

## PRO-ED, INC.

### HEALTH PROFESSIONAL PRODUCTS PRIVACY POLICY

Effective Date: February 15, 2021

**ABOUT US:** PRO-ED, Inc. (“**PRO-ED**”, “**we**,” or “**us**”) understands the importance of protecting information that may be provided to us by psychologists, counselors, speech-language pathologists, occupational and physical therapists, special education/rehabilitation providers, and other health and behavioral care providers (“**health professionals**”). The information provided by health professionals may include information related to a student’s, patient’s or client’s (“**Evaluatee(s)**”) medical condition, health or other situation and other contact and registration information such as name, address, email, date of birth (“**Evaluatee Data**”), which may be considered Protected Health Information (“**PHI**”)<sup>1</sup> under the U.S. Health Insurance and Portability Accountability Act, the Standards for Privacy of Individually Identifiable Health Information (“**Privacy Rule**”) and PHI related regulations (“**HIPAA**”). When a health professional provides PHI to PRO-ED, the health professional generally is considered a “covered entity”<sup>2</sup> or “business associate”<sup>3</sup> as those terms are defined in HIPAA. In those instances, it is the responsibility of each health professional to obtain any legally required authorizations from his/her Evaluatees for the release of the Evaluatee PHI prior to disclosing such PHI to PRO-ED. When PRO-ED processes Evaluatee PHI for a covered entity or a business associate, PRO-ED will follow the terms of its then-current Business Associate Agreement<sup>4</sup> with the respective covered entity or business associate and its processing of PHI will be consistent with the Business Associate Agreement requirements.

PRO-ED publishes standardized assessments, instructional materials, curricular and therapy materials, including online software, and professional journals in both digital and print versions for use by health professional (the “**Products and Services**”); and PRO- ED markets and sells such Products and Services to health professionals. PRO- ED engages in data processing when Evaluatee Data, that may include PHI, is provided by health professionals using our Products and

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<sup>1</sup> PHI is defined in HIPAA as all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. “Individually identifiable health information” is information, including demographic data, that relates to: the individual’s past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number). The Privacy Rule excludes from protected health information ...certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

<sup>2</sup> A “covered entity” is any health plan, healthcare provider, or healthcare clearinghouse that must comply with the HIPAA Privacy Rule.

<sup>3</sup> A “business associate” is any person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity. A member of the covered entity’s workforce is not a business associate.

<sup>4</sup> PRO-ED has written contracts between itself and a Covered Entity or Business Associate that requires PRO-ED to comply with specific requirements related to PHI.

Services. We have implemented policies and procedures to comply with HIPAA and its requirements related to business associates and our processing of PHI in that capacity, including Business Associate agreements. Significantly, our Products and Services are intended to be used under the direction of health professionals and are NOT meant to be used by children for themselves (including those under 13), unless such use is under the direction of a licensed or otherwise qualified health professional.

**PURPOSE AND SCOPE:** The purpose of this Privacy Policy is to describe PRO-ED's procedures for the collection, access, use, disclosure, processing, security, and retention of information submitted by a health professional ("**End User Information**") and any submission of Evaluatee Data, including that which includes PHI. "You" and "your" and "End User" refers to you as an end user of PRO-ED's Products and Services ("**End User**"). Use of the Product and Services may require your submission of Evaluatee Data and End User Information to PRO-ED. This Privacy Policy applies to your use of the Products and Services and your use of any PRO-ED End User dashboards, web applications, web-based products, mobile apps, or other web-based resources for End Users to access and administer our Products and Services ("**End User Platform(s)**").

**INFORMATION COLLECTED:** PRO-ED may collect the following information from End Users:

- Evaluatee Data from a health professional to provide and administer the Products and Services used by an End User;
- End User Information to allow that entity to create and use an account and to access and/or administer our Products and Services;
- Rosters of Evaluatees provided by End Users;
- End User provided Evaluatee email addresses to allow its Evaluatees to access certain Products and Services;
- End User transaction information, including purchase confirmations and updates regarding End User use and administration of our Products and Services;
- Customer service inquiries may require End User to provide information to our support staff to respond to your inquiries; and/or promotional or marketing communications if End User has consented to receive such communications.
- **Automatically Collected Information:** When you use our End User Platform, we may passively and automatically collect "Usage Information" (i.e., information that does not directly identify you, but that may be linkable to your computer, device, operating system, platform, or software instance via a unique device ID for the purpose of helping us enable the functionality and improving our online Products and Services).

For our test Products, your IP address, End User ID, and site name is collected and stored in the audit log and database when an End User logs into an End User Platform. We also use a

cookie to store a session identification. The cookie used for this purpose expires when the session ends (see next bullet).

- **Cookies and Similar Technologies:** For our other Products available on an End User Platform, we collect session cookies set by the application, that are used to determine which users are logged in and which expire at the end of the session. We also collect and store IP addresses in the log files that are used for retrieval in the case of failure and to debug the End User Platform when required. Those logs are cleared automatically and periodically.

We store IP addresses in a database table that contains session information. The information in this table is only needed for active sessions and is regularly cleared.

Browser Cookies are small text files stored on your device which are transmitted to PRO-ED from your use as an End User of our End User Platforms. We use cookies to help understand how our End User Platforms are used and to improve content, navigation, and functionality. You can manage placement of cookies on your device by using the features in most Internet browsers, including adjusting your browser settings to warn you before a cookie is stored or to block all cookies. It is important that you understand that by disabling or removing cookies, some parts of our End User Platforms, as well as our Products and Services, may be disabled or not function properly. Also, when you revisit our Product and Services your ability to limit cookies is subject to your browser software's settings and limitations.

Web Beacons, Web Bugs, and clear GIFs are used in combination with Cookies to help individuals manage websites and to understand the behaviors of their customers. Web Beacons are typically a transparent graphic image (usually 1-pixel x 1 pixel) that is placed on a website or in an email. They may be used to collect IP Addresses.

**Browser Settings:** If you do not wish to receive cookies, you may set your browser to reject cookies or to alert you when a cookie is placed on your computer. Although you are not required to accept cookies when you visit our End User Platforms, you may be unable to use all the functionality if your browser rejects our cookies.

**PRO ED does not sell Evaluatee PHI, Evaluatee Data or End User Information or engage in any marketing (including targeted ads) related to Evaluatees. PRO-ED does not use Evaluatee Data for any commercial purposes that are unrelated to its agreements with health professionals.**

**USE OF INFORMATION:** PRO-ED uses information as follows:

- PRO-ED uses Evaluatee Data only as authorized by a health professional, as required by applicable law and any written agreement, including the then-current Business Associate Agreement in effect with the health care professional.
- PRO-ED uses End User Information to administer and manage our Products and Services and to operate our End User Platforms.

- PRO-ED may send emails and other correspondence to End Users about our Products and Services, End User Platforms, and other information that may be of interest to them, as well as customer satisfaction surveys and requests for feedback about our Products and Services and Websites. You may opt out from receiving certain communications by following the instructions for unsubscribing provided at the bottom of the communication. However, you will not be able to opt out of formal notices about the operation of our End User Platforms, Products or Services, legal, and other related notices concerning our Products and Services, and your relationship with PRO-ED.
- PRO-ED may use information for the conduct of research for educational, psychometric, and assessment validity and integrity purposes. Any such research related to Evaluatee Data will only be conducted as authorized by the applicable health professional in its written agreement, and as permitted by applicable law.

**DISCLOSURE OF INFORMATION:** PRO-ED may disclose information as provided below and consistent with the Business Associate Agreement.

- **HIPAA and Business Associate Agreement:** We may use or disclose PHI on behalf of, or to provide services to, covered entities or their business associates for purposes of fulfilling our service obligations to them, if such use or disclosure of PHI is permitted or required by the Business Associate Agreement and would not violate the Privacy Rule.

In the event that PHI must be disclosed to one of our subcontractors or agents, we will ensure that the subcontractor or agent agrees to abide by the same restrictions and conditions that apply to us under the Business Associate Agreement with respect to PHI, including the implementation of reasonable and appropriate safeguards.

- We may disclose information to government and regulatory agencies, but only to comply with a court order or as otherwise required by applicable law. In so doing we adhere to the requirements of the relevant Business Associate Agreement.

## **CHILDREN'S PRIVACY**

PRO-ED Products and Services are not directed, promoted, or sold to children. Instead, they are meant to be used and administered exclusively by educational and health professional users that directly oversee the use of our Products and Services by an Evaluatee, including children under the care of such educational or health professional. We do not knowingly collect any information from children (including those under 13) unless the health professional, parent, or guardian has provided authorization or consent for a child to use the Products or Services. We collect only as much information as is necessary to provide the Product or Service and an End User may access, delete, or withdraw authorization for continued processing of the child's information at any time. If you have any questions about reviewing, modifying, or deleting PHI of a child under the age of 13, please contact your health professional directly. The health professional is responsible for obtaining required consents from the parent or guardian in compliance with applicable law. Please contact us at [privacy@proedinc.com](mailto:privacy@proedinc.com) if you believe we have inadvertently collected PHI from a child under 13 without proper consent. This will allow us to delete such information as quickly as

possible.

## **CALIFORNIA PRIVACY NOTICE**

Our Products and Services provided to and used by End Users that are health professionals, as well as the Evaluatee Data that is PHI that we process in these instances, is exempt under the California Consumer Privacy Act (“CCPA”) because the CCPA does not apply to “*protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5)*” and to the respective covered entities and business associates also covered by HIPAA. Where we provide our Products and Services to California consumers on behalf of our End Users that are not subject to HIPAA and are not covered entities or business associates, we are considered a “service provider” under the CCPA. In such instances, the health or other qualified professional’s privacy notice governs the use of Evaluatee Data. In those instances, you should contact your health or other qualified professional with any questions or requests about your personal information.

Under the CCPA, when we are a conducting “business” functions, and are not acting a service provider as described above related to HIPAA, California residents have the right to request that we disclose the Personal Information that we have collected, used, or disclosed during the past twelve (12) months, as well as the categories of sources from which their Personal Information was collected, our business purposes for collecting their personal information, and the categories of third parties with whom we shared their Personal Information. A California resident also has the right to ask us to delete the Personal Information we have collected, although that right is not always granted if we have a legal basis for retaining it. We cannot and do not discriminate against a California resident for exercising any of their rights under the CCPA. PRO-ED does not sell any Personal Information as defined in CCPA. Under CCPA, California residents have the right to opt out of the sale of their Personal Information. Because we do not sell Personal Information, we are not required to offer this opt out.

California residents or their authorized agent (registered with the California Secretary of State) can make a request to know or delete by contacting us as by email at [privacy@proedinc.com](mailto:privacy@proedinc.com) or by phone at 800-397-7633. We may require you to provide additional Personal Information to verify your identity, but any Personal Information that you provide to verify your identity will not be used for any other purpose.

California law (California Civil Code Section 1798.83) “Shine the Light Law” permits residents of California to opt out of our disclosures of End User Personal Information to third parties for marketing purposes at any time. PRO-ED will not disclose Personal Information to third parties for marketing without giving you notice and getting your consent. Please note this opt-out does not prohibit disclosures for non-marketing purposes. You can opt out for free by contacting us at

privacy@proedinc.com or writing to PRO-ED, Inc., c/o Privacy Officer, 1301 W. 25th St., Suite 300, Austin, TX 78705.

Some website and platform browsers may be able to send a “do not track” signal to websites. PRO-ED’s End User Platforms do not respond to “do not track” signals or similar mechanisms and requests. If you block cookies through your browser, you will be blocking cookies as noted above.

#### **END USERS OUTSIDE OF THE UNITED STATES:**

For any health professional located outside of the United States, you should consult your health professional’s privacy policy, because PRO-ED is operating only as a processor of Evaluatee Data on behalf of the relevant health professional, which is the controller with regard to Evaluatee Data and End User Information. PRO-ED only processes Evaluatee Data as instructed by the health professional; under these circumstances where the health professional is the controller, its privacy policy governs in all respects. End Users, parents, or Evaluatees should contact your health professional directly with any questions. PRO-ED will forward any inquiries it receives to the applicable controller.

#### **INFORMATION SECURITY, SAFEGUARDS AND RETENTION**

PRO-ED and its subcontractors employ administrative, technical and physical safeguards, consistent with its operations, to protect the confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of the Business Associate Agreement. PRO-ED has implemented policies and procedures to comply with the applicable legal and regulatory requirements for safeguarding such information. We have dedicated information security programs and work to update our technical and operational security measures on a regular basis. Our security measures include the use of data encryption, firewalls, limitations on the data use and access for our personnel and subcontractors, the use of secure database hosting, and the use of physical access controls within our facilities.

Additionally, each End User’s account is protected by the password you use to access your online account for the End User Platforms, and we urge you to take steps to keep your username and password safe. End Users are responsible for maintaining the confidentiality of their usernames and passwords. If you feel your password has been compromised, you should change it immediately and notify us. When you are finished using our Products or Services, you should log out of your account and exit your browser. End Users are also responsible for notifying us immediately of any known or suspected unauthorized use(s) of their accounts, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of login credentials. Any fraudulent, abusive, or otherwise illegal activity on your account may be reported to appropriate law enforcement agencies by us. Please be aware that, despite our best efforts, no security measures are perfect. As a result, we cannot guarantee or warrant the security of End User Information and Evaluatee Data.

In the event of a security incident that involves Evaluatee Data or End User information, PRO-ED will investigate the incident and take steps pursuant to our Incident Response Plan; if a data breach has occurred, we will notify the health professional of such incident as required in the

relevant Business Associate Agreement and by relevant state law and document any disclosures of PHI.

PRO-ED employees or contractors who have access to Evaluatee Data are given appropriate training on the requirements applicable to the collection, use, disclosure, operation, or maintenance of that information. The training covers PRO-ED's privacy and security policies and procedures related to privacy and security of PHI, Evaluatee Data, and End User Information.

PRO ED will only retain Evaluatee Data and End User Information consistent with the then-current Business Associate Agreement, and as permitted or required by applicable law, as directed by health professional, or as consistent with its legitimate business purposes.

## **ACCESS TO DATA AND YOUR RIGHTS**

As provided in our Business Associate Agreement with your health professional, we will make available information necessary for the covered entity to allow individuals to exercise their rights of access, amendment, and accounting in accordance with HIPAA regulations.

Upon request, we will make our internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by the business associate on behalf of a covered entity available to the covered entity or the Secretary of the U.S. Department of Health and Human Services for the purpose of determining compliance with the terms of the BA Agreement and HIPAA regulations.

For End Users, in many of our Products and Services, you as an End User will be able to access Evaluatee Data, as well as change and delete some of the information yourself, by logging into your account. If you cannot access, correct, or delete the required information yourself, please follow these steps:

- If you are an End User of our Products and Services that we provide on behalf of a covered entity or business associate, contact the respective covered entity or business associate to exercise your rights. They need to manage your request even if it relates to information that we store on their behalf. We will support them in responding to your request.
- In all other cases, email us at [privacy@proedinc.com](mailto:privacy@proedinc.com) or contact us in writing using the address below if you want to exercise any of these rights.
- Please remember that many of your rights are not absolute. In some circumstances, we (or the covered entity or business associate) are not legally required to comply with your request because of relevant legal requirements or obligations which require us to retain End User information, Evaluatee Data or PHI.

## **HOW TO CONTACT US**

If you have questions or concerns regarding this Policy, please contact us at [privacy@proedinc.com](mailto:privacy@proedinc.com), or at PRO-ED, Inc, c/o Privacy Officer, 1301 W. 25<sup>th</sup> St., Austin, TX 78705; 1-800-897-3202.

### **CHANGES TO THIS PRIVACY POLICY**

PRO-ED may modify or amend this Privacy Policy due to changes in our Products, Services, End User Platforms, business, applicable law and other reasons. We will include a notice on the home page of our End User Platform, but you should also check this Privacy Policy and the effective date at the beginning. Any changes or amendments are effective immediately upon posting of the changes or amendments on our website Policy.

### **TRANSFER OF OWNERSHIP**

PRO-ED reserves the right to transfer Student Data (including, but not limited to, PHI) to a third party in connection with the sale of all or substantially all the assets of PRO-ED, provided the purchaser has agreed to safeguard Evaluatee Data with protections that are at least as protective as those set out in this Privacy Policy.

### **COMPLETE AGREEMENT**

This Privacy Policy and our Terms of Use constitute the Complete Agreement between you and PRO-ED. To the extent the End User Terms of Use conflict with the provisions of this Privacy Policy the terms of this Privacy Policy shall control.