

**DATA SHARING AGREEMENT
BETWEEN THE KANSAS STATE DEPARTMENT OF EDUCATION
AND
THE UNIVERSITY OF KANSAS
PURSUANT TO THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT
STUDIES' EXCEPTION**

THIS DATA SHARING AGREEMENT (Agreement) is made by and between the Kansas State Department of Education (KSDE) and the University of Kansas (KU) on behalf of the Center for Physical Activity & Weight Management of the University of Kansas Medical Center.

KU has requested KSDE student data on assessment, attendance and other general demographic data to complete the requirements of a National Institutes of Health (NIH) grant DK85317 "Physical activity and academic achievement," a five (5) year cluster randomized, controlled trial to determine conclusively if physically active academic lessons improves academic achievement in elementary school children in grades two (2) through three (3) followed for up to three years to grades four (4) to five (5).

NOW, THEREFORE, IT IS AGREED, pursuant to the Family Educational Rights and Privacy Act (FERPA), set forth in 20 U.S.C. 1232g and its regulations at Part 99 of Title 34 of the Code of Federal Regulations (as amended in 2012) as follows:

I. TERM OF AGREEMENT

This Agreement shall take effect upon signature by the authorized representatives of the KSDE and KU, and shall remain in effect until the sooner of **July 8, 2014**, or being terminated by KSDE or KU pursuant to Paragraph VI herein. Upon termination of this Agreement, KU will provide assurances to KSDE by letter and confirm that all data obtained under this Agreement has been destroyed and/or returned to KSDE in accordance with the requirements of 34 CFR § 99.35(b).

II. DEFINITIONS AND ABBREVIATIONS

- a) "Disclose", "disclosure" or "re-disclosure" means to permit access to or 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. 34 CFR § 99.3.
- b) "FERPA" refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means 20 U.S.C. 1232g as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations (as amended in 2012), "Family Educational Rights and Privacy."

- c) "Personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in a combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or, information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3.
- D) "Education records" means records that are directly related to a student, and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3.

III. PURPOSE OF THE DISCLOSURE

KSDE disclosure of personally identifiable information from education records to KU is for the purpose of **improving instruction**. KU will evaluate whether student activity improves health status and improves performance on standardized academic tests.

Dr. Donnelly, Director of the Center for Physical Activity & Weight Management of the University of Kansas Medical Center, and his staff have selected a group of students from schools in the Kansas City, Kansas, and Johnson County, Kansas, areas and have obtained parental permission for inclusion in the study. It will be necessary for KSDE to electronically match these students to the KSDE master file to obtain assessment results and other information needed as a part of the research.

KSDE will provide the following data elements (from the 2011-2012 school year) necessary to complete the study:

	Pseudo-ID
D2	Current School Code
D3	Resident District (USD) Code
D8	Gender
D9	Date of Birth (Expressed as age in months)
D10	Grade Level
D15	Current District Code
D16	Current School Year
D22	Cumulative days of membership (enrollment)
D23	Cumulative days attended
D24	Truant student flag

D27	SPED flag
D28	Exit date
D31	Exit withdrawal type(s)
D32	All Race Codes
D33	Primary Disability Code
D34	Gifted Student Code
D35	Qualified for 504 flag
D36	Early Childhood Program Participant
D47	Homeless Student Flag
D48	Miles Transported
D54	Transportation FTE
D55	Military Family
D57	Immigrant Student Flag
Assessment Scores	Refugee Status Flag
	Math, Reading, Science

This study was initiated in 2010 and will end in 2015. The actual intervention is a three year period that began in fall of 2011 and will end in the spring of 2014. The scope of the study is found in the specific aims. The primary aim is to determine if physically active lessons influence academic achievement. Secondary aims are to determine if physically active lessons influence health outcomes (blood chemistry, fitness, fatness, etc). We need individually identifiable information to accomplish the primary aim.

Some children in a class are very active and some much less active in response to a physically active academic lesson delivered by the classroom teacher. The individual level of physical activity during these lessons is thought to be the mechanism responsible for changes in cognition and academic achievement. Thus, to evaluate this association requires analysis at the individual level which requires matching assessments of the level of classroom physical activity for individual participants with their academic achievement scores.

In summary, assessment of our primary aim necessitates matching academic achievement scores with the level of physical activity for individual children.

If KU wishes to change the purpose, scope or duration of the disclosure in any way, including but not limited to, the methodology utilized, KU must obtain prior written permission from the KSDE to do so.

IV. REQUIRED TASKS UNDER THE AGREEMENT

a) Joint Responsibilities

1. The KSDE and KU 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, re-disclose or share student information in a manner not allowed by federal law, regulation or this Agreement.
2. The KSDE and KU shall identify at least one point of contact/data custodian from their respective organizations who shall be responsible for processing and responding to data requests and general inquiries from the other party. Upon signing of this Agreement, both parties will exchange in writing the name, mailing address, telephone number, fax number and email address of their data custodian. The point of contact/data custodian may be changed as conditions change upon written notice of the change to the other party.
3. KU will permit the KSDE to review and will provide written assurances to the KSDE regarding the use of data transmitted under this Agreement for the purpose of ensuring that KU has appropriate policies and procedures in place to protect the personally identifiable information and that personally identifiable information will not be re-disclosed or released.

b) Responsibilities of KSDE:

1. KSDE will share the requested data with KU, but only for purposes of KU conducting a study as described in paragraph III of this Agreement. The KSDE will determine and disclose only those specific data elements required to complete the study.
2. KSDE will, in light of the December 2011 guidance from the U.S. Department of Education, post for public access, a copy of this Agreement within the Data Request History report located on the Data, Media and Reports portal of the KSDE's website.

c) Responsibilities of KU:

1. KU agrees to use data shared under this Agreement for no purpose other than to conduct the study as described in paragraph III of this Agreement. KSDE approval to utilize the personally identifiable information from education records for this study does not confer approval to use it for any other purpose.
2. KU agrees 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 KSDE. This does not prohibit KU

from sharing aggregate student data if KU follows disclosure avoidance policies and obtains KSDE prior written approval before sharing aggregate student data.

3. KU agrees 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 of completing the study described in paragraph III of this Agreement, or as necessary for established data management and KU processes. 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.
4. The ability to access or maintain data under this Agreement will not under any circumstances transfer from KU or be assigned by KU to any other individual, institution, organization, government or entity.
5. Despite any contrary provisions in the Agreement, KU agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student or parent to any other individual, institution, organization, government or entity.
6. KU agrees to establish procedures and systems to ensure that all personally identifiable student data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure of the data, including the interception, diversion, duplication, or other unauthorized access to said data.
7. KU agrees to establish procedures and systems to ensure all personally identifiable data obtained is kept in secured facilities and media, and that access to such records is restricted to KU personnel who are authorized to have access to said data for the purposes of conducting the aforementioned study. As part of these procedures and systems, KU agrees that all personally identifiable data provided by the KSDE will be stored in a manner that limits access to only those who are authorized. KU agrees to provide to KSDE the computer's location, type of security system, firewall protection as well as any other information about the computer as reasonably requested. KU agrees to never place personally identifiable information on an unencrypted flash drive, compact disc or other similar device unless KU first obtains prior written permission from the KSDE. Failure to obtain prior written permission is considered a violation of this Agreement and must be reported to the KSDE pursuant to the requirements of paragraph IV.c.10 of this Agreement.

8. KU agrees to establish a training program to teach its employees having access to the data herein described and provided by the KSDE about FERPA, and how to protect personally identifiable information from education records. KU will maintain records of the training provided for six (6) years.
9. Upon signing of this Agreement, KU shall submit to the KSDE a list in writing of the individuals who are authorized to have access to said data provided by the KSDE pursuant to this Agreement. This list shall include name(s), mailing address, telephone number, fax number and e-mail address. Along with the list, KU must submit proof that each individual has completed KU's training program as described in the previous paragraph, and a copy of an affidavit of nondisclosure or other documentation indicating their individual agreement to handle the PII from education records properly. These names may be changed as conditions change as long as the described documentation is provided to the KSDE at least seven days prior to KU granting access to the individual.
10. KU shall, within one hour of learning, report to KSDE in detail any incidents of any personally identifiable information received pursuant to this Agreement whose confidentiality was breached or is believed to have been breached. This initial notification must be by a phone call to the KSDE security representative (Attachment A) with a detailed follow up via letter within two (2) days to the KSDE security representative as well as the point of contact/data custodian as more fully described in paragraph IV.a.2.
11. KU agrees to destroy or return to KSDE all personally identifiable information when it is no longer needed for the purpose for which it was obtained under this Agreement. Nothing in this Agreement authorizes KU to maintain data received from KSDE 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 shall attest that a complete destruction of the data occurred. KU agrees to submit a letter to KSDE within 15 days of the termination of this Agreement, attesting to the destruction of any referenced personally identifiable data received from KSDE. The KSDE will not enter into any new agreements with KU until the data is returned or destroyed as set forth herein.
12. KU agrees to adhere to any KSDE protocols or directives prohibiting disclosure of data, which even though the data may not have been provided by KSDE in a personally identifiable manner, would still permit public identification of students because of the small cell sizes of the data. If data is so identified by the KSDE or the data elements, it may only be used in a

disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students or parents.

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 KU of any of the information provided by the KSDE in that this would constitute a re-disclosure of information. Pursuant to 34 CFR § 99.33, re-disclosure is only permitted upon obtaining prior consent of the parent or eligible student of the personally identifiable information.
14. KU agrees that the KSDE maintains the right to conduct audits or other monitoring activities of KU's policies, procedures, and systems, including on and off site data storage facilities, as they apply to management of this data. This right includes, but is not limited to, the right to verify the existence of disciplinary policies to protect data, verify training programs as previously described, verify the existence of a sound data security plan, and verify the existence of a data stewardship program. KU agrees that KSDE may conduct such auditing/monitoring with no prior notice, and agrees to fully cooperate with KSDE's auditing and monitoring processes and procedures.
15. Under no circumstance shall KU become owners, or proprietors of any data or personally identifiable information provided to KU pursuant to the terms of this Agreement. If KU intends to publish or distribute any information product that uses the subject data where unauthorized persons will have access, then KU must submit an advance copy of the information product to the KSDE, prior to its publication or access by non-authorized individuals, to the point of contact/data custodian as more fully described in paragraph IV.a.2. The KSDE review and approval will be limited to ensuring that the information product reflects the original intent of the Agreement and that the information product does not contain FERPA protected disclosures. Once the information product has been cleared by the KSDE, KU may distribute the information product as desired for educational and governmental purposes only.
16. KU shall grant to the KSDE a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use any of the study results completed with data and personally identifiable information pursuant to this Agreement, and to authorize others to use such results for educational and governmental purposes.

V. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings between KSDE and KU concerning the subject matter hereof. No prior Agreement, verbal representations, or understandings shall be valid or enforceable unless embodied in this Agreement. This Agreement may be modified only upon the express written approval of the parties hereto.

VI. TERMINATION OF AGREEMENT

This Agreement may be terminated by the KSDE or KU, upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither the KSDE nor KU shall negate obligations already incurred or required to be performed prior to the effective date of the termination. The KSDE may terminate the Agreement immediately upon confirmation of fraud, negligence or abuse of confidentiality restrictions. This Agreement shall terminate automatically on **July 8, 2014**, unless extended by a written agreement which can be at not greater than 1-year intervals.

VII. TERMINATION OF PRIOR AGREEMENT

The KSDE and the Center for Physical Activity & Weight Management (CPWM) previously entered into a data sharing agreement with an effective date of August 28, 2012, which is the date that Dr. Donnelly signed the agreement. The KSDE and CPWM agree that, upon execution of this Agreement, the previous data sharing agreement is terminated. The KSDE permits the CPWM to retain the data provided pursuant to the previous agreement, and the CPWM and KU agree that the previous data is now subject to the terms of this Agreement.

VIII. VENUE

The KSDE and KU agree that this Agreement shall be subject to, governed by and construed according to the laws of the State of Kansas, and jurisdiction and venue regarding any aspect of this Agreement shall reside only in the District Court of Shawnee County, Kansas, and the appellate courts of Kansas.

IX. NONDEBARMENT

KU certifies by its representative's signature hereon that neither it nor its principals have been or are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any agreement similar to this Agreement by any state or federal department or agency.

X. CONTRACTUAL PROVISIONS ATTACHMENT

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto as Attachment B, are hereby incorporated in this Agreement and made a part thereof. The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof.

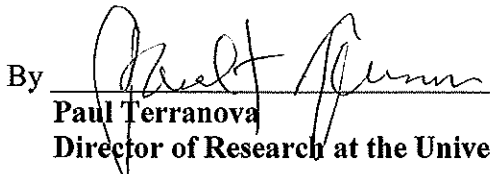
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

KANSAS STATE DEPARTMENT OF EDUCATION

By 
Dale Dennis
Deputy Commissioner of Education

Date: 9/18/13

UNIVERSITY OF KANSAS

By 
Paul Terranova
Director of Research at the University of Kansas Medical Center

Date: 9/13/13

THE CENTER FOR PHYSICAL ACTIVITY & WEIGHT MANAGEMENT OF THE UNIVERSITY OF KANSAS MEDICAL CENTER

By 
Dr. Joseph Donnelly
Director, Center for Physical Activity & Weight Management

Date: 9/9/13

Attachment A - KSDE Security Representatives

Connie Torres
Security Manager
ctorres@ksde.org
office: 785.296.0950
mobile: 785.554.8468

Kathy Gosa
IT Director
kgosa@ksde.org
office: 785.296.7931
mobile: 785.220.0872

CONTRACTUAL PROVISIONS ATTACHMENT B

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 9 day of September, 2013.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.