

Joint OCFS, DOH, & OTDA Guidance to Local Social Services Districts on Use of Tools for Chat and Video Conferencing

Overview

This guidance is meant to address questions on the expanded need to conduct business with chat and video conferencing, while the NYS Pause executive order is in effect. During this unprecedented time, while there is value in using tools such as chat and video conferencing, these solutions also introduce additional risks. Local Social Services Districts (Districts) should be aware that legal obligations, including but not limited to confidentiality, security, privacy, and compliance requirements regarding data, based upon data source, must continue to be met in any chat, video conferencing, and all other Information Technology (IT) solutions. The use of all IT solutions must also include the development and implementation of a policy and procedure for use to the extent this technology is not addressed through existing guidelines or policies.

Accordingly, individuals looking to implement business practices involving chat and/or video conferencing must ALWAYS consult with their District legal, HR, senior management, and Information Security Officer (ISO) for guidance on the use of any solution in connection with **each** specific use. Such analysis must include, but not be limited to, answering questions such as:

- *How will the solution be used?*
- *Who will be using it?*
- *What is the legitimate business justification for use?*
- *Is there an alternative mode of access that meets confidentiality, security, privacy, and compliance requirements and could be used instead? Phone? Email? Other?*
- *What data from what data source will be involved, discussed, and shared in the solution?*
- *For the data involved, is the solution sufficiently secure?*
- *Does the solution meet record retention and litigation hold policies?*

PLEASE NOTE: None of the solutions noted below currently meet all legal obligations for any data with heightened compliance obligations, including data from sources such as Federal Tax Information (FTI), Federal Parent Locator Services (FPLS), Unemployment Insurance Benefits (UIB), or Social Security Administration (SSA). Accordingly, agency guidance would be to NOT use any of these solutions if such data will be in use.

Additionally, this guidance is only applicable to NYS Office of Information Technology Services (ITS) supported IT solutions. Any county or District solutions that are NOT supported by NYS ITS are not in scope and require a full and thorough vetting by the District.

Additional Information on Particular Solutions:

Skype for Business and Instant Messaging

This solution:

- Does NOT collect instant messages or chats in the solution.
- Individuals can exchange files virtually, and there is no record of such exchange or retention. This feature exponentially increases data loss risk, as it allows for file transfers

that will not be audited or otherwise captured with, for instance, Data Loss Prevention (DLP) tools that may be utilized by the District.

- External access, outside the NYS government O365 tenant, is blocked by default, so external users cannot chat with those on the inside. This prohibition does not block or disallow users from attending external meetings, but only blocks external entities from entering NYS hosted meetings.

If, after a thorough consideration of all legal risks, including those noted above, the District determines they still want to use Skype for Business within the NYS O365 tenant, there are no technical controls to stop access to Skype.

Skype for Business for remote court appearances (OCA hosting)

The Office of Court Administration (OCA) has implemented Skype for Business as the solution for virtual court appearances. Please note OTDA, OCFS, and DOH are not aware, with any detail, of what security, confidentiality, privacy, or compliance controls are in place for the OCA Skype for Business solution. ITS does not, however, block access to the Skype for Business Web App.

As such, each District should review OCA's administrative orders for virtual court appearances. When appearing, the above analysis applies, and confidentiality and security requirements must be maintained. In instances when the content, data, or evidence requires a level of security or confidentiality beyond that of Skype, Districts shall coordinate with the Court and seek an alternative secure method to transmit that content, data, or evidence to the Court. Please consult with court administration regarding their preferred method of transferring data with heightened compliance requirements, such as FTI and other information that would otherwise be redacted in a public filing.

Microsoft Teams

Microsoft Teams is a chat-based app that brings together people, conversations, and content on a single platform.

Microsoft Teams is designed for employees who frequently work together (i.e., in the same business unit or on a specific project). It is recommended that one person from the group/team/project serve as the Team's site owner/administrator and invite others to join. Only members invited to join can access the Team.

Please note that to use the Teams functionality in NYS O365 tenant, the user must be licensed and provisioned. Should a District be interested in utilizing the NYS O365 Teams solution, please contact the HUP CRM mailbox, and request a Team creation via the ITSM Service Catalog. The name of a Team site owner/administrator will need to be provided at the time of the request.

SMS/mobile text messaging solutions

Districts should consider guidance that mirrors that at the state agencies, which generally provides that the only acceptable use is as a means of communicating administrative issues (i.e. "please check your email," "Please call _____"; etc.). SMS and mobile text messaging solutions shall not be used for any substantive decision making or discussion of District business. Uses that do not comport with these limitations put the District at risk in many ways, including the failure to meet basic confidentiality, security, and compliance obligations.

SMS/mobile text messaging about the District business should NEVER occur on a worker's personal device.

Smartphone based video conference tools

The use of smartphone based video conferencing platforms, including those such as Facetime, the proprietary videotelephony product on iPhones, or software based applications such as Facebook Messenger, WhatsApp, Marco Polo, Google Duo, or similar do not meet legal obligations for data compliance, including general retention and legal holds, and confidentiality obligations. Accordingly, Districts shall limit all authorized use to discussing only such legitimate District business purposes that absolutely require the use of smartphone based video conferencing access and cannot be done over a phone or other more confidential and compliant IT solutions. Use of smartphone or tablet based video conference technology which is not already supported by NYS ITS to discuss District business should NEVER occur on a worker's personal device, unless the worker has securely connected their personal device to the NYS network as outlined in the BYOD guidance previously provided to Districts.**

** Note that OCFS in guidance issued on March 15, 2020 "Novel Coronavirus of 2019 Disease (COVID-19) Guidance for Child Protective Services Staff" and guidance dated March 20, "Novel Coronavirus of 2019 Disease (COVID-19) Guidance for Foster Care and Preventative Staff" that addressed CPS, Foster Care, and Preventive contacts. Please see that guidance to determine whether and when the use of video conference tools is permissible.