

**DATA SHARING AGREEMENT BETWEEN  
THE KANSAS STATE DEPARTMENT OF EDUCATION AND  
KEYSTONE LEARNING SERVICES**

This Data Sharing Agreement (“the Agreement”) is entered into on this 20<sup>th</sup> day of June 2016, by and between the Kansas State Department of Education (“the Department”) and Northeast Kansas Education Service Center, dba. Keystone Learning Services (“Keystone”).

I. PARTIES. The Kansas State Department of Education is a state educational agency, authorized to collect and maintain student educational records and to receive information from local educational agencies (LEAs) consistent with applicable state and federal laws and subject to the Kansas Student Data Privacy Act (SDPA), K.S.A. 72-6215 through 72-6223, and amendments thereto, and the federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. §1232g(b) and 34 CFR Part 99.

Keystone is an education interlocal that provides educational products and services to learners from birth through 21 and districts who serve these learners. Keystone accomplishes this support through a variety of projects that support learners and educators across Kansas.

II. PURPOSE. The purpose of this Agreement is to document the terms under which the Department is authorized to release to Keystone student data for the purpose of calculating the measurement results for the State Performance Plan and Annual Performance Report Indicators as required by the US Department of Education Office of Special Education (OSEP), and to designate Keystone as the authorized representative of the Department consistent with applicable state and federal laws concerning access to and confidentiality of student data and record information including the SDPA and FERPA. As described herein, Keystone, as the Department’s authorized representative, may have temporary access to student data in the custody of the Department for the purpose of completing the tasks identified in this Agreement, and under the terms and conditions described in this Agreement and any addenda to it.

III. AUTHORITY. Consistent with the Kansas Student Data Privacy Act (SDPA), the Department may disclose, without written consent, student data submitted to and maintained by the Department’s statewide longitudinal student data system to the authorized personnel of any state agency, or to a service provider of a state agency, educational agency or school who is engaged to perform a function of instruction, assessment or longitudinal reporting.

Consistent with the federal Family Educational Rights and Privacy Act (FERPA), the Department may disclose personally identifiable information from students’ education records to its contractor without written consent for use in studies initiated or approved by the Department in connection with an audit or evaluation of Federal or State supported education programs, or enforcement of, or compliance with, Federal legal requirements relating to such programs. 34 CFR § 99.31(a)(1)(i)(B), 20 U.S.C. § 1232g(b)(3). The Department may also disclose personally identifiable information to its authorized representative without written consent for the purpose of conducting studies for or on behalf of the Department, schools, school districts or postsecondary institutions in order to develop, validate or administer predictive tests, administer

student aid programs, or improve instruction. 34 CFR § 99.31(a)(1)(i)(B) and §§ 99.35; 20 U.S.C. § 1232g(b)(1)(F).

All activities referred to above shall be described in addenda to this Agreement, which shall include project information including but not limited to the purpose and scope of the project, the student data elements that will be disclosed to Tim Berens, the temporary custodian appointed by Keystone, applicable timelines, additional terms and conditions specific to each project, and requirements for communication and reporting to the Department.

IV. TERMS AND CONDITIONS. To affect the transfer of student data and information that is subject to State and Federal confidentiality laws and to ensure that the required confidentiality of student data and personally identifiable information shall always be maintained, Keystone agrees to:

1. In all respects comply with the provisions of the SDPA. For the purposes of this Agreement and the specific project conducted pursuant to this Agreement and described in addenda to it, the SDPA includes any amendments or other relevant provisions of state law. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student data and student record information in a manner not allowed pursuant to Kansas law or regulation.
2. In all respects comply with the provisions of FERPA. For the purposes of this Agreement and the specific project conducted pursuant to this Agreement and described in addenda to it, FERPA includes any amendments or other relevant provisions of federal law, as well as all requirements of 34 CFR Part 99 and 20 U.S.C. § 1232g. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student data and student record information in a manner not allowed pursuant to Federal law or regulation.
3. Identify a temporary custodian of the Department's student data for this project. The custodian shall be able to request and receive student data pursuant to this Agreement and applicable addenda to it and to ensure Keystone's compliance with the terms of the Agreement and applicable laws. The Department shall release student data only to the named temporary custodian, who shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to the Agreement and addenda to it, including confirmation of the completion of the project and the destruction of data as required by this Agreement.
4. Use data disclosed under this Agreement for no purpose other than the assessment and evaluation project described in the attached addenda, and as authorized pursuant to the SDPA and FERPA under 34 CFR §§ 99.31(a)(6) and 99.35; or 34 CFR § 99.31(a)(3). Nothing in this Agreement or the addenda shall be construed to authorize Keystone to have access to additional data from the Department that is not included in the scope of this Agreement or under the terms of the project described in the addenda to it, or to govern access to the data by entities other than the Parties. Keystone understands that this Agreement does not convey ownership of data to Keystone.

5. Require all Keystone employees, entities, contractors and agents of any kind to comply with this Agreement, and all applicable provisions of the SDPA, FERPA and other federal and state laws with respect to the data and information disclosed under this Agreement. Keystone agrees to require of and obtain and maintain an appropriate confidentiality agreement from each employee, contractor, or agent with access to data pursuant to this Agreement and addenda to it. Nothing in this section authorizes Keystone to disclose data and information provided under this Agreement and addenda with any other individual or entity for any purpose other than completing Keystone' work as authorized by the Department consistent with this Agreement and addenda to it. The Department or its agents may upon request review the records required to be kept by Keystone pursuant to this section.
6. Upon signing of this Agreement, Keystone shall submit to the Department a list in writing of the employees who are authorized to have access to data provided by the Department pursuant to this Agreement. This list shall include name(s), mailing address, telephone number, fax number and e-mail address. Along with the list, Keystone must submit proof that each individual has completed a SDPA/FERPA training within the last calendar year, and a copy of an affidavit of nondisclosure or other documentation indicating their individual agreement to comply with this Agreement, and applicable state and federal laws. Keystone further agrees not to disclose data received under this Agreement and addenda with any other entity, contractors or agents of any kind without prior written approval from the Department which may include obtaining approval from the Department's Data Request Review Board.
7. Provide the Department with periodic status reports during the project term as described in addenda to this Agreement. Status reports shall include but not be limited to progress of the project relative to established deadlines. Keystone shall provide the Department with immediate written notice of any changes to project protocols except as consistent with this Agreement and any addenda to it.
8. Maintain all data received pursuant to this Agreement separate from all other data files and not copy, reproduce or transmit data obtained pursuant to this Agreement except to its own agents acting for or on behalf of the Department and as necessary to fulfill the purpose of the project described in the attached addenda. Transmission of a data must be by SECURE electronic systems and/or networks. Keystone agrees to provide to the Department information about the technical storage solution if requested. Keystone agrees to never place data on an unencrypted flash drive, compact disc, laptop, mobile device or other similar device unless the Department first provides prior written permission. All copies of data of any type derived from or otherwise related to data provided under this agreement, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement and addenda to it in the same manner as the original data disclosed by the Department to Keystone. The rights and duties under this Agreement shall not under any circumstances transfer or be assigned from Keystone to any other individual, institution or entity, unless expressly authorized by this Agreement.

9. Not disclose data contained under the Agreement or addenda to it in any manner that could identify any individual student, except as authorized by the SDPA and FERPA, to any entity other than the Department, or authorized employees, contractors and agents of Keystone working as the Department's authorized representative on the project approved by the Department consistent with this Agreement and described in addenda to it. Persons participating in approved projects on behalf of the Parties under this Agreement shall neither disclose or otherwise release data and reports relating to an individual student, nor disclose information relating to a group or category of students without ensuring the confidentiality of students in that group. Publications and reports of this data and information related to it, including preliminary project descriptions and draft reports, shall involve only aggregate data and not personally identifiable information or other information that could lead to the identification of any student. No public report of these data containing a group of students less than the minimum of ten (10) as determined by the Department shall be released to anyone other than the Department. In addition to utilization of this minimum group size reporting rule, Keystone shall utilize other statistical methods to protect student identity such as the methods described in the Statewide Longitudinal Data Systems (SLDS) Technical Brief 3 published by the National Center for Education Statistics. Keystone shall require that all employees, contractors and agents working on this project abide by that statistical cell size as well as other statistical methods to protect student identity.
10. Destroy all data obtained under this Agreement and addenda to it when no longer needed for the purpose of this Agreement or upon expiration of this Agreement, whichever occurs first. Nothing in this Agreement authorizes Keystone to maintain data beyond the time period reasonably needed to complete the project described in the addenda to this Agreement. Destruction of all data shall comply with the National Institute of Standards and Technology Special Publication (NISTSP) 800-88 standards of data destruction, in compliance with the provisions of the SDPA. FERPA also requires that Keystone destroy all data obtained under this Agreement and addenda in compliance with 34 CFR §§ 99.31(a)(6)(iii)(b) and 99.35(b)(2). Keystone agrees to require all employees, contractors, or agents of any kind to comply with this provision. Keystone agrees to submit a letter to the Department within 15 days of the termination of this Agreement attesting to the destruction of any data obtained under this Agreement. Neither Keystone nor other entity is authorized to continue using the data obtained pursuant to this Agreement upon the termination of the Agreement and the project described in addenda to it.
11. Cooperate with any Department and/or independent on-site inspections and audits to ensure that the safeguards described above are maintained by Keystone. The Department reserves the right to conduct audits of Keystone's policies, procedures and systems that are involved in processing and/or safeguarding the data obtained under this Agreement.
12. Report to the Department, within one hour of learning, of any incident or suspected incident involving data obtained pursuant to this Agreement whose confidentiality was breached or is believed to have been breached, or disclosed without authorization

or believed to have been disclosed without authorization. This initial notification must be by a phone call to the Department's security representative (Attachment B) with a detailed follow up via letter within two (2) days to the Department's security representative. Keystone will cooperate with the Department in all follow-up activities of the Department, including but not limited to responding to questions, interview of the parties involved, notification of each affected student, if an adult, or the parent or legal guardian of the student, if a minor, of the breach or unauthorized disclosure. Keystone will cooperate with the Department's investigation into the causes and consequences of the breach or unauthorized disclosure.

13. Provide the Department with one electronic and at least one paper copy of the final versions of all approved, released reports and other documents associated with this project. The Department reserves the right to distribute and otherwise use the final approved, released report and associated documents as it wishes, in sum or in part.

V. RELATED PARTIES. The person signing this Agreement represents he/she is authorized to bind Keystone to the terms of the Agreement, including confidentiality, maintenance, publication, and destruction or return of data, employees or contractors who have access to the data pursuant to this agreement or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or use in any way.

VI. PUBLICATION OF AGREEMENT. The Department 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 Department's website.

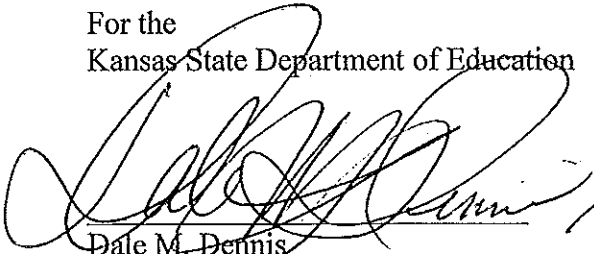
VII. TERM. This Agreement takes effect upon signature by the authorized representative of each Party and shall remain in effect until June 30, 2017, or until canceled by either Party upon 30 days written notice, whichever occurs first. The Agreement is renewable for one year upon written approval by the authorized representative of each Party.

VIII. NONDEBARMENT. Keystone 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.

VIX. ATTACHMENTS. The provisions contained in the Scope and Purpose Attachment, Security Representative Attachment, List of Data Elements and the Contractual Provisions Attachment (Form DA-146a), attached hereto and marked Appendix 1, 2, 3 and 4 are incorporated by reference and made a part of this Agreement as though fully set forth at length herein

X. SCOPE OF AGREEMENT. This Agreement expresses the entire agreement of the parties and shall not be modified or altered except in writing executed by the authorized representatives of the Department and Keystone, and in a manner consistent with applicable State and Federal laws.

For the  
Kansas State Department of Education

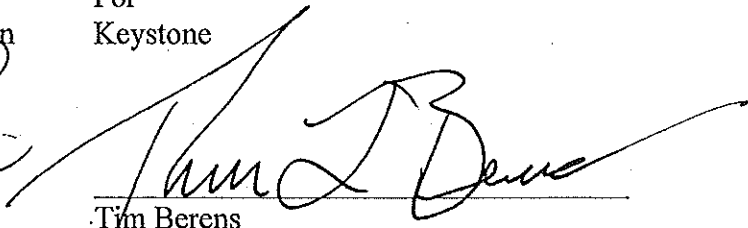


Dale M. Dennis  
Deputy Commissioner of Education

Date

6/16/16

For  
Keystone



Tim Berens  
Keystone Learning Services

Date

5/16/2016

Attachment(s):

- Appendix 1 – Purpose and Scope
- Appendix 2 – Security Representative
- Appendix 3 – List of Data Elements
- Appendix 4 – Contractual Provisions

## **Appendix 1 – Purpose and Scope**

The Department will disclose student data and personally identifiable information to Keystone to assess and report on the State Performance Plan (SPP) and Annual Performance Report (APR) Indicators as required by the United States Department of Education Office of Special Education (OSEP). Keystone is a service provider of the Department, as an educational agency, engaged by the Department to perform a function of assessment and longitudinal reporting.

The temporary custodian appointed by Keystone is Tim Berens, Kansas State Department of Education Technical Assistance System Network GSTAD Grant Coordinator, [tberens@keystonelearning.org](mailto:tberens@keystonelearning.org), 913-538-7250.

## **Appendix 2 – Security Representative**

Lane Wiley  
Director - IT  
Kansas State Department of Education  
(785) 296-0758 (work)  
(785) 207-7730 (cell)  
[lwiley@ksde.org](mailto:lwiley@ksde.org)

Data request is tracked as FP # DR-62

CONTRACTUAL PROVISIONS Appendix 4

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 16<sup>th</sup> day of June, 2016.

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.

### Appendix 3 Data Elements

Ind	Source	Level of Detail	Source School Year	Potential KSDE Data Source	
1	EDEN C150-Regulatory Adjusted-Cohort Graduation Rate.	SEA, LEA and Building. data	SY 14-15 & SY 15-16	Research and Evaluation Team	
1	EDEN C151-Cohorts for Regulatory Adjusted-Cohort Graduation Rate	SEA, LEA and Building. data	SY 14-15 & SY 15-16	Research and Evaluation Team	
2	EDEN C009-Children with Disabilities (IDEA)Exiting Special Education	SEA, LEA and Building. data	SY 14-15 & SY 15-16	ECSET 618 Data Manager	
2	EDEN C032-Dropout	SEA, LEA and Building. data	SY 14-15 & SY 15-16	Research and Evaluation Team	
2	PBR Audited Enrollment-Count of Students with Disabilities and a Count of All students for each district and state institution within each grade.	SEA, LEA and Building. data	SY 14-15 & SY 15-16	Research and Evaluation Team	
3	EDEN C185-Mathematics Participation Status	LEA and Building. data	SY 15-16	Research and Evaluation Team	
3	EDEN C188-Reading/Language Arts Participation Status	LEA and Building. data	SY 15-16	Research and Evaluation Team	

Ind	Source	Level of Detail	Source School Year	Potential KSDE Data Source	
3	EDEN C175- Academic Achievement in Mathematics	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
3	EDEN C178- Academic Achievement in Reading (Language Arts)	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
3	EDEN C185- Assessment Participation in Mathematics	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
3	EDEN C188- Assessment Participation in Reading/Language Arts	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
4	Sped Pro OSEP Tables Discipline Report- Detail Final Report	Individual Child data	SY 14-15 & SY 15-16	ECSET 618 Data Manager	
5 & 6	Sped Pro December 1 Final Report	Individual Child data	SY 15-16	ECSET 618 Data Manager	
5	EDEN C002- Children with Disabilities(I DEA) School Age	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
5 & 6	Sped Pro June End of Year Final Report	SEA, LEA and Building. data	SY 15-16	ECSET 618 Data Manager	
6	EDEN C089- Children with Disabilities (IDEA) Early Childhood	SEA, LEA and Building. data	SY 15-16	Research and Evaluation Team	
7	Outcomes Web System Annual ECO Report	SEA and LEA data	SY 15-16	ECSET Indicator Lead	

Ind	Source	Level of Detail	Source School Year	Potential KSDE Data Source	
9	Disproportionate Representation	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
10	Disproportionate Representation by Ethnicity	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
11	Timely Evaluation APR Data	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
12	Transition from Part C to Part B APR Data	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
13	Transition at Age 16 APR Data	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
14	Post School Outcomes	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
17	State Systemic Improvement Plan	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
Significant Disproportionality	Weighted Risk Ratios	SEA and LEA data	SY 15-16	ECSET Indicator Lead	
Significant Disproportionality	EDEN C006	LEA data	SY 14-15 & SY 15-16	Research and Evaluation Team	
Significant Disproportionality	EDEN C052	LEA data	SY 14-15 & SY 15-16	Research and Evaluation Team	
Significant Disproportionality	EDEN C143	LEA and data	SY 14-15 & SY 15-16	Research and Evaluation Team	