

AGREEMENT

Between Solano County on behalf of its Department of Health & Social Services
and
Solano County Office of Education on behalf of the Solano County Special Education
Local Plan Area (SELPA)

This Agreement is made between Solano County ("County") on behalf of its Department of Health & Social Services ("HSS") and the Solano County Office of Education on behalf of the Solano County Special Education Local Plan Area (hereinafter "SELPA"), collectively referred to as the "Parties."

I. Introduction

The purpose of this Agreement is to establish the procedures for the utilization of Protected Health Information (PHI) and other Personally Identifiable Information {PII) of dually-identified special education pupils receiving mental health services by Solano SELPA and HSS's Behavioral Health Services (hereinafter "BHS".)

The SELPA incorporates the Solano County Office of Education and the following school districts: Benicia Unified School District (USD), Dixon USD, Fairfield-Suisun USD, Travis USD and Vacaville USD.

Mental Health Services may be provided by BHS staff or agencies selected by the SELPA under contract with the SELPA or HSS.

II. Communications

Communications are essential to ensure that the specialized education needs of each student with special needs in each school district within Solano County are appropriately met. The Parties agree to maintain open lines of communication between designated staff at both the managerial and technical levels. In order to achieve shared goals, HSS agrees to provide SELPA with PHI regarding students dually served by SELPA and HSS pursuant to governing law and privacy regulations.

To safeguard the confidentiality and integrity of the personal information of the students served dually by both HSS and SELPA, the Parties agree to abide by the requirements of the Health Insurance Portability and Accountability Act (HIPAA), the Privacy and the Security Rules, and relevant California state regulations.

III. Uses and Disclosures of PHI

1. The SELPA shall not use PHI except for the express purpose of serving the social, emotional, behavioral and educational needs of students enrolled in its member school districts. Furthermore, the SELPA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act.

2. The SELPA shall not use or further disclose confidential data other than as permitted or required by this Agreement and shall refer any persons not included under this Agreement to request access to the confidential data in writing. The SELPA agrees that the information shall be made available to its own employees only on a "need to know" basis with a determination such employees have a "legitimate educational interest" in the information. Need-to-know and legitimate educational interest are defined as those authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this Agreement.
3. The SELPA shall request, use, and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.ⁱ The Parties understand and agree that "Minimum Necessary" is a process defined in the HIPAA regulations: when using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

IV. Appropriate Safeguards for Protection of PHI

1. The SELPA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI otherwise than as permitted by this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHIⁱⁱ. The SELPA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.ⁱⁱⁱ
2. The SELPA agrees to comply with 45 C.F.R. part 164 with respect to Electronic Protected Health Information (ePHI). The SELPA must secure all ePHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS), as applicable.
3. The SELPA agrees that destruction of PHI on paper, film, or other hard copy media must involve either cross cut shredding or otherwise destroying the PHI so that it cannot be read or reconstructed.
4. Should any employee of the SELPA have direct, authorized access to computer systems of HSS that contain PHI, the SELPA shall immediately notify HSS of any change of such personnel (e.g. employee termination, or change in assignment where such access is no longer necessary) in order for County to disable previously authorized access.
5. HSS' Compliance Unit shall provide access to online training regarding privacy, security, and confidentiality under HIPAA to the SELPA employees who will have access to the PHI of dually-identified students. This online training shall be completed prior to accessing PHI and on an annual basis. SELPA shall retain all training records to satisfy an audit requirement. It is the responsibility of SELPA to ensure staff participate in training.

V. Breach of PHI

In the case of a breach of PHI, the SELPA shall comply with the applicable provisions of 42 U.S.C. § 17932 and 45 C.F.R. part 164, subpart D, including but not limited to 45 C.F.R. part 164.410. Specifically, SELPA's shall comply with the following requirements:

1. The SELPA agrees to notify County of any access, use or disclosure of PHI not permitted or provided for by this Agreement of which it becomes aware, including any breach as required in 45 C.F.R. part 164.410 or security incident immediately upon discovery by email at HSS-Compliance@SolanoCounty.com or by telephone at 707-784-3198 and will include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, used, or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of the occurrence, and a description of any remedial action taken or proposed to be taken by the SELPA. The SELPA will also provide HSS any other available information requested with regard to any breach.
2. A breach or unauthorized access, use or disclosure shall be treated as discovered by the SELPA on the first day such unauthorized access, use, or disclosure is known or reasonably should have been known.
3. The SELPA shall mitigate, to the extent practicable, any harmful effect that results from a breach, security incident, or unauthorized access, use, or disclosure of PHI by the SELPA or its employees, officers, subcontractors, agents or representatives.
4. Following a breach, security incident, or any unauthorized access, use or disclosure of unsecured PHI, SELPA agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make all documentation available to the County.
5. Except as provided by law, SELPA agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of PHI without obtaining the County's prior written consent. HSS reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice. When applicable law requires the breach to be reported to a federal or state agency or that notice be given to media outlets, the SELPA shall cooperate and coordinate with HSS to ensure such reporting is in compliance with applicable law, to prevent duplicate reporting, and to determine reporting responsibilities.

VI. Right to Audit

HSS has the right to audit the SELPA on an unscheduled frequency not to exceed three times each year for those students for which PHI information has been disclosed by HSS to SELPA. These audits will be conducted by HSS' Compliance Unit.

VII. Transfer of Rights

The SELPA and HSS have no right to and shall not subcontract, delegate, assign, or otherwise transfer or delegate any of its rights or obligations under this Agreement to any other person or entity, without the other party's prior written consent. Any such transfer of rights shall be null and void.

VIII. Term of Agreement

This Agreement will remain in effect for one (1) year after the latest signature date in the signature block below. After one (1) year, this Agreement will expire without further action. If the Parties wish to extend this Agreement, they may do so by reviewing, updating, and reauthorizing this Agreement. The newly signed Agreement shall explicitly supersede this Agreement, which shall be referenced by title and date. If one or both of the Parties wish to terminate this Agreement prematurely, they may do so upon 30 days' advanced notice or in the event of a security incident that necessitates an immediate response.

IX. Dispute Resolution, Jurisdiction and Warranties

1. This Agreement shall be construed in accordance with the laws of the State of California. Any action under this Agreement shall be brought in a court of competent jurisdiction located in the State of California, Solano County.
2. In the event of a dispute arising exclusively out of the enforcement of a provision of this Agreement, the parties agree to meet and confer in good faith to resolve the issues prior to filing a claim.

X. Termination of Agreement

Upon the expiration or termination of this Agreement for any reason, the SELPA shall return or destroy all PHI received from the County.

XI. Entire Agreement

This Agreement constitutes the entire agreement between the Parties. Any and all modifications of this Agreement must be in writing and signed by all Parties. Any oral representations or agreements between the Parties shall be of no force or effect. The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

XII. Signatory Authority

By executing this Agreement below, the Parties represent that each has the authority to bind each respective agency to this Agreement.

This Agreement has been executed as of the date last written below.

**Solano County on behalf of its
Department of Health & Social Services**

**Solano County Office of Education
on behalf of the Solano County
Special Education Local Plan Area
(SELPA)**

By: Gerald Huber 

By: 

Print Name: Gerald R. Huber

Print Name: Andrew Ownby

Print Title: Director

Print Title: Assistant Superintendent

Date: 09/09/2020
03:48 PM EDT

Date: 8/27/2020

By: Birgitta Corsello 

Print Name: Birgitta E. Corsello
Print Title: County Administrator

Date: 09/17/2020
07:34 PM EDT

- i 42 U.S.C. section 17935(b); 45 C.F.R. § 164.514(d)(3)
- ii In accordance with 45 C.F.R. §§ 164.308, 164.310, and 164.312. [45 C.F.R. § 164.504(e)(2)(ii)(B); 45 C.F.R. § 164.308(b)]
- iii Including, but not limited to, 45 C.F.R. § 164.316. (42 U.S.C. section 17931)