



**Interoffice Memorandum**

July 16, 2018

**AGENDA ITEM**

**TO:** Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

**THRU:** Lonnie C. Bell, Jr., Director  
Family Services Department

**FROM:** Sonya L. Hill, Manager  
Head Start Division  
**Contact:** Khadija Pirzadeh, (407) 836-8912  
Sonya Hill, (407) 836-7409

**SUBJECT:** **Consent Agenda Item – August 7, 2018**  
Meal Service Agreement between the School Board and  
Orange County, Florida

The Head Start Division requests Board approval of Meal Service Agreement between the School Board and Orange County, Florida. The agreement will allow the School Food Service to provide Head Start children with two-thirds of the daily nutritional requirements. Meals will be furnished by the School Board Food Service at Dillard Head Start.

The Florida Childcare Food Program funds in the amount of \$5,013.20 will be used to cover the cost of meals. The term of these agreements is from August 13, 2018 through September 30, 2018. The County Attorney's Office and Risk Management Division have reviewed this agreement for legality and compliance with County policy guidelines.

**ACTION REQUESTED:** Approval and execution of: 1) Meal Service Agreement between Orange County, Florida and School Board of Orange County, Florida regarding School Food Service at Dillard Head Start and 2) Orange County, Florida and The School Board of Orange County, Florida Addendum to Meal Service Agreement related to Business Associate Assurance of compliance with the Health Insurance Portability and Accountability Act (HIPPA) Privacy, Breach and Security Rules and the Florida Information Protection Act (FIPA).

SH/kp:jam

**Attachment(s)**

**c:** Randy Singh, Assistant County Administrator  
Cristina Berrios, Assistant County Attorney, County Attorney's Office  
John Petrelli, Director, Risk Management and Professional Standards  
Yolanda S. Brown, Manager, Fiscal Division, Family Services Department  
Jamilie Clemens, Grants Supervisor, Finance Division  
Patria Morales, Grants Coordinator, Office of Management and Budget

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

AUG 07 2018

**Meal Service Agreement  
between  
Orange County, Florida  
and  
School Board of Orange County, Florida  
regarding School Food Service**

Name of Center: DILLARD HEAD START	Authorization No: S-734
Person to Contact: VIVIAN JONES	Phone No.: 407-877-5020 EXT 3612257
Address: 311 N. DILLARD ST., WINTER GARDEN, FL 34787	

The Orange County School Board, School Food Service agrees to furnish meals daily to the above Center for the period from: August 13, 2018 to September 30, 2018 except for holidays or other days of in-operation complete with required (x) paper products, (x) condiments, (x) milk pursuant to the following:

Meal Type	Estimated Total No. of Meals per Day	Unit Price per Meal	Total Price	Pick-up Time
Breakfast, Pre-K	34	\$1.41	\$47.94	8:30AM
Breakfast, adult	2	\$2.82	\$5.64	8:30AM
Lunch, Pre-K	34	\$2.17	\$73.78	11:30AM
Adult, lunch	2	\$3.84	\$7.68	11:30AM
Snack, Pre-K	34	\$0.87	\$29.58	1:30PM

The Orange County School Board, School Food Service agrees to:

- Ensure meals will meet the Meal Pattern for Pre-K and Elementary Students.
- Provide meals in ( X ) unitized for breakfast, ( X ) unitized for lunch, and (X) unitized snack.
- Prepare meals for (X) pick up by Center at the designated school Food Service at the time(s) indicated above.
- Provide meal count one week in advance; up to 10% change accepted one day before.
- Submit billing invoice for payment within 30 days to mailing address provided by Center.

Orange County, Florida, through its Head Start Division, agrees to pay for meals based on the above unit price(s) within thirty (30) days of receipt of invoice. The Orange County School Board, School Food Service warrants meals provided are safe and wholesome.

Each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including reasonable attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assure any liability for the acts, omissions and/or negligence of the other party. If for any reason, this agreement is no longer desired, either party may terminate these services with a two (2) week notification.

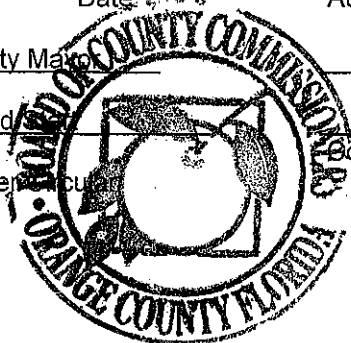
IN WITNESS WHEREOF, the Parties hereto have caused said agreement to be executed by their duly authorized officers.

By: B. J. Dalehanda 8.7.18 L. J. Gilbert 8-30-18  
Authorized Signature Date Authorized Signature Date

Teresa Jacobs, Orange County Mayor Senior Director  
Title Title

For: Orange County Head Start County School Board, School Food Service  
Child Care Center

Attachments: BAA; OMB Superintendant



---

**ORANGE COUNTY, FLORIDA**  
**AND**  
**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**  
**ADDENDUM TO MEAL SERVICE AGREEMENT**  
**related to**  
**BUSINESS ASSOCIATE ASSURANCE OF COMPLIANCE WITH THE**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**  
**PRIVACY, BREACH AND SECURITY RULES AND THE**  
**FLORIDA INFORMATION PROTECTION ACT (FIPA)**

---

**THIS ADDENDUM** is by and between ORANGE COUNTY, FLORIDA (the “County”), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801, on behalf of its Head Start Division (the “Covered Healthcare Component”), and The SCHOOL BOARD OF ORANGE COUNTY, FLORIDA (“Business Associate”), located at 445 West Amelia Street, Orlando, Florida 32801. The County and Business Associate may be referred to herein individually as “party” or collectively as “parties”.

**RECITALS**

**WHEREAS**, the County has been designated as a “Hybrid Entity” under the HIPAA Privacy and Security Rules, 45 CFR §164.105; and

**WHEREAS**, pursuant to 45 CFR §164.105 (a) (2) (iii) (D), the County, as a Hybrid Entity, has documented that its Head Start Division is a “Covered Healthcare Component” of the County and, as such, when the County is acting through its Head Start Division, it must be treated as a “Covered Entity”; and

**WHEREAS**, in connection with the provision of services to the County (collectively referenced to as “Services”) by the Business Associate, the County, through its Covered Healthcare Component, may disclose to the Business Associate certain Protected Health Information (“PHI”) that is subject to protection under the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164; and

**WHEREAS**, the HIPAA Privacy and Security Rules require that a Covered Entity, as well as Hybrid Covered Entity when it is acting through one of its Covered Healthcare Components, receives adequate assurances that the Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to, or on behalf of, the Covered Entity; and

**WHEREAS**, the purpose of this Addendum is to comply with the requirements of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act (“FIPA”), §501.171, Florida Statutes, and 42 CFR Part 2, where applicable, and as amended; and

WHEREAS, the County and Business Associate have entered, or will be entering into, a contract for services known as Meal Service Agreement (the "Agreement") and the parties wish to adopt this Addendum to the Agreement in order to ensure that the Services provided by the Business Associated pursuant to the Agreement are provided in compliance with the requirements of the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended.

NOW THEREFORE, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the parties agree as follows:

**Section 1. Incorporation**

- A. **Recitals Incorporated.** The above recitals are true and correct and are hereby incorporated as a material part of this Addendum.
- B. HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, are hereby incorporated into this Addendum.
- C. To the extent that this Addendum, or the Agreement, imposes more stringent requirements than those contained in HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, those more stringent requirements of this Addendum, or the Agreement, will control.

**Section 2. Definitions**

- A. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 CFR §§160.103, 162.103, 164.103, 164.402, and 164.501, and §501.171, Florida Statutes.
  - 1. ***Breach*** shall have the meaning given to such term as found in 45 CFR §164.402, and the Florida Information Protection Act, §501.171, Florida Statutes.
  - 2. ***Designated Record Set*** shall mean a group of records maintained by or for a covered entity that is (a) the medical records and billing records about individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used, in whole or in part, by or for the covered entity to make decisions about individuals. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.
  - 3. ***Disclosure*** shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

4. ***Florida Information Protection Act*** shall mean the Florida Information Protection Act (“FIPA”) codified at §501.171, Florida Statutes.
5. ***HIPAA Privacy and Security Rules*** shall mean the Standards of Privacy, Security, Breach, notification, and Enforcement at 45 CFR Parts 160, 162 and 164.
6. ***Individual*** shall mean the person who is the subject of PHI, and shall include a person who qualifies as a personal representative, in accordance with 45 CFR §164.502 (g).
7. ***Individually Identified Health Information*** shall mean information that is a subset of health information, including demographic information collected from an individual, and (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; (b) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (c) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
8. ***Privacy Officer*** shall mean the individual designated by the County pursuant to 45 CFR §164.530, who is responsible for the development and implementation of the County’s policies and procedures as they relate to its, and its Covered Healthcare Component’s, compliance with HIPAA Privacy and Security Rules, Breach Notification rules (HITECH Act).
9. Personally Identifiable Information (“PHI”) shall mean the following:
  - a. An individual’s social security number; and /or
  - b. An individual’s initials, first name, or first initial and last name in combination with any one or more of the following data elements for that individual:
  - c. A driver’s license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
  - d. A financial account number or credit card or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
  - e. Any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
  - f. An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
  - g. Any other identifier as referenced in the Department of Health & Human Services “Safe Harbor Standards”.

- h. The term “Personally Identifiable Information” does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information usable.
  - i. A user name or email address, in combination with a password or security question and answer that would permit access to an online account.
  - j. The PII provided pursuant to the Agreement shall be limited to what is necessary for the Business Associate to meet its obligations thereunder.
- 10. ***Protected Health Information (“PHI”)*** shall mean an individual’s health information that is-or has been –created, received, transmitted, or maintained in any form or medium, on or behalf of the County, with the exception of education records covered by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232 g, as amended, and the health care records of students at post-secondary educational institutions or of students eighteen (18) years of age or older, used exclusively for their health care treatment which have been disclosed to anyone other than health care provider at the student’s request. The PHI provided pursuant to the Agreement shall limited to what is necessary for the Business Associate to meet its obligations thereunder.
- 11. ***Required by Law*** shall have the same meaning as the term “required by law” in 45 CFR §164.103.
- 12. ***Secretary of Health and Human Services*** shall mean the Secretary of Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.
- 13. ***Security Incident or Incident*** shall mean the attempted or successful authorized access, use, disclosure, modification, or destruction or PHI or PII contained in any form or interference with system operations in an information system that contains PHI or PII.
- 14. Unsuccessful Security Incidents shall include, but are not limited to, pings and other broadcast attacks on the Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
- 15. Use shall mean the sharing, employment, application, utilization, examination, or analysis of PII or PHI within an entity that maintains such information.

**Section 3. Scope of Agreement**

- A. Individual Status of Parties. The parties agree that they are, and shall be, independently responsible for complying, and shall independently comply, with the HIPAA Privacy and Security Rules and FIPA, as it may be amended from time to time. The parties further agree that they are, and shall be, responsible for their own actions and conduct and shall not assume responsibility for the actions and conduct of one another. Additionally, the parties agree that they shall maintain all corporate formalities establishing separate and individual control by each organization's board of directors, as applicable.
- B. The Business Associate acknowledges that the confidentiality requirements set forth herein shall apply to all of its employees, agents, and representatives. The Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions brought against the County, including costs and attorney's fees, resulting from the breach by the Business Associate of the confidentiality requirements of this Addendum.

**Section 4. Privacy of Protected Health Information and Confidentiality of Personal Information.**

- A. **Permitted Uses and Disclosures of PHI and PII by Business Associate.** The Business Associate may use, or disclose, PHI and PII received from the County to its officers and employees. The Business Associate may disclose PHI and PII to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI and PII on its behalf if the Business Associate obtains satisfactory assurances, in accordance with 45 CFR §164.504 (e) (1) (i) and §501.171 (2), that the subcontractor will appropriately safeguard the information. All other uses or disclosures, not otherwise authorized by this Addendum or otherwise governed by law, are prohibited.
- B. **Responsibilities of the Business Associate.** Regarding the use or disclosure of PHI and PII, the Business Associate agrees to:
1. Only use or disclose the PHI and PII as allowed under this Addendum or otherwise by applicable law.
  2. Only use or disclose PHI and PII in a manner that would not violate the HIPAA Privacy and Security Rules, Breach Notification rules (under the HITECH Act) or FIPA, if done so by a Covered Entity.
  3. Establish and implement appropriate procedures, physical, and technical safeguards to prevent improper access, uses, transmissions, or disclosures of PHI and PII for mitigating, to the greatest extents possible under the circumstances, any deleterious effects from any improper access, use, or disclosure of PHI and PII that the Business Associate reports to the County. Safeguards shall include, but are not limited to: (a) the implementation and use of

electronic security measures to safeguard electronic data; (b) requiring employees to agree to access, use, or disclose PHI and PII only as permitted by this Addendum; and (c) taking related disciplinary action for inappropriate access, use or disclose as necessary.

4. Ensure that the Business Associate's subcontractors or agents to whom the Business Associate provides PHI or PII, created, received, maintained, or transmitted on behalf of the County agree to the same restrictions and conditions that apply to the Business Associate with respect to PHI and PII, and ensure that its subcontractors or agents agree to establish and implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of all PHI and PII that it creates, receives, maintains, or transmits on behalf of the County.
5. Make the Business Associate's records, books, accounts, agreements, policies, and procedures available to the Secretary of HHS for determining the County's compliance with HIPAA Privacy and Security Rules of Breach Notification rules (under the HITECH Act), and also, with the State of Florida's Department of Legal Affairs to determine the County's compliance with FIPA.
6. Limit use by, or disclose to, its subcontractors, agents, and other third parties, to the minimum PHI and PII necessary to perform or fulfill a specific function required or permitted hereunder.
7. Provide information to the County to permit the County to respond to a request by an individual for an accounting of disclosures within seven (7) business days of receiving a written request from the County, if the Business Associate maintains a Designated Records Set on behalf of the County.
8. At the request of and in the manner designated by, the County, and within five (5) business days, make any amendment(s) to the PHI and PII when directed by the County, if the Business Associate maintains a Designated Record Set on behalf of the County.
9. At the request of and in the manner designated by, the County, and within five (5) business days, make any amendment (s) to the PHI and PII when directed by the County, if the Business Associate maintains a Designated Record Set on behalf of the County.
10. Establish and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI and PII the Business Associate creates, receives, maintains, or transmits on behalf of the County.



11. Report to the County any Security Incident involving PHI and PII that the Business Associate discovers in the manner detailed in Section 7 below.

C. **Compliance with the County's Policies.** The Business Associate hereby agrees to abide by the County's policies and practices for its Covered Healthcare Component that relate to the confidentiality, privacy, and security of PHI and PII.

D. **Use of PHI and PII Management and Administration or Legal Responsibilities of the Business Associate.** The Business Associate may use PHI and PII received by the County pursuant to the Agreement for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to use PHI and PII for the aforementioned uses if:

1. The disclosure is required by law; or
2. The Business Associate obtains reasonable assurances from the person to whom the PHI and PII is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI or PII.

E. **Data Aggregation Services.** With respect to PHI and PII created or received by the Business Associate in its capacity as the Business Associate of the County, the Business Associate may combine such PHI and PII it has received from the County with the PHI and PII received by the Business Associate in its capacity as a Business Associate of another Covered Entity, or Hybrid Covered Entity, to permit data analysis that relates to the health care operation of the respective Covered Entity or Hybrid Covered Entity, if data analyses is part of the Services that Business Associate is to provide to the County pursuant to the Agreement.

F. **Compliance.** The Business Associate agrees to keep all PHI and PII confidential and secure in compliance with the provisions of this Addendum and according to current state and federal laws.

## **Section 5. Confidentiality.**

A. In the course of performing under this Addendum, each party may receive, be exposed to, or acquire the confidential information including, but not limited to, all information, data reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identifiable as confidential ("Confidential Information") of the other party.

- B. For purposes of this Addendum, Confidential Information shall not include PHI, the security and privacy of which is the subject of this Addendum. The parties, including their employees, agents, or representatives shall:
1. not disclose to any third party the Confidential Information of the other party except as otherwise permitted by this Addendum, or as mandated by the State of Florida's Public Records Laws;
  2. only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under the Agreement; and
  3. advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential.
- C. This provision shall not apply to Confidential Information:
1. after it becomes publicly available through no fault of either party;
  2. which is later publically released by either party in writing;
  3. which is lawfully obtained from third parties without restrictions; or
  4. which can be shown to be previously known or developed by either party independently of the other party.

**Section 6. Security**

- A. **Security of Electronic Protected Health Information and Personal Information.** The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (as defined in 45 CFR §160.103) and PII (as defined by §501.171, Florida Statutes) that the Business Associate creates, receives, maintains, or transmits on behalf of the County consistent with the HIPAA Privacy and Security Rules, Breach Notification Rules (under HITECH Act), and FIPA.
- B. **Reporting Security Incidents.** The Business Associate will report to the County any Incident of which the Business Associate becomes aware that is:
1. A successful unauthorized access, use or disclosure of Electronic PHI or PII;
  2. A modification or destruction of electronic PHI or PII; or
  3. Interference with system operations in an information system containing electronic PHI or PII.

**Section 7. Reporting Requirements**

- A. **Reporting.** The Business Associate shall make a good faith effort to identify any use or disclosure of protected information not provided for in this Addendum.
- B. **Reporting to the County.**
1. The Business Associate will report to the County within:
    - a. five (5) calendar days of any suspected-or confirmed-access, use, or disclosure of PHI or PII, regardless of form, not permitted or required by this Addendum of which the Business Associate becomes aware; and
    - b. twenty-four (24) hours of discovery; any Security Incident of which the Business Associate becomes aware. However, this section constitutes notice by the Business Associate to the County of the ongoing existence and occurrence of attempted but Unsuccessful Incidents (as defined in Section 2 above) for which no notice to the County shall be required.
  2. Such report shall include the identification of each individual whose unsecured PHI and PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  3. Reports of Security Incidents shall include a detailed description of each Incident, at a minimum, to include: (a) the date of the Incident; (b) the nature of the Incident; (c) the information involved, whether the information was accessed, disclosed, used, modified, destroyed, etc; (d) the identities of the individual (s) and their relationship to the Business Associate; (e) a description of the Business Associate's response to each Incident; (f) and the name and title of the individual the County should contact for additional information.
  4. The Business Associate will conduct such further investigation as is reasonably required by the County and promptly advise the County of additional information pertinent to the Incident.
  5. The Business Associate will cooperate with the County in complying with any applicable notification requirements pursuant to the Breach Notification Rule and/or pursuant to Florida law (including but not limited to, §§501.171 and 817.5681, Florida Statutes), and in taking steps determined by the County to be necessary to mitigate any potential harm caused by a Security Incident. The Business Associate will pay and/or reimburse the County for any reasonable expenses the County incurs in notifying individuals of, and /or mitigating potential harm caused by, a Security Incident caused by the Business Associate and/or its subcontractors or agents.

- C. **Reporting to Individuals.** In the case of a breach of PHI or PII discovered by the Business Associate, the Business Associate shall first notify the County of the pertinent details of the breach and, upon prior approval of the County's Privacy Officer, shall notify each individual whose unsecured PHI or PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or if specified, as a preference by the individual, by electronic mail. Where there is insufficient or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the web site of the Business Associate involved or notice in major print or broadcast media, including major media in the geographic areas where the individual's affected by the breach are likely to reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured PHI or PII, the Business Associate may also provide information to individuals by telephone or other means, as appropriate.
- D. **Reporting to Media.** In the case of a breach of PHI discovered by the Business Associate where the unsecured PHI of more than five hundred (500) persons or unsecured PII of more than five hundred (500) persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall provide notice to prominent media outlets serving the state or relevant portion of the state involved.
- E. **Reporting to HHS and the State of Florida Department of Legal Affairs.** The Business Associate shall cooperate with the County to provide notice to the Secretary of HHS of unsecured Phi and to the State of Florida, Department of Legal Affairs, of unsecured PII that has been acquired or disclosed in a breach. If the breach was with respect to five hundred (500) or more individuals, such notice must be provided immediately. If the breach was with respect to less than five hundred (500) individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the County so that it may satisfy its obligation to notify the Secretary of HHS documenting such breaches occurring in the year involved.
- F. **Content of Notices.** All notices and reports required under this Addendum shall include the content set forth 45 CFR §164.404 and FIPA. Notification to individuals, except that references therein to a "Covered Entity", shall be read as referenced to the Business Associate.
1. Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following: (a) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (b) a description of the types of unsecured PHI and PII that were involved in the breach (such as full name, social security number, date of birth, home address, account

number, or disability code); (c) the steps individuals should take to protect themselves from potential harm resulting from the breach, if applicable; (d) a brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against further breaches; and (e) contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an email address, web site , or postal address.

- G. **Notice to Credit Reporting Agencies.** In the case of a breach of PII discovered by the Business Associate where the unsecured PII of more than one thousand (1000) individuals has reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall notify all consumer reporting agencies nationwide, that complete and maintain files in accordance with the provisions of §501.171, Florida Statutes.
- H. **Financial Responsibility.** The Business Associate shall be responsible for all reasonable costs related to the notice required by this Section.
- I. **Mitigation.** The Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of use or disclosure of PHI or PII in violation of this Addendum, the HIPAA Privacy and Security Rules, the Breach Notification Rules (under the HITECH Act), and FIPA.
- J. A violation of this Section shall be a material violation of this Addendum.

#### **Section 8. Termination**

- A. **Immediate Termination.** The County is authorized to immediately terminate the Agreement if it determines –based on its own discretion-that the Business Associate has violated a material term of this Addendum.
- B. **Opportunity to Cure or Terminate.** At the County’s sole discretion, the County may either:
1. Provide notice of breach and an opportunity for the Business Associate to reasonably and promptly cure the breach or end the violation and termination the Agreement if the Business Associate does not cure the breach, or end the violation within the reasonable time specified by the County; or
  2. Immediately terminate the Agreement if the Business Associate has breached a material term of this Addendum and cure is not possible.
- C. **Effects of Termination.** Termination of the Agreement shall not affect any claim or rights that may arise based on the acts or omissions of the parties prior to the effective date of termination.

**D. Duties of Business Associate Upon Termination of the Agreement.**

1. When the Agreement is terminated, the PHI and PII that the Business Associate received from, created, or received on behalf of the County must be destroyed after being returned to the County, at the Business Associate's expense, including all PHI and PII in the possession of the Business Associate's subcontractors or agents. However, if the Business Associate determines that returning or destroying PHI and PII is not feasible, the Business Associate must maintain the privacy protections under this Addendum, and according to applicable law, for as long as the Business Associate retains the PHI and PII, and the Business Associate may only use or disclose the PHI and PII for specific uses or disclosures that make it necessary for the Business Associate to retain the PHI and PII.
2. If the Business Associate determines that it is not feasible for the Business Associate to return PHI and PII in the subcontractor's or agent's possession, the Business Associate must provide a written explanation of the County of such reasons and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Addendum to the subcontractor's or agent's use or disclosure of any PHI and PII retained after the termination of the Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI or PII not feasible.

**Section 9. Miscellaneous**

- A. **Agreement Subject to all Applicable Laws.** The parties recognize and agree that the Agreement, and any and all activities performed thereunder, is governed by federal, state, and local laws, including the regulations, rules and policies of the U.S. Department of Health and Human Services including, but not limited to, HIPAA Privacy and Security Rules, FIPA, and their accompanying regulations. The parties further recognize and agree that the Agreement is subject to new legislation as well as amendments to government regulations, rules, and police, and agree to amend this Addendum accordingly.
- B. **No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.
- C. **Survival.** The rights and obligations of the parties in Sections 4, 5, 6, 7 in their entirety, as well as subsections 8D., 9E., 9G., and 9H., shall survive termination of the Agreement indefinitely.
- D. **Amendment.** This Addendum may only be revoked, amended, changed, or modified by a written amendment that is executed by both parties.
- E. **Enforcement Costs and Attorney's Fees.** If any legal action or other proceedings, including arbitration, is brought for the enforcement of this Addendum, or because of an alleged dispute,

breach, default, or misrepresentation in connection with any provision of this Addendum, each party will hereby be responsible for its own costs and attorney's fees.

- F. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the County to comply with the Privacy and Security Rules.
- G. **Indemnification.** To the fullest extent permitted by law, the Business Associate shall defend, indemnify, and hold harmless the County, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or part by any act or omission of the Business Associate, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the County. In the event the Business Associate is a state department or division, or a political subdivision of the State of Florida, indemnification shall follow the provisions of §768.28, Florida Statutes.
- H. **Signatory Authority.** Each signatory to this Addendum represents and warrants that he or she possess all necessary capacity and authority to act for, sign and bind the respective entity or person on whose behalf he or she is signing.
- I. **Governing Law.** This Addendum shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by the HIPAA Privacy Rules or other applicable federal law.
- J. **Notice.** All notices and other communications under this Addendum shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. mail, postage prepaid, sent registered, or certified mail, return receipt requested, or sent via nationally recognized and receipted overnight courier service, to the parties at their respective principal office or record as set forth below or as designed in writing from time-to-time. No notice of a change of address shall be effective until received by the other party(ies).

**To the County:**

Orange County HIPAA Privacy Officer  
2002 A East Michigan Street  
Orlando, FL 32806  
(407) 836-9214

And

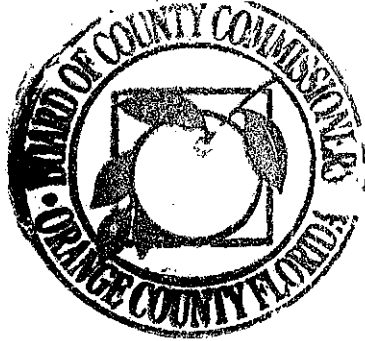
Orange County Administrator  
Administration Building, 5<sup>th</sup> Floor  
201 S. Rosalind Avenue  
Orlando, FL 32801

**To the Business Associate:** Orange County Public Schools  
Attention: Office of Legal Services  
445 West Amelia Street  
Orlando, FL 32801

- K. **Severability.** If any provisions of this Addendum, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Addendum, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Addendum shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the parties that if any provision of this Addendum were capable of two constructions, one that rendered the provision void and one that renders the provision valid, then the provision shall have the meaning that renders it valid.
- L. **Success and Assigns.** The Business Associate shall not assign either its obligations or benefits under this Addendum without the expressed written consent of the County, which shall be at the sole discretion of the County. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.
- M. **Venue and Waiver of Jury Trial.** Any action or proceeding seeking to enforce any provision, or based on any right arising out of this Addendum shall be brought in the federal or state courts located in Orange County, Florida, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Any and all rights to a trial by jury are hereby waived.
- N. **Waiver and Breach.** No failure by a party to insist upon the strict performance of any covenant, agreement, term, or condition of this Addendum shall constitute a waiver of any such breach or such covenant, agreement, term or condition. Any party may waive compliance by the other party with any of the provisions of this Addendum if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.
- O. **Entire Agreement.** The Agreement, this Addendum and/or any additional addenda or amendments to the Agreement, any documents incorporated herein by reference, and/or attachments hereto, shall construe the entire understanding between the parties as to the rights, obligations, duties, and services to be performed hereunder.



IN WITNESS HEREOF, the parties, attesting that they are dully authorized to enter into this Agreement, have executed this Agreement on the dates indicated below.



**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor  
Date: 8.7.18

ATTEST: Phil Diamond, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Jennifer Lara-Keimig*

**The School Board of Orange County, Florida,**  
a public corporate body organized and existing  
under constitution and laws of the State of  
Florida.

By: *William E. Sublette*  
William E. Sublette, as Chairman  
Date: 9.11.18



Signed, sealed and delivered in the  
Presence of:

Print Name: Margarita Rivera

## ATTACHMENT B

### SUPER CIRCULAR

#### **§200.327 Financial reporting.**

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

#### **§200.328 Monitoring and reporting program performance.**

- (a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities.
- (b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
  - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a

justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
  - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
  - (ii) The reasons why established goals were not met, if appropriate.
  - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
  - (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

- (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- (e) The Federal awarding agency may make site visits as warranted by program needs.
- (f) The Federal awarding agency may waive any performance report required by this part if not needed.

**§200.331 Requirements for pass-through entities.**

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.

- (i) Subrecipient name (which must match the name in DUNS);
- (ii) Subrecipient's DUNS number (see §200.32 Data Universal Numbering System (DUNS) number);
- (iii) Federal Award Identification Number (FAIN);
- (iv) Federal Award Date (see §200.39 Federal award date);
- (v) Subaward Period of Performance Start and End Date;
- (vi) Amount of Federal Funds Obligated by this action;
- (vii) Total Amount of Federal Funds Obligated to the subrecipient;
- (viii) Total Amount of the Federal Award;

- (ix) Federal award project description, as required to be responsive to the federal Funding Accountability and Transparency Act (FFATA);
  - (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
  - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - (xii) Identification of whether the award is R&D; and
  - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
  - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
  - (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this Part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (b) of this Part.
  - (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§200.300 Statutory and national policy requirements through 200.309 Period of performance, and Subpart F-Audit Requirements of this Part; and
  - (6) Appropriate terms and conditions concerning closeout of the subaward.

- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:
  - (1) The subrecipient's prior experience with the same or similar subawards;
  - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this Part, and the extent to which the same or similar subaward has been audited as a major program;
  - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
  - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
  - (1) Reviewing financial and programmatic reports required by the pass-through entity.
  - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
  - (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
  - (2) Performing on-site reviews of the subrecipient's program operations;
  - (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.
- (f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this Part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.
  - (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
  - (h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this Part and in program regulations.

### **§200.333 Retention requirements for records.**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

- (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

#### **§200.336 Access to records.**

- (a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
- (b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to



this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

- (c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

#### **§200.337 Restrictions on public access to records.**

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, or local statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

#### **§200.338 Remedies for noncompliance.**

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

#### **§200.339 Termination.**

- (a) The Federal award may be terminated in whole or in part as follows:
  - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
  - (2) By the Federal awarding agency or pass-through entity for cause;
  - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
  - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.
- (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

#### **§200.340 Notification of termination requirement.**

- (a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.
- (b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
- (c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77. See also the requirements for Suspension and Debarment at 2 CFR part 180.

#### **§200.341 Opportunities to object, hearings and appeals.**

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

#### **§200.342 Effects of suspension and termination.**

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- (a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

- (b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

**§200.344 Post-closeout adjustments and continuing responsibilities.**

- (a) The closeout of a Federal award does not affect any of the following:
  - (1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
  - (2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
  - (3) Audit requirements in Subpart F—Audit Requirements of this Part.
  - (4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this Part, §§200.310 Insurance Coverage through 200.316 Property trust relationship.
  - (5) Records retention as required in Subpart D—Post Federal Award Requirements of this Part, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records.
- (b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

**§200.345 Collection of amounts due.**

- (a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements;
  - (2) Withholding advance payments otherwise due to the non-Federal entity; or
  - (3) Other action permitted by Federal statute.
- (b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR Parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.