

**FERPA AGREEMENT BETWEEN
THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT
AND
THE NEW MEXICO HIGHER EDUCATION DEPARTMENT
AND
THE NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS**

THIS FERPA AGREEMENT ("Agreement") is made by and between the New Mexico Public Education Department ("PED"); the New Mexico Higher Education Department ("HED"); and the New Mexico Department of Workforce Solutions ("DWS).

RECITALS:

WHEREAS, PED, HED, and DWS entered into a Data Sharing Agreement in September of 2019;

WHEREAS, the purpose of the Data Sharing Agreement is to ensure that New Mexico is able to establish a longitudinal data system that provides educators and policy makers with timely, accurate, and usable data that can improve student success throughout New Mexico's P-20 system;

WHEREAS, the terms of the data sharing agreement provided that by sharing data, the appropriate state agencies would produce reports including, but not limited to those that connect records from before school-age through post-graduate education and on into the workforce;

WHEREAS, the nature of this project data would encompass the submission of personally identifiable information of individual students, which currently is in the possession of PED, HED, and DWS;

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), set forth in Title 20 U.S. Code Section 1232g and its regulation at Title 34 CFR § 99.1 et seq. generally prohibits the disclosure of student's personally identifiable information without consent, subject to certain exceptions;

WHEREAS, 34 CFR §99.31(3) and §99.35 allow for distribution of student personally identifiable information to authorized representatives of state authorities in connection with an audit or evaluation of Federal or State supported education programs;

WHEREAS, PED, HED and DWS are the agencies who would be involved in creating and sharing personally identifiable information in regards to a longitudinal data study to improve student success throughout New Mexico's P-20 system and beyond into the New Mexico workforce;

WHEREAS, the purpose of this Agreement is to share information among PED, HED and DWS in a manner consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA") in regard to data necessary to fulfill the establishment of a longitudinal data system and for producing records showing the correlation among student performance in K-12, higher education and into the New Mexico workforce;

WHEREAS, the PED and HED are State Educational Agencies subject to FERPA, as set forth in Title 20 U.S. Code Section 1232g and 34 CFR §99.31;

WHEREAS, FERPA requires that information be shared in a way which does not permit personal identification of parents and students and requires further that the information be destroyed when no longer needed for the purposes for which the study was conducted;

WHEREAS, FERPA provides that if any party allowed access to personally identifiable information does not destroy that information when no longer needed for the purposes for which the study was conducted, then that party will be prohibited from access to future personally identifiable information from educational records for at least five years;

NOW, THEREFORE, IT IS AGREED as follows:

I. TERM OF AGREEMENT

This Agreement shall take effect upon signature by the authorized representatives of the PED, HED and DWS and shall remain in effect until the sooner of June 30, 2025, or being terminated by either party, upon fourteen days written notice pursuant to Paragraph V herein. Upon termination of this Agreement, PED, HED and DWS all provide assurances to each other by letter and agree that all data obtained under this Agreement will be promptly destroyed or returned in accordance with the requirements of 34 CFR §99.35(b).

II. DEFINITIONS AND ABBREVIATIONS

- a) "Disclose" or "disclosure" means the release, transfer or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. Further disclosure of any information exchanged by any party to this agreement is prohibited by this Agreement in that it constitutes a redisclosure of information. 34 CFR 99.33.
- b) " FERPA" refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means Title 20 U.S. Code Section 1232g as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations, "Family Educational Rights and Privacy". Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.

III. REQUIRED TASKS UNDER THE AGREEMENT

a) Joint Responsibilities

1. PED, HED and DWS shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.

2. Each party shall identify at least one authorized representative or data custodian from their respective agencies who shall be responsible for processing and responding to data requests from the other party. Within seven (7) days of

signing this Agreement, all sides shall exchange in writing the name(s), mailing address, telephone number, fax number and email address of their authorized representative(s). These names can be changed as conditions change.

3. Each party may seek to review or seek written assurances and each party shall agree to permit each other to review or to provide written assurances regarding the use of data transmitted under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the personally identifiable information and that personally identifiable information has not been redisclosed or released.

b) Responsibilities of All Parties:

1. All Parties shall share the personally identifiable information detailed in Exhibit A in regards to those student records that each respective party possesses. This information shall be shared amongst the parties upon request, but only for purposes of establishing a longitudinal data system with the goal of improving student success throughout New Mexico's P-20 education system and on into the workforce. The information shall also be used for producing related reports.
2. All parties agree not to share or re-disclose personally identifiable data received under this Agreement with any other entity, organization or individual without the prior written approval from the agency from which the personally identifiable data originates. Any reports created or produced by the parties under this agreement shall not identify students or their parents, or release any personally identifiable information shared under this agreement.
3. Each party shall assign, and through execution of this agreement, hereby does assign, every other party to this agreement as an authorized representative for purposes of having access to personally identifiable information of students as detailed in this agreement and in accordance with 34 CPR 99.35. Each party is an authorized representative only for the sole purpose of conducting an evaluation and study of federal and State supported education programs as detailed in this agreement.
4. All parties agree to maintain all data obtained pursuant to this Agreement separate from all other data files that they possess and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose stated above in paragraph III (b)(1). Transmission of all FERPA-protected data must be by SECURE electronic systems and/or networks. All copies of data of any type including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data.
5. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from or be assigned to any other individual, institution, organization or entity.

6. Despite any contrary provisions in the Agreement, all parties agree not to disclose any data obtained under this Agreement in a manner which could identify an individual student to any other individual, institution, organization or entity.
7. All parties agree that procedures and systems will be established to ensure that all confidential data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents the interception, diversion, duplication, or other unauthorized access to said data.
8. All parties shall promptly, that is, within one (1) hour of learning, report to the relevant party any incidents in detail of any personally identifiable information received from that party whose confidentiality was breached or is believed to have been breached.
9. All parties agree to destroy or return all personally identifiable data obtained under this Agreement when it is no longer needed for the purpose for which it was obtained in compliance with 34 CFR §99.35(b). Nothing in this Agreement authorizes the parties to maintain data received from the other agency beyond the time period reasonably needed to complete the purpose of the request, and in no case beyond the termination date of this Agreement. Any destruction of the referenced data must be witnessed by one other person who can later attest that the destruction occurred. All parties agree to submit letters to each other within 30 days of the termination of this agreement, attesting to the destruction of any referenced personally identifiable data received from each other.
10. Unless the data is returned, each party shall maintain records that document and verify the destruction of the data provided by each other under this Agreement.
11. All parties agree to adhere to any mutually agreed upon protocols or directives prohibiting disclosure of data, which even though it may not have been provided in a personally identifiable manner, would still permit public identification of students because of the small cell sizes (i.e., subgroups of fewer than 10 students) of the data. If data is so identified, it may only be used in a disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students.
12. The parties shall use the requested data in the following way: personally identifiable information obtained from the parties will be matched with other non-personally identifiable information to create a longitudinal data system to be created with the goal of improving student success throughout New Mexico's P-20 education system and beyond into the work force. The information will be correlated for producing related reports related to those mentioned in 22-1-11(K) NMSA 1978 as well as other reports that further the goal of improving New Mexico student and worker success.
13. Subject to the agreed-upon and limited use of requested data provided and only for the purposes asserted in this Agreement, there shall be no further disclosure

by any party of any of the information provided under this Agreement in that this would constitute a redisclosure of information. Under the applicable federal FERPA regulation, that is, 34 CFR 99.33, redisclosure is only permitted upon obtaining prior consent of the parent or eligible student of the personally identifiable information.

IV. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings among PED, HED and DWS concerning the subject matter hereof. No prior agreement, verbal representations, or understandings shall be valid or enforceable unless embodied in this Agreement.

V. TERMINATION OF AGREEMENT

This Agreement may be terminated by any party, upon written notice delivered to all other parties not less than fourteen (14) days prior to the intended termination date. By such termination notice, no party shall negate obligations already incurred or required to be performed prior to the effective date of termination. Each party, may terminate the Agreement immediately upon confirmation of fraud, negligence or abuse of confidentiality restrictions. This Agreement shall terminate automatically on June 30, 2025, unless extended by a written agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

BY: Kate O'Neill
KATE O'NEILL, SECRETARY DATE: 8/29/19

BY: Sandy Digges
GENERAL COUNSEL DATE: 8/29/19

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

BY: [Signature]
KARA BOBROFF, INTERIM SECRETARY DATE: 8/29/19

BY: [Signature]
GENERAL COUNSEL DATE: 8/29/19

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

BY: Bill McCamley
BILL MCCAMLEY, SECRETARY DATE: 8/29/19

BY: [Signature]
GENERAL COUNSEL DATE: 8/29/19