duties shall be paid by the District; and

WHEREAS, the District and Dr. Johnson are entering into this Agreement at the direction of the Commissioner to describe the duties and responsibilities of the monitor and to provide for compensation;

IT IS HEREBY AGREED THAT:

1. Dr. Johnson will provide monitor services to the District under the terms and conditions of this Agreements.
2. The term of this appointment shall be for the period July 1, 2020 through June 30, 2025 unless sooner terminated as provided herein. Upon satisfactory evaluation of the monitor's performance of the goals and objectives of Chapter 19 of the Laws of 2020, and subject to the needs of the District and approval of the Commissioner, the monitor's appointment may be extended for one or more additional one-year terms.
3. The monitor shall perform the following duties, responsibilities of a monitor appointed to the Hempstead UFSD:
  - k) Provide oversight, guidance and technical assistance related to the educational and fiscal policies, practices and decisions of the District, the Board of the Education ("the Board") and the Superintendent;
  - l) Serve as a non-voting ex-officio member of the Board, and as such, attend all District Board of Education meetings, including executive and emergency sessions;

- m) The Board in in consultation with the monitor shall adopt a conflict of interest policy that complies with all existing applicable laws, rules, and regulations that ensures its board members and administrators act in the District's best interest and comply with applicable legal requirements;
- n) Schedule three public hearings to be held within sixty days of his or her appointment, which shall allow public comment from the District's residents, students, employees, parents, board members, and administration. The subject matter of such hearings shall be consistent with section 5 of Chapter 19 of the Laws of 2020. Provided, however, that such public hearings shall be subject to modification pursuant to any Executive Order of the Governor pursuant to a State of emergency declared for the COVID-19 crisis;
- o) In conjunction with the Board, develop a proposed financial plan for the District no later than November 1, 2020 for the 2020-2021 school year and the four subsequent school years. The financial plan shall ensure that the annual aggregate operating expenses of the District do not exceed annual operating revenues for such school year and that the major operating funds of the district be balanced in accordance with generally accepted accounting principles. The financial plan shall include statements of all estimated revenues, expenditures, and cash flow projections of the District. When the proposed financial plan has been approved by the Board, the monitor shall submit such plan to the Commissioner for approval following a public hearing thereon conducted by the Board. Should the Board and the monitor not agree on the elements of the proposed financial plan, the monitor shall submit no later than December 1, 2020 the proposed financial plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner following a public hearing thereon conducted by the Board;
- p) In conjunction with the Board, develop a proposed academic improvement plan for the District no later than November 1, 2020 for the 2020-2021 school year and the four subsequent school years. The academic improvement plan shall contain a series of programmatic recommendations designed to improve academic performance over the period of the plan in those academic areas that the Commissioner deems to be in need of improvement which shall include addressing the provisions contained in any action plan set forth by NYSED. When the proposed academic plan has been

approved by the Board, the monitor shall submit such plan to the Commissioner for approval following a public hearing thereon conducted by the Board. Should the Board and the monitor not agree on the elements of the proposed academic plan, the monitor shall submit no later than December 1, 2020 the proposed academic plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner following a public hearing thereon conducted by the Board;

- q) Starting with the proposed budget for the 2021-2022 school year, annually review the District's proposed budget to ensure that it is balanced within the context of revenue and expenditure estimates and mandated programs and to ensure that it, to the greatest extent possible, is consistent with the District's academic improvement plan and financial plan. The monitor shall present his findings to the Board and the Commissioner no later than 45 days prior to the date scheduled for the school district's annual budget vote. In the event of a revote, the monitor in conjunction with the Board shall develop and submit the District's proposed budget for the next succeeding school year to the Commissioner no later than 7 days prior to the budget hearing;
- r) Provide semi-annual reports to the Commissioner, Regents, the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the academic, fiscal, and operational status of the District. Such reports shall include all the contracts the District entered into throughout the year;
- s) Work with the District's shared decision-making committee as defined in 8 NYCRR Part 100.11, in developing the academic improvement plan, financial plan, District goals, implementation of district priorities and budgetary recommendations; and
- t) Assist in resolving any disputes and conflicts, including but not limited to, those between the Superintendent and the Board and among members of the Board;

4. The monitor shall have the following powers of a monitor appointed by the Hempstead

UFSD:

- e) The monitor shall be provided access to any necessary documents and records of the district including access to electronic information systems, databases and planning documents, consistent with all

applicable State and federal statutes including, but not limited to, the federal Family Education Rights and Privacy Act (“FERPA”) (20 USC §1232g) and New York State Education Law §2-d;

- f) The monitor shall have the authority to disapprove travel outside the State paid for by the District;
- g) The monitor may recommend, and the Board shall consider by vote of a resolution at the next scheduled meeting of the Board, cost saving measures including, but not limited to, shared service agreements; and
- h) The monitor may notify the Board in writing when he or she deems the District is violating an element of the financial plan or academic improvement plan.

5. The District shall pay the monitor the following reasonable and necessary expenses incurred while the monitor performs his or her official duties, consistent with the requirements of Chapter 19 of the Laws of 2020:

- a) Consulting fees, to be paid at the rate of \$195.50 per hour, as established by the Commissioner. Such hourly rate shall include\$@ to defray the cost of a 12-month XXX insurance policy to cover XXX; and
- b) Meals, lodging and travel expenses, to be paid at a rate not to exceed the applicable rates paid to state employees.

6. The monitor shall submit invoices, within such time frame as agreed upon by the parties, to the District’s Business Officer. The District shall audit the invoices and make payment no later than 60 days after receipt of each invoice.

7. The monitor shall at all times be an independent contractor and consultant to the District, and shall not be deemed to be an employee or representative of the District, however, the monitor shall be entitled to defense and indemnification by the District to the same extent as a school district employee.

8. The Monitor shall observe and comply with all applicable District Policies and Regulations while on the grounds of the District or providing services pursuant to this Agreement.



9. The monitor will report to the New York State Education Department's ("NYSED's") Deputy Commissioner for P-12 Instruction, or other NYSED staff as designated by the Commissioner.

10. The parties recognize that, upon appointment of the monitor, the District shall ensure that the monitor shall be subject to a criminal history and fingerprint check, in accordance with §100.17(d)(2)(vi) of the Commissioner's regulations. If the result of the check are unsatisfactory, upon approval of the Commissioner, this Agreement shall be terminated upon written notice to the monitor, effective upon personal delivery, or upon the mailing of such notice by first class mail, return receipt requested, to the address provided by the monitor to the District's Business Official upon execution of this Agreement. This Agreement shall be terminated upon such written notice from NYSED if the appointment of the monitor by the Commissioner is terminated for any reason. The monitor's designated address may be changed at any time upon provision of a new address to the Business Official, provided, however, that any notices mailed before the date of receipt of the new address shall be deemed mailed to the proper address.

11. This Agreement may also be terminated by mutual agreement of the Commissioner and the District.

12. The parties agree that routine communications between and among the District, NYSED and the monitor may be accomplished through the use of email. The parties designate the following email addresses for communications related to the work of the monitor, which may be changed or supplemented at any time upon notice to all three:

Monitor: [wjohnso6@optonline.net](mailto:wjohnso6@optonline.net)

District:

NYSED: [Commissioner@nysed.gov](mailto:Commissioner@nysed.gov)

13. The monitor shall work on average of 25-30 hours a week provided, however, that the monitor's hours may increase or decrease depending on the needs of the District. The monitor shall collaborate with the District and NYSED, as needed, to determine a schedule that is mutually convenient and sufficient to accomplish the goals and objectives of the monitor as provided in Chapter 19 of the Laws of 2020. The District shall cooperate fully with an appointed monitor. Such cooperation shall include, but not be limited to:

- a) Providing the monitor with a space to work and a District email address to be used for official correspondence;
- b) Placing on the District website reports of the monitor and contact information for the monitor;
- c) Providing the monitor with an opportunity to present a report to the Board at least quarterly on the implementation of the improvement efforts of the District; and
- d) Promptly scheduling meetings with District relevant personnel as requested by the monitor.

14. The monitor agrees to comply with all applicable laws and regulations regarding the privacy, confidentiality and security of personally identifiable information including, but not limited to, FERPA and Education Law §2-d. The monitor agrees that all such information will, at a minimum, be handled and maintained consistent with the Data Security and Privacy Plan (attached hereto and incorporated herein as Appendix A) and Parents Bill of Rights (attached hereto and incorporated herein as Appendix B). These security guidelines were developed by NYSED and set forth the management of confidential information.

15. When on District property, the monitor agrees to comply with applicable District policies concerning use of District property and information technology assets, safety and security.

16. The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.

17. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, and any dispute regarding the Agreement must be brought in a court of appropriate jurisdiction in New York State.

18. The failure of any party at any time to require the performance by any other party of any of the terms or provisions of this Agreement shall not affect the right thereafter to enforce the same, and shall not constitute a waiver by any party of a breach of any of the terms or provisions of this Agreement or be construed as a waiver of any succeeding breach.

19. This Agreement is subject to and is to be interpreted in light of Chapter 19 of the Laws of 2020, and any other applicable State or federal statute, regulation or policy.

20. No amendment, modification or waiver of any provision of this Agreement shall be effective unless approved in advance by the Commissioner and set forth in writing signed by the District and the monitor.

21. This Agreement may be executed in one or more copies, and each such duplicate of this Agreement will be deemed an original thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year noted below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Carmen Ayala  
Vice President, Board of Education  
Hempstead Union Free School District

Dated: \_\_\_\_\_

\_\_\_\_\_  
William H. Johnson  
Monitor

## Appendix A- Data Security and Privacy Plan

### APPENDIX A DATA SECURITY AND PRIVACY PLAN

If individually identifiable data is provided to or stored by the Contractor pursuant to this agreement (the "Data"), the Contractor agrees that the data are sensitive requiring appropriate levels of security to prevent unauthorized disclosure or modification. Therefore, the Contractor shall be subject to the following requirements:

1. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.
2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.
3. The Contractor's security measures must also include:
  - a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;
  - b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;
  - c. Access to computer applications and Data are managed through appropriate userID/password procedures;
  - d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;
  - e. That Contractor have a disaster recovery plan that is acceptable to the State;
  - f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and
  - g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.
4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must

be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.

5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:
  - a. Any officers or employees of the third-party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
  - b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - c. not use the education records for any other purposes than those explicitly authorized in its contract;
  - d. except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any 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 party provides a notice of the 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 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; and
  - f. use encryption technology consistent with Education Law §2-d and any implementing regulations.
6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.
7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.
8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.

9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.
10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff actually gained access to the server room.
11. Breach Notification.
  - a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.
  - b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.
  - c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d(6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.
  - d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.

## PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

To satisfy their responsibilities regarding the provision of education to students in pre-kindergarten through grade twelve, “educational agencies” (as defined below) in the State of New York collect and maintain certain personally identifiable information from the education records of their students. As part of the Common Core Implementation Reform Act, Education Law §2-d requires that each educational agency in the State of New York must develop a Parents’ Bill of Rights for Data Privacy and Security (Parents’ Bill of Rights). The Parents’ Bill of Rights must be published on the website of each educational agency, and must be included with every contract the educational agency enters into with a “third party contractor” (as defined below) where the third party contractor receives student data, or certain protected teacher/principal data related to Annual Professional Performance Reviews that is designated as confidential pursuant to Education Law §3012-c (“APPR data”).

The purpose of the Parents’ Bill of Rights is to inform parents (which also include legal guardians or persons in parental relation to a student, but generally not the parents of a student who is age eighteen or over) of the legal requirements regarding privacy, security and use of student data. In addition to the federal Family Educational Rights and Privacy Act (FERPA), Education Law §2-d provides important new protections for student data, and new remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

### **A. What are the essential parents’ rights under the Family Educational Rights and Privacy Act (FERPA) relating to personally identifiable information in their child’s student records?**

The rights of parents under FERPA are summarized in the Model Notification of Rights prepared by the United States Department of Education for use by schools in providing annual notification of rights to parents. It can be accessed at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>, and a copy is attached to this Parents’ Bill of Rights. Complete student records are maintained by schools and school districts, and not at the New York State Education Department (NYSED). Further, NYSED would need to establish and implement a means to verify a parent’s identity and right of access to records before processing a request for records to the school or school district. Therefore, requests to access student records will be most efficiently managed at the school or school district level.

Parents’ rights under FERPA include:

1. The right to inspect and review the student's education records within 45 days after the day the school or school district receives a request for access.
2. The right to request amendment of the student’s education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA. Complete student records are maintained by schools and school districts and not at NYSED, which is the secondary repository of data,

and NYSED make amendments to school or school district records. Schools and school districts are in the best position to make corrections to students' education records.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the school or school district with legitimate educational interests; (ii) officials of another school for purposes of enrollment or transfer; (iii) third party contractors providing services to, or performing functions for an educational agency; (iv) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (v) organizations conducting studies for or on behalf of educational agencies) and (vi) the public where the school or school district has designated certain student data as "directory information" (described below). The attached FERPA Model Notification of Rights more fully describes the exceptions to the consent requirement under FERPA).
4. Where a school or school district has a policy of releasing "directory information" from student records, the parent has a right to refuse to let the school or school district designate any all of such information as directory information. Directory information, as defined in federal regulations, includes: the student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received and the most recent educational agency or institution attended. Where disclosure without consent is otherwise authorized under FERPA, however, a parent's refusal to permit disclosure of directory information does not prevent disclosure pursuant to such separate authorization.
5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA.

**B. What are parents' rights under the Personal Privacy Protection Law (PPPL), Article 6-A of the Public Officers Law relating to records held by State agencies?**

The PPPL (Public Officers Law §§91-99) applies to all records of State agencies and is not specific to student records or to parents. It does not apply to school districts or other local educational agencies. It imposes duties on State agencies to have procedures in place to protect from disclosure of "personal information," defined as information which because of a name, number, symbol, mark or other identifier, can be used to identify a "data subject" (in this case the student or the student's parent). Like FERPA, the PPPL confers a right on the data subject (student or the student's parent) to access to State agency records relating to them and requires State agencies to have procedures for correction or amendment of records.

A more detailed description of the PPPL is available from the Committee on Open Government of the New York Department of State. Guidance on what you should know about the PPPL can be accessed at <http://www.dos.ny.gov/coog/shldno1.html>. The Committee on Open Government's address is Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, suite 650, Albany, NY 12231, their email address is [coog@dos.ny.gov](mailto:coog@dos.ny.gov), and their telephone number is (518) 474-2518.



**C. Parents' Rights Under Education Law §2-d relating to Unauthorized Release of Personally Identifiable Information**

**1. What “educational agencies” are included in the requirements of Education Law §2-d?**

- The New York State Education Department (“NYSED”);
- Each public school district;
- Each Board of Cooperative Educational Services or BOCES; and
- All schools that are:
  - a public elementary or secondary school;
  - a universal pre-kindergarten program authorized pursuant to Education Law §3602-e;
  - an approved provider of preschool special education services;
  - any other publicly funded pre-kindergarten program;
  - a school serving children in a special act school district as defined in Education Law 4001; or
  - certain schools for the education of students with disabilities - an approved private school, a state-supported school subject to the provisions of Education Law Article 85, or a state-operated school subject to Education Law Article 87 or 88.

**2. What kind of student data is subject to the confidentiality and security requirements of Education Law §2-d?**

The law applies to personally identifiable information contained in student records of an educational agency listed above. The term “student” refers to any person attending or seeking to enroll in an educational agency, and the term “personally identifiable information” (“PII”) uses the definition provided in FERPA. Under FERPA, personally identifiable information or PII includes, but is not limited to:

- (a) The student’s name;
- (b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and Mother’s Maiden Name<sup>1</sup>;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

**3. What kind of student data is *not* subject to the confidentiality and security requirements of Education Law §2-d?**

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<sup>1</sup> Please note that NYSED does not collect certain information defined in FERPA, such as students’ social security numbers, biometric records, mother’s maiden name (unless used as the mother’s legal name).

The confidentiality and privacy provisions of Education Law §2-d and FERPA extend only to PII, and not to student data that is not personally identifiable. Therefore, de-identified data (e.g., data regarding students that uses random identifiers), aggregated data (e.g., data reported at the school district level) or anonymized data that could not be used to identify a particular student is not considered to be PII and is not within the purview of Education Law §2-d or within the scope of this Parents' Bill of Rights.

#### **4. What are my rights under Education Law § 2-d as a parent regarding my student's PII?**

Education Law §2-d ensures that, in addition to all of the protections and rights of parents under the federal FERPA law, certain rights will also be provided under the Education Law. These rights include, but are not limited to, the following elements:

- (A) A student's PII cannot be sold or released by the educational agency for any commercial or marketing purposes.
  - PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.
  - However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.
  
- (B) Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by an educational agency.
  - This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record.
  - NYSED will develop policies for annual notification by educational agencies to parents regarding the right to request student data. Such policies will specify a reasonable time for the educational agency to comply with such requests.
  - The policies will also require security measures when providing student data to parents, to ensure that only authorized individuals receive such data. A parent may be asked for information or verifications reasonably necessary to ensure that he or she is in fact the student's parent and is authorized to receive such information pursuant to law.
  
- (C) State and federal laws protect the confidentiality of PII, 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.

Education Law §2-d also specifically provides certain limitations on the collection of data by educational agencies, including, but not limited to:

- (A) A mandate that, except as otherwise specifically authorized by law, NYSED shall only collect PII relating to an educational purpose;
- (B) NYSED may only require districts to submit PII, including data on disability status and student suspensions, where such release is required by law or otherwise authorized under FERPA and/or the New York State Personal Privacy Law; and
- (C) Except as required by law or in the case of educational enrollment data, school districts shall not report to NYSED student data regarding juvenile delinquency records, criminal records, medical and health records or student biometric information.
- (D) Parents may access the NYSED Student Data Elements List, a complete list of all student data elements collected by NYSED, at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234; and
- (E) Parents have the right to file complaints with an educational agency about possible breaches of student data by that educational agency's third party contractors or their employees, officers, or assignees, or with NYSED. Complaints to NYSED should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, email to [CPO@mail.nysed.gov](mailto:CPO@mail.nysed.gov). The complaint process is under development and will be established through regulations to be proposed by NYSED's Chief Privacy Officer, who has not yet been appointed.
  - Specifically, the Commissioner of Education, after consultation with the Chief Privacy Officer, will promulgate regulations establishing procedures for the submission of complaints from parents, classroom teachers or building principals, or other staff of an educational agency, making allegations of improper disclosure of student data and/or teacher or principal APPR data by a third party contractor or its officers, employees or assignees.
  - When appointed, the Chief Privacy Officer of NYSED will also provide a procedure within NYSED whereby parents, students, teachers, superintendents, school board members, principals, and other persons or entities may request information pertaining to student data or teacher or principal APPR data in a timely and efficient manner.

## **5. Must additional elements be included in the Parents' Bill of Rights.?**

Yes. For purposes of further ensuring confidentiality and security of student data, as an appendix to the Parents' Bill of Rights each contract an educational agency enters into with a third party contractor shall include the following supplemental information:

- (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 with the third party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
- (D) if and how a parent, student, eligible student, 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 (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
  - a. In addition, the Chief Privacy Officer, with input from parents and other education and expert stakeholders, is required to develop additional elements of the Parents' Bill of Rights to be prescribed in Regulations of the Commissioner.

**6. What protections are required to be in place if an educational agency contracts with a third party contractor to provide services, and the contract requires the disclosure of PII to the third party contractor?**

Education Law §2-d provides very specific protections for contracts with “third party contractors”, defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. The term “third party contractor” also includes an educational partnership organization that receives student and/or teacher or principal APPR data from a school district to carry out its responsibilities pursuant to Education Law §211-e, and a not-for-profit corporation or other non-profit organization, which are not themselves covered by the definition of an “educational agency.”

Services of a third party contractor covered under Education Law §2-d include, but not limited to, data management or storage services, conducting studies for or on behalf of the educational agency, or audit or evaluation of publicly funded programs.

When an educational agency enters into a contract with a third party contractor, under which the third party contractor will receive student data, the contract or agreement must include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy. However, the standards for an educational agency's policy on data security and privacy must be prescribed in Regulations of the Commissioner that have not yet been promulgated. A signed copy of the Parents' Bill of Rights must be included, as well as a requirement that any officers or employees of the third party contractor and its assignees who have access to student data or

teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

Each third party contractor that enters into a contract or other written agreement with an educational agency under which the third party contractor will receive student data or teacher or principal data shall:

- limit internal access to education records to those individuals that are determined to have legitimate educational interests
- not use the education records for any other purposes than those explicitly authorized in its contract;
- except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any PII 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 party provides a notice of the disclosure to NYSED, district 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;
- maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody; and
- use encryption technology to protect data while in motion or in its custody from unauthorized disclosure.

## **7. What steps can and must be taken in the event of a breach of confidentiality or security?**

Upon receipt of a complaint or other information indicating that a third party contractor may have improperly disclosed student data, or teacher or principal APPR data, NYSED's Chief Privacy Officer is authorized to investigate, visit, examine and inspect the third party contractor's facilities and records and obtain documentation from, or require the testimony of, any party relating to the alleged improper disclosure of student data or teacher or principal APPR data.

Where there is a breach and unauthorized release of PII by a by a third party contractor or its assignees (e.g., a subcontractor): (i) the third party contractor must notify the educational agency of the breach in the most expedient way possible and without unreasonable delay; (ii) the educational agency must notify the parent in the most expedient way possible and without unreasonable delay; and (iii) the third party contractor may be subject to certain penalties including, but not limited to, a monetary fine; mandatory training regarding federal and state law governing the confidentiality of student data, or teacher or principal APPR data; and preclusion from accessing any student data, or teacher or principal APPR data, from an educational agency for a fixed period up to five years.

## **8. Data Security and Privacy Standards**

Upon appointment, NYSED's Chief Privacy Officer will be required to develop, with input from experts, standards for educational agency data security and privacy policies. The Commissioner will then promulgate regulations implementing these data security and privacy standards.

## **9. No Private Right of Action**

Please note that Education Law §2-d explicitly states that it does not create a private right of action against NYSED or any other educational agency, such as a school, school district or BOCES.

## ATTACHMENT

### **Model Notification of Rights under FERPA for Elementary and Secondary Schools**

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the [Name of school ("School")] receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the [School] to amend a record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service of function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the school discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

[Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in §99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, §99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student –

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in §99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student's State (SEA). Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside



entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§99.31(a)(3) and 99.35)

- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to §99.38. (§99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to §99.36. (§99.31(a)(10))
- Information the school has designated as "directory information" under §99.37. (§99.31(a)(11))

## **Attachment To Parents' Bill Of Rights For Contracts Involving Disclosure of Certain Personally Identifiable Information**

Education Law §2-d, added by Ch. 56 of the Laws of 2014, requires that a Parents' Bill of Rights be attached to every contract with a third-party contractor (as defined in the law) which involves the disclosure of personally identifiable information (PII) derived from student education records ("Student Data"), or certain teacher/principal information regarding annual professional performance evaluations that is confidential pursuant to Education Law §30212-c ("APPR Data"). Each such Contract must include this completed Attachment to provide specific information about the use of such data by the Contractor.

1. Specify whether this Contract involves disclosure to the Contractor of Student Data, APPR Data, or both.

Disclosure of Student Data

Disclosure of APPR Data

2. Describe the exclusive purposes for which the Student Data or APPR Data will be used in the performance of this contract.

***Provide brief description (approximately 2-3 sentences) of the deliverables/services to be provided under the contract that require the use of data.***

3. Identify any subcontractors or other persons/entities with whom the Contractor will share the Student Data or APPR in the performance of this Contract and describe how the Contractor will ensure that such persons/entities will abide by the data protection and security requirements of the Contract.

Subcontractors or other entities with whom the Contractor will share data:

***Specifically list in this section any/all subcontractors that will/may receive data.***

***In the event the Contractor engages a Subcontractor or otherwise shares Student Data or APPR Data with any other entity, Contractor acknowledges and agrees that before any such data is shared with a Contractor or another entity, such party must agree in writing to be bound by the confidentiality and data protection provisions set forth in this Contract including, but not limited to, the “Data Security and Privacy Plan” set forth in Appendix A. Upon termination of the agreement between the Contractor and a Subcontractor or other entity, Contractor acknowledges and agrees that it is responsible for ensuring that all Student Data or APPR Data shared by the Contractor must be returned to Contractor or otherwise destroyed as provided in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix A.***

4. Specify the expiration date of the Contract and explain what will happen to the Student Data or APPR Data in the Contractor’s possession, or the possession of any person/entity described in response to Paragraph 3, upon the expiration or earlier termination of the Contract.

Contract expiration date: **date entered when RFP completed**

Contractor agrees to return the Student Data or APPR Data to NYSED consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix A.

Contractor agree to securely destroy the Student Data or APPR Data consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix A.

5. State whether the Contractor will be collecting any data from or pertaining to students derived from the student’s education record, or pertaining to teachers or principals’ annual professional performance evaluation pursuant to the Contract, and explain if and how a parent, student, eligible student (a student eighteen years or older), teacher or principal may challenge the accuracy of the Student Data or APPR data that is collected.

Student Data

APPR Data

***Any challenges to the accuracy of any of the Student Data or APPR Data shared pursuant to this Contract should be addressed to the school, educational agency or entity which produced, generated or otherwise created such data.***

6. Describe where the Student Data or APPR Data will be stored (in a manner that does not jeopardize data security), and the security protections taken to ensure that the data will be protected, including whether such data will be encrypted.

***Detail in this section where data will be stored, what security measures will be in place, and whether electronic data is encrypted in motion and/or at rest.***

## Attachment B: Draft Conflict of Interest Policy

### SCHOOL DISTRICT OFFICER AND EMPLOYEE CODE OF ETHICS

All members of the Board of Education and administration of the school district must at all times act in the school district's best interest. The Board of Education is committed to avoiding any situation in which the existence of conflicting interests of any Board member, officer or employee may call into question the integrity of the management or operation of the school district. The Board recognizes that sound, ethical standards of conduct serve to increase the effectiveness of district officers and staff as educators and public employees in the community. Adherence to a code of ethics promotes public confidence in the schools and furthers the attainment of district goals.

The Board also recognizes its obligation to adopt a code of ethics setting forth the standards of conduct required of all Board members, district officers and employees under the provisions of the General Municipal Law and all other applicable laws, rules, and regulations. Therefore, every Board member, officer and employee of the district, whether paid or unpaid, shall adhere to the following code of ethics.

#### Statutory Conflicts of Interest

It is a conflict of interest for a Board member, officer or employee to benefit personally from contracts made in their official capacity.

- “**Contract**” is defined broadly to include any claim or demand against the district or account or agreement with the district, whether expressed or implied that exceeds the sum of \$750.00 in any fiscal year.
- An “**interest**” is defined as a direct or indirect benefit that runs to the employee as a result of a contract with the district.

No Board member, officer or employee shall have an “**interest**” (i.e., receive a direct or indirect benefit as the result of a contract with the district) in:

1. a firm, partnership or association in which he/she is a member or employee;
2. a corporation in which he/she is an officer, director or employee;
3. a corporation in which he/she, directly or indirectly, owns or controls 5% or more of the stock; or
4. a contract between the district and his/her spouse, minor child or dependents, except for an employment contract between the school district, a spouse, minor child or dependent of a Board member authorized by §800(3) of the General Municipal Law or §3016 of the Education Law.

#### Code of Ethics

1. Gifts: A Board member, officer or employee shall not directly or indirectly solicit any gift or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part.

However, the Board welcomes and encourages the writing of letters or notes expressing gratitude or appreciation to staff members. Gifts from children that are principally sentimental in nature and of insignificant financial value may be accepted in the spirit in which they are given.

1. Confidential information: A Board member, officer or employee shall not disclose confidential information acquired by him or her in the course of his or her official duties or use such information to further his or her personal interest.
2. Representation before the Board or District: A Board member, officer or employee shall not receive or enter into any agreement, expressed or implied, for compensation for services to be rendered in relation to any matter before the school district.
3. Disclosure of interest in matters before the Board: A Board member, officer or employee of the district, whether paid or unpaid, must publicly disclose the nature and extent of any interest they or their spouse, domestic partner, or other immediate family member have, will have or later acquire in any actual or proposed contract, purchase agreement, lease agreement or other agreement involving the school district (including oral

agreements), to the governing body and his/her immediate supervisor (where applicable) even if it is not a prohibited interest under applicable law. Such disclosure must be in writing and made part of the official record of the school district. Disclosure is not required in the case of an interest that is exempted under §803(2) of the General Municipal Law. The term "interest" means a pecuniary or material benefit accruing to an officer or employee. A person with an interest in matters may not be present at or participate in board deliberations or votes on the matter giving rise to such conflict, provided that nothing shall prohibit the board from requesting that the person with the conflict present information as background or answer questions at a board meeting prior to the commencement of deliberations or voting relating thereto.

4. **Prohibition against nepotism:** No family member of a current Board member may serve on the Board pursuant to §2103(3) of the Education Law. Spouses, children, and other relatives of a Board member may be employed by the district provided, however, that pursuant to §3016 of the Education Law any person who is related by blood or marriage to any member of the Board shall only be employed as a teacher in the district upon the consent of 2/3rds of the Board members.
5. **Investments in conflict with official duties:** A Board member, officer or employee shall not invest or hold any investment directly in any financial, business, commercial or other private transaction that creates a conflict with his or her official duties. Exceptions to the conflict of interest law can be found in §802 of the General Municipal Law.
6. **Private employment:** A Board member, officer or employee shall not engage in, solicit, negotiate for, or promise to accept private employment when that employment or service creates a conflict with or impairs the proper discharge of his or her official duties.
7. **Future employment:** A Board member, officer or employee shall not, after the termination of service or employment with the district, appear before the Board in relation to any action, proceeding, or application in which he or she personally participated during the period of his or her service or employment or that was under his or her active consideration.
8. **Involvement with Charitable Organizations:** A Board member, officer or employee may be involved as a volunteer, officer or employee in a charitable organization that has a relationship with the district. If a Board member is a board member, officer or employee of the charitable organization the Board member must disclose such relationship in writing to the district, and the Board member must recuse himself or herself from any discussions or votes relating to the charitable organization that may come before the Board. When participating in the activities of the charitable organization, the Board member, officer or employee shall not disclose any confidential information learned in the course of his or her official duties or use such information to further personal interests. Additionally, the Board member, officer or employee shall not make representations on behalf of the district unless specifically authorized to do so by the Board.
9. **Individuals with a conflict:** A person with a conflict is prohibited from being present at or participating in board deliberations or votes on the matter giving rise to such conflict, provided that the board may request that the person with the conflict present information as background or answer questions at a board meeting prior to the commencement of deliberations or voting related thereto.
10. **Prohibition against Improper Influence:** A person with a conflict is prohibiting from seeking to influence improperly the deliberation or voting on the matter giving rise to such conflict.
11. **Documentation of Conflict:** The existence and resolution of any conflict by a board member or employee of the school district shall be documented in the board's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

#### Distribution of Code of Ethics

The Superintendent of Schools shall cause a copy of this Code of Ethics to be distributed to every member of the Board, every officer and employee of the school district. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his or her office or employment. In addition, the Superintendent shall ensure that a copy of Article 18 of the General Municipal Law shall be kept posted in each public building under the district's jurisdiction in a place conspicuous to the district's officers and employees.

#### Penalties

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of the Board's code of ethics and its accompanying regulation may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

## **Attachment C: Conduct of Independent Monitor Public Meetings**

The District shall assist the Independent Monitor in conducting public hearings required pursuant to Chapter 19 of the Laws of 2020. Three public hearings must be scheduled within 60 days of the monitor's appointment, which shall allow public comment from the District's residents, students, parents, employees, Board members and administration. The first hearing shall take public comment on existing statutory and regulatory authority of the Commissioner, the Department and the Board of Regents regarding school District governance and intervention under applicable state law and regulations, including but not limited to, sections 306, 211-c, and 211-f of the Education Law. The second public hearing shall take public comment on the academic performance of the District and the third public hearing shall take public comment on the fiscal performance of the District.

With respect to each such hearings, the District shall:

(1) conduct such hearings on dates and in such format as are mutually agreeable to the Independent Monitor and the District;

(2) provide written notice at least 10 calendar days prior to such public meeting of the time and place of such public meeting to parents of, or persons in parental relation to, students attending public schools within the District. The District shall provide translators at the public meeting, as well as translations of the written notice into languages most commonly spoken in the District and when appropriate, into the recipient's native language or mode of communication. In order to maximize opportunities for the participation of the public and parents of, or persons in parental relation to, students attending public schools in the District, the public meeting shall be held at a school building in the evening hours or on Saturday, to the extent practicable;

(3) provide reasonable notice to the public of such public hearing by:

(a) posting the notice on a District website, if one exists; posting the notice in schools and District offices in conspicuous locations; publishing the notice in local newspapers or other local publications; and/or including the notice in District mailings and distributions. The District shall also provide translations of the notice into the languages other than English that are most commonly spoken in the District; and

(b) providing public notice of the time and place of a public meeting scheduled at least one week prior thereto and giving such notice to the news media and conspicuously posting in one or more designated public locations at least 72 hours before such hearing;

(4) provide members of the public who are not able to attend such public hearing with the opportunity to provide written comments and feedback in writing and/or electronically; and

(5) create a written transcription of the public hearing, including a translation into English of any comments made in a language other than English.

**Such public hearings may be held remotely due to the State of emergency declared by the Governor for the COVID-19 crisis.**

## Attachment D: Development of Financial Plan

### Financial Plan

1. No later than November 1, 2020, the board of education ("Board") and the monitor shall develop a proposed financial plan for the 2020-21 school year and the four subsequent school years. The financial plan shall ensure that annual aggregate operating expenses shall not exceed annual aggregate operating revenues for such school year and that the major operating funds of the District be balanced in accordance with generally accepted accounting principles. The financial plan shall include statements of all estimated revenues, expenditures, and cash flow projections of the District. The financial plan should also clearly identify all debts and liabilities of the District and the payment schedule for such debts and liabilities and should indicate how such debts and liabilities are projected to affect future revenues and constrain future expenditures of the District.
2. The Board and the monitor shall use such template as shall be provided by the Commissioner to develop the proposed financial plan, except that if the Board and the monitor wish to modify the template or use an alternate format, the monitor shall submit no later than October 1, 2020 such modified template or alternate format for the review and approval of the Commissioner.
3. If the Board and the monitor agree on all the elements of the proposed financial plan, the Board shall conduct a public hearing on the plan and consider the input of the community. The proposed financial plan shall be made public on the District's website at least three business days before such public hearing, which shall be conducted in the same manner as prescribed in Attachment C. Once the proposed financial plan has been approved by the Board, such plan shall be submitted by the monitor to the Commissioner no later than December 1, 2020 for approval and shall be deemed approved.
4. If the Board and the monitor do not agree on all the elements of the proposed financial plan, the Board shall conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. The proposed financial plan, elements of disagreement, and requested amendments shall be made public on the District's website at least three business days before such public hearing. The elements of disagreement, documented justifications and requested amendments from the monitor shall be provided to the public in accordance with the template provided by the Commissioner in Attachment D-2.
5. After considering the input of the community, the Board may alter the proposed financial plan and the monitor may alter his or her requested amendments. The monitor shall submit the proposed financial plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner no later than December 1, 2020 using the Template provided by the Commissioner in Attachment D-3. The Commissioner shall approve the proposed financial plan with any of the monitor's proposed amendments, and any other modifications he or she deems appropriate no later than January 15, 2021.
6. The Board shall provide the Commissioner with any information he or she requests to approve such plan within three business days of such request.

7. The monitor may notify the Commissioner and the Board in writing using the Template provided by the Commissioner in Attachment D-4 when he or she deems the District is violating an element of the financial plan. Prior to notifying the Commissioner of a violation of the financial plan, the monitor shall notify in writing the Board and superintendent of schools or chief school officer not fewer than 10 business days prior to submission that the monitor plans to submit a notice of violation to the Commissioner.

(a) The monitor shall give the notified parties at least five business days from the receipt of the notice violation to respond in writing to such notice and the monitor shall consider any response received before submitting the notice of violation to the Commissioner.

(b) If the monitor determines that the violation places at risk the health or welfare of the school's students or staff or to ensure that the District complies with the Education Law or Commissioner's regulations, the monitor may waive the required notification period but shall, within 24 hours or as soon as practicable thereafter, inform the Board, and the superintendent of the notice of violation taken and provide them with an opportunity to respond.

(c) The monitor shall provide the Commissioner with an electronic copy of all correspondence upon its issuance related to supersession.

Within twenty calendar days, the Commissioner shall determine whether the District is in violation of any of the elements of the financial plan highlighted by the monitor and shall order the District to comply immediately with the plan and remedy any such violation. The District shall suspend all actions related to the potential violation of the financial plan until the Commissioner issues a determination.



**Attachment D-2: Financial Plan Areas of Disagreement and Monitor’s Proposed Amendments**

Chapter 19 of the Laws of 2020 requires the board of education (“Board”) and the monitor of the Hempstead Union Free School District (“District”) to develop a financial plan for the District. Where the Board and the monitor do not agree on all the elements of the proposed financial plan, the Board must conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. The elements of disagreement, documented justifications, and requested amendments from the monitor outlined below shall be made public on the District’s website at least three business days before the public hearing. Attach additional documentation as needed.

1. Describe the elements of disagreement and justifications for disagreements on the proposed financial plan.

*Please reference the specific provision(s) in the financial plan about which there is a disagreement. Include as appropriate page numbers and specific text that is in disagreement.*

2. Describe the monitor’s requested amendments to the proposed financial plan.

*Please detail the specific provision(s) of the proposed financial plan the monitor requests to amend. Include the specific text in the plan that will be inserted into the plan and any text that will be replaced or modified.*

**Attachment D-3: Financial Plan Submission of Areas of Disagreement and Monitor’s Proposed Amendments**

Chapter 19 of the Laws of 2020 requires the board of education (“Board”), and the monitor of the Hempstead Union Free School (“District”) to develop a financial plan for the District. Where the Board and the monitor do not agree on all the elements of the proposed financial plan, the Board must conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. After considering the input of the community, the Board may alter the proposed financial plan and the monitor may alter his or her requested amendments. The monitor shall submit this form outlining the elements of disagreement between the monitor and the Board, the monitor’s requested amendments to the plan, and justifications for such disagreements and amendments to the Commissioner no later than December 1, 2020. The monitor shall also submit with this form the proposed financial plan and additional documentation as needed.

1. Describe the elements of disagreement and justifications for disagreements on the proposed financial plan.

*Please reference the specific provision(s) in the financial plan about which there is a disagreement. Include as appropriate page numbers and specific text that is in disagreement.*

2. Describe the monitor’s requested amendments to the proposed financial plan and justification for such amendments.

*Please detail the specific provision(s) of the proposed financial plan the monitor requests to amend. Include the specific text in the plan that will be inserted into the plan and any text that will be replaced or modified.*

**Attachment D-4: Submission of Areas of Violation of Financial Plan**

Chapter 19 of the Laws of 2020 requires the board of education (“Board”) and the monitor of the Hempstead Union Free School District (“District”) to develop a financial plan for the District. Where the monitor deems the District is in violation of any element of the financial plan, the monitor may notify the Commissioner and the Board of such violation. Such violation shall be detailed below. Attach additional documentation as needed.

1. ***Provide the element(s) and specific citation(s) from the plan that have been violated and how they were violated:***

2. ***Provide evidence that such violations occurred:***

**3. Detail how the District was informed of the violation(s) and was given the opportunity to correct such violation(s) prior to the submission of this form.**

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## **Attachment E: Development of Academic Improvement Plan**

### Academic Improvement Plan

1. No later than November 1, 2020, the board of education ("Board") and the monitor shall develop a proposed academic improvement plan for the 2020-21 school year and the four subsequent school years. The academic improvement plan shall contain a series of programmatic recommendations designed to improve academic performance over the period of the plan in those academic areas that the Commissioner deems to be in need of improvement which shall include addressing the provisions contained in any action plan set forth by the Department.
2. The Board and the monitor shall use such template as shall be provided by the Commissioner to develop the proposed academic improvement plan, except that if the Board and the monitor wish to modify the template or use an alternate format, the monitor shall submit no later than October 1, 2020 such modified template or alternate format for the review and approval of the Commissioner.
3. If the Board and the monitor agree on all the elements of the proposed academic improvement plan, the Board shall conduct a public hearing on the plan and consider the input of the community. The proposed academic improvement plan shall be made public on the District's website at least three business days before such public hearing, which shall be conducted in the same manner as prescribed in Attachment C. Once the proposed academic improvement plan has been approved by the Board, such plan shall be submitted by the monitor to the Commissioner no later than December 1, 2020 for approval and shall be deemed approved.
4. If the Board and the monitor do not agree on all the elements of the proposed academic improvement plan, the Board shall conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. The proposed academic improvement plan, elements of disagreement, and requested amendments shall be made public on the District's website at least three business days before such public hearing. The elements of disagreement, documented justifications and requested amendments from the monitor shall be provided to the public in accordance with the template provided by the Commissioner in Attachment E-2.
5. After considering the input of the community, the Board may alter the proposed academic improvement plan and the monitor may alter his or her requested amendments. The monitor shall submit the proposed academic improvement plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the Commissioner no later than December 1, 2020 using the Template provided by the Commissioner in Attachment E-3. The Commissioner shall approve the proposed academic improvement plan with any of the monitor's proposed amendments, and any other modifications he or she deems appropriate no later than January 15, 2021.
6. The Board shall provide the Commissioner with any information he or she requests to approve such plan within three business days of such request.

7. The monitor may notify the Commissioner and the Board in writing using the Template provided by the Commissioner in Attachment E-4 when he or she deems the District is violating an element of the academic improvement plan. Prior to notifying the Commissioner of a violation of the academic improvement plan, the monitor shall notify in writing the Board and superintendent of schools or chief school officer not fewer than 10 business days prior to submission that the monitor plans to submit a notice of violation to the Commissioner.

(a) The monitor shall give the notified parties at least five business days from the receipt of the notice violation to respond in writing to such notice and the monitor shall consider any response received before submitting the notice of violation to the Commissioner.

(b) If the monitor determines that the violation places at risk the health or welfare of the school's students or staff or to ensure that the District complies with the Education Law or Commissioner's regulations, the monitor may waive the required notification period but shall, within 24 hours or as soon as practicable thereafter, inform the Board, and the superintendent of the notice of violation taken and provide them with an opportunity to respond.

(c) The monitor shall provide the Commissioner with an electronic copy of all correspondence upon its issuance related to supersession.

Within twenty calendar days, the Commissioner shall determine whether the District is in violation of any of the elements of the academic improvement plan highlighted by the monitor and shall order the District to comply immediately with the plan and remedy any such violation. The District shall suspend all actions related to the potential violation of the academic improvement plan until the Commissioner issues a determination.

## **Attachment E-2: Academic Improvement Plan Areas of Disagreement and Monitor's Proposed Amendments**

Chapter 19 of the Laws of 2020 requires the board of education ("Board"), Superintendent and the monitor of the Hempstead Union Free School District ("District") to develop an academic improvement plan for the District. Where the Board and the monitor do not agree on all the elements of the proposed financial plan, the Board must conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. The elements of disagreement, documented justifications, and requested amendments from the monitor outlined below shall be made public on the District's website at least three business days before the public hearing. Attach additional documentation as needed.

1. Describe the elements of disagreement and justifications for disagreements on the proposed academic improvement plan.

*Please reference the specific provision(s) in the academic improvement plan about which there is a disagreement. Include as appropriate page numbers and specific text that is in disagreement.*

2. Describe the monitor's requested amendments to the proposed academic improvement plan.

*Please detail the specific provision(s) of the proposed academic improvement plan the monitor requests to amend. Include the specific text in the plan that will be inserted into the plan and any text that will be replaced or modified.*

### **Attachment E-3: Academic Improvement Plan Submission of Areas of Disagreement and Monitor's Proposed Amendments**

Chapter 19 of the Laws of 2020 requires the board of education ("Board") and the monitor of the Hempstead Union Free School District ("District") to develop an academic improvement plan for the District. Where the Board and the monitor do not agree on all the elements of the proposed academic improvement plan, the Board must conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the Board, including documented justification for such disagreements and any requested amendments from the monitor. After considering the input of the community, the Board may alter the proposed academic improvement plan and the monitor may alter his or her requested amendments. The monitor shall submit this form outlining the elements of disagreement between the monitor and the Board, the monitor's requested amendments to the plan, and justifications for such disagreements and amendments to the Commissioner no later than December 1, 2020. The monitor shall also submit with this form the proposed academic improvement plan and additional documentation as needed.

1. Describe the elements of disagreement and justifications for disagreements on the proposed academic improvement plan.

*Please reference the specific provision(s) in the academic improvement plan about which there is a disagreement. Include as appropriate page numbers and specific text that is in disagreement.*

2. Describe the monitor's requested amendments to the proposed academic improvement plan and justification for such amendments.

*Please detail the specific provision(s) of the proposed financial plan the monitor requests to amend. Include the specific text in the plan that will be inserted into the plan and any text that will be replaced or modified.*



**Attachment E-4: Submission of Areas of Violation of Academic Improvement Plan**

Chapter 19 of the Laws of 2020 requires the board of education (“Board”) and the monitor of the Hempstead Union Free School District (“District”) to develop an academic improvement plan for the District. Where the monitor deems the District is in violation of any element of the academic improvement plan, the monitor may notify the Commissioner and the Board of such violation. Such violation shall be detailed below. Attach additional documentation as needed.

- 1. Provide the element(s) and specific citation(s) from the plan that have been violated and how they were violated:***

- 2. Provide evidence that such violations occurred:***

**3. Detail how the District was informed of the violation(s) and was given the opportunity to correct such violation(s) prior to the submission of this form.**

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## **Attachment F: Fiscal and Operational Oversight**

1. Commencing with the 2021-2022 school year, the board of education (“Board”) shall annually submit the District’s proposed budget for the next succeeding school year to the monitor no later than March first prior to the District’s annual budget vote. The monitor shall review the proposed budget to ensure that it is balanced within the context of revenue and expenditure estimates and mandated programs. The monitor shall also review the proposed budget to ensure that it, to the greatest extent possible, is consistent with the District’s academic improvement plan and financial plan. The monitor shall present his or her findings to the Board, Superintendent and the Commissioner no later than 45-days prior to the date scheduled for the District’s annual budget vote, which shall include an explicit delineation of each amendment to the proposed budget that the monitor recommends and the justification for such amendment. The Commissioner shall require the Board to make amendments to the proposed budget consistent with any recommendations made by the monitor if the Commissioner determines such amendments are necessary to comply with the financial plan and academic improvement plan. At least 15 calendar days prior to the date scheduled for the school District’s annual vote, the Board shall submit to the Commissioner the final proposed budget that incorporates the amendments required by the Commissioner.
2. The District shall make available on the District's website: the initial proposed budget, the monitor's findings, and the final proposed budget at least 7 days prior to the date of the District’s budget hearing. In the event of a revote, the board of education, in conjunction with the monitor, shall develop and submit the school district's proposed budget for the next succeeding school year to the Commissioner no later than seven days prior to the budget hearing. The Board shall provide the Commissioner with any information he or she requests in order to make a determination within three business days of such request.
3. The District shall provide quarterly reports to the monitor and annual reports to the Commissioner and Board of Regents on the academic, fiscal, and operational status of the District in accordance with such template as may be provided by the Commissioner. In addition, the monitor shall provide semi-annual reports to the Commissioner, Board of Regents, the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the fiscal and operational status of the District in accordance with such template as may be provided by the Commissioner. Such semi-annual reports shall include all the contracts that the District entered into throughout the year. Such semi-annual reports shall be provided simultaneously to the Board and the Superintendent. The District shall submit its quarterly reports to the monitor by September 30<sup>th</sup>, December 31<sup>st</sup>, March 31<sup>st</sup>, and June 30<sup>th</sup> of each school year. The monitor shall submit their semi-annual reports to the Commissioner by January 1st and June 30<sup>th</sup> of each school year. The District shall submit its annual report to the Commissioner by June 30<sup>th</sup> of each school year.

4. The monitor shall have the authority to disapprove travel outside the State paid for by the District. Any employee or Board member of the District seeking to travel outside the State and to have such travel paid for by the District shall submit a request to the monitor detailing the travel destination and the reason for such travel. The monitor shall consider, when approving or disapproving such travel, whether such travel is necessary and the cost to the District.
5. The monitor shall work with the District's shared decision-making committee as defined in 8 NYCRR 100.11 in developing the financial plan, District goals, implementation of District priorities and budgetary recommendations.
6. The monitor shall assist in resolving any disputes and conflicts, including but not limited to, those between the Superintendent and the Board and among the members of the Board.
7. The monitor may recommend, and the Board shall consider by vote of a resolution at the next scheduled meeting of the Board, cost saving measures including, but not limited to, shared service agreements.