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TO: School District Superintendents
BOCES District Superintendents
Deans and Directors of Institutions of Higher Education Offering Educator
Preparation Programs

FROM: Louise DeCandia, Chief Privacy Officer

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**Applicability of Education Law 2-d to the clinical experiences required in
New York State registered educator preparation programs**

This memorandum is issued to (1) confirm that placement of a candidate in an educational agency for clinical experience does not require an Education Law § 2-d agreement; and (2) provide guidance as to how educational agencies can address concerns regarding candidates and the privacy and security of student data.

The State Education Department supports the prompt placement of candidates from educator preparation programs in clinical settings. Concerns over the applicability of Education Law § 2-d have, as of late, served as impediments to promptly placing candidates. Clinical experiences in an educational setting are an integral requirement in New York State registered educator preparation programs. The clinical experience requirements provide candidates with the opportunity to apply their pedagogical knowledge and skills by working with students in the field. Clinical experiences include, but are not limited to:

- Student teaching, residencies or practica;
- Field experiences prior to student teaching;
- Transitional B and C mentored in-service component;
- Leadership experiences; and
- School counseling and school psychology supervised internship hours.

School districts, schools, and boards of cooperative educational services (BOCES), which are “educational agencies” as defined in Education Law § 2-d (1)(c), are encouraged to assist educator preparation programs with the placement and support of candidates who need to complete their clinical experiences for program completion.

Placement of candidates in an educational agency for their clinical experience does not require an Education Law §2-d agreement because neither the candidates nor their

educator preparation programs are third party contractors. Education Law §2-d defines a third party contractor as “any person or entity other than an educational agency, that receives student data or principal or teacher data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. . .” [Education Law § 2-d (1)(k)].

Candidates placed in an educational agency for their clinical experience are not there to provide a service to an educational agency, even if the educational agency receives a benefit. Rather, this arrangement is a partnership between an educational agency and an educator preparation program to secure clinical experiences for candidates that are, in turn, necessary for program completion and certification. Similarly, neither candidates nor the faculty/staff at the educator preparation program receive student data for the purpose of providing a service to an educational agency. Any personally identifiable information (PII) obtained during the clinical experience is directly associated with candidates’ need to perform the responsibilities required in their clinical experience and serves as a legitimate educational interest.

Finally, the candidate is not an employee or a representative of the educator preparation program. To the contrary, the candidate is under the supervision of the educational agency during their clinical experience and should be considered a “school official” within the definition of the Family Educational Rights Privacy Act (FERPA).

FERPA [34 CFR § 99.31(a)(1)(i)(B)] permits educational agencies to disclose education records to contractors, consultants, volunteers, or other third parties provided that such outside party:

1. Performs an institutional service or function for which the educational agency would otherwise use employees;
2. Is under the direct control of the educational agency with respect to the use and maintenance of education records;
3. Is subject to the requirements in 34 CFR § 99.33 (a) governing the use and disclosure of that PII from education records; and
4. Meets the criteria specified in the educational agency’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Therefore, neither candidates nor their educator preparation program should be asked to enter an Education Law 2-d agreement with an educational agency as a prerequisite to participation in the clinical experience.

Recommended Best Practice for § 2-d Compliance

A more appropriate practice is for the educator preparation program and/or educational agency to provide candidates with appropriate training about student data privacy and security prior to and/or at the beginning of their clinical experience at the educational agency.¹ For example, candidates could sign a confidentiality agreement with the educational agency or the educator preparation program before beginning their clinical experience. In this agreement, candidates could acknowledge that they have taken or will take data privacy and security training and that they understand the educational agency's policies regarding confidentiality. An example candidate confidentiality and non-disclosure agreement, example privacy and security training presentation, and other resources are available on the [Office of College and University Evaluation website](#). The example agreement is also attached to this memorandum.

As an additional safeguard, the educational agency and the educator preparation program could enter into a memorandum of understanding or similar collaborative agreement that addresses, among other issues, the protection of student PII, FERPA compliance, and the educational agency's data privacy and security policies.²

The clinical experience is an invaluable aspect of candidate training that takes place at an educational agency. It is not, however, a service to the educational agency that requires an Education Law § 2-d agreement. Rather, both the educational preparation program and educational agency should ensure candidates receive appropriate training and obtain a practical understanding of the importance of data privacy and security in schools.

¹ Educational agencies are required to provide annual data privacy and security awareness training to their officers and employees with access to PII [8 NYCRR § 121.7].

² For registered teacher preparation programs with candidates who first enroll for the Fall 2023 semester and thereafter, institutions are required to “establish, maintain and review memorandum of understanding or similar collaborative agreements with all educational settings, community-based organizations, an/r other appropriate entities in which teacher candidates are involved in clinical experience. . .” [8 NYCRR § 52.21 (b)(2) (i) (f) (ii)].