

**DATA SHARING AGREEMENT BETWEEN  
THE KANSAS STATE DEPARTMENT OF EDUCATION AND  
THE UNITED STATES DEPARTMENT OF EDUCATION NATIONAL CENTER FOR  
EDUCATION STATISTICS**

This Data Sharing Agreement (“the Agreement”) is entered into on this \_\_\_ day of November, 2014 by and between the Kansas State Department of Education (“the Department”) and the United States Department of Education, National Center for Education Statistics (NCES). This agreement is in furtherance of the 2015 National Assessment of Educational Progress (NAEP).

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), as authorized by Senate Bill 367 (2014 Kansas Legislative Session), and the federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. §1232g(b) and 34 CFR Part 99.

NAEP is a congressionally mandated project of the United States Department of Education. P.L. 107-279, Title III, directs the Commissioner for Education Statistics to conduct a National Assessment of Educational Progress. The law requires the NCES Commissioner for Education Statistics to conduct a national and state assessment in mathematics and reading in grades four and eight at least once every 2 years. At grade 12, NAEP assesses mathematics and reading at regularly scheduled intervals. Additional national assessments in grades 4, 8, and 12 take place at regularly scheduled intervals in other subjects such as writing, science, history, geography, civics, economics, foreign languages, and arts. This agreement applies to data collection activities under the NAEP program including functions of assessment and longitudinal reporting.

II. PURPOSE. The purpose of this Agreement is to document the terms under which the Department is authorized to release to NCES student data for administering national and state assessments, and to designate NCES 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, NCES, as the Department’s authorized representative, may have temporary access to student data in the custody of the Department for use in 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. The Department designates NCES as a service provider who is engaged to perform a function of assessments and a function of 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 authorized representative 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)(3), 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)(6) and §§ 99.35; 20 U.S.C. § 1232g(b)(1)(F).

The Department designates NCES as its authorized representative for the purposes of herein described, and allowing the Department to disclose student data and information, including personally identifiable information, for use in assessments and evaluation as described in the above two paragraphs.

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 NCES the temporary custodian appointed by the Department, applicable timelines, additional terms and conditions specific to each project, and requirements for communication and reporting to the Department.

IV. TERMS AND CONDITIONS. To effect 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, NCES 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. Name 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 NCES'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. The Department or its agents may upon request review the records required to be kept by NCES pursuant to this section.

4. Use data shared under this Agreement for no purpose other than the assessment and longitudinal reporting 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 NCES 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. NCES further agrees not to share data received under this Agreement and addenda with any other entity, except NCES contractors that have signed the NCES Affidavit of Nondisclosure and are authorized to work on NAEP, without prior written approval from the Department which may include obtaining approval from the Department's Data Request Review Board. NCES understands that this Agreement does not convey ownership of data to NCES.
5. Require all 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 shared under this Agreement. NCES 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 NCES to share data and information provided under this Agreement and addenda with any other individual or entity for any purpose other than completing NCES's 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 NCES pursuant to this section.
6. 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. NCES 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.
7. 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. NCES agrees to provide to the Department information about the technical storage solution if requested. NCES 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 NCES. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from NCES to any other individual, institution or entity.

8. 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 KUCR 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 no personally identifiable information or other information that could lead to the identification of any student. No 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, NCES 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. NCES 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.
9. 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 NCES 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 NCES 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). NCES agrees to require all employees, contractors, or agents of any kind to comply with this provision. NCES 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 NCES nor other entity is authorized to continue research using the data obtained pursuant to this Agreement upon the termination of the Agreement and the project described in addenda to it.
10. Upon request, NCES shall permit the Department to review policies, procedures, and systems governing the confidentiality of the data and shall provide written assurances to the Department regarding the use of Confidential Data under this Agreement.”

11. 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. NCES will cooperate with the Department in all follow-up activities of the Department, regarding 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, 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. NCES will cooperate with the Department's investigation into the causes and consequences of the breach or unauthorized disclosure.
12. 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 NCES represents that it is authorized to bind to the terms of the Agreement, including confidentiality, maintenance, publication, and destruction or return of data, all related or associated institutions, individuals, employees or contractors who may have access to the data 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.

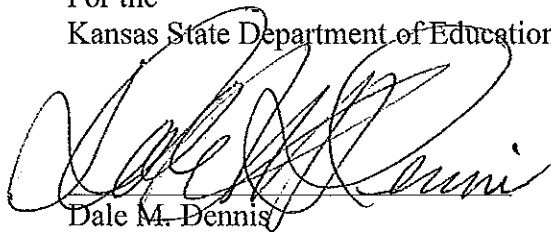
VII. TERM. This Agreement takes effect upon signature by the authorized representative of each Party and shall remain in effect until December 31, 2015, or until canceled by either Party upon 30 days written notice, whichever occurs first. The Agreement is renewable for one year upon written approval by the authorized representative of each Party.

VIII. NONDEBARMENT. The NCES 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, and the Contractual Provisions Attachment (Form DA-146a), attached hereto and marked Appendix 1, 2 and 3, 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 NCES and in a manner consistent with applicable State and Federal laws.

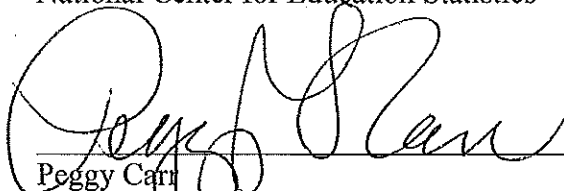
For the  
Kansas State Department of Education



Dale M. Dennis  
Deputy Commissioner of Education

11-20-14  
Date

For the  
National Center for Education Statistics



Peggy Carr  
Acting Commissioner

11/18/14  
Date

Attachment(s):

- Appendix 1 – Purpose and Scope
- Appendix 2 – Security Representative
- Appendix 3 – NCES Affidavit of Nondisclosure
- Appendix 4 – Contractual Provisions

## Appendix 1 – Purpose and Scope

The Department will disclose student data and personally identifiable information to NCES in furtherance of the National Assessment of Educational Progress.

NCES is a service provider of an educational agency who is engaged to perform assessments and longitudinal reporting.

Disclosure of student data and personally identifiable information is in furtherance of the audit an evaluation exception pursuant to FERPA, 20 U.S.C. §1232g(b)(1)(C), (b)(3), and (b)(5).

The temporary custodian appointed by NCES is Peggy Carr, Acting Commissioner for the National Center for Education Statistics, 1990 K. St. NW Rm. 8011, Washington, DC 20006

Data elements provided to NCES through this agreement:

1. Student first name
2. Student middle name if available
3. Student last name
4. Student ID
5. Month of birth (2 digits)
6. Year of birth (4 digits)
7. Gender
8. Race
9. Ethnicity
10. School Lunch Eligibility – This information is provided based on USDA Memo SP 40-2008
  - a. Community eligible status (if applicable)
11. Disability Status
12. English Language Learner Status
13. Zip Code
14. Teacher of record/homeroom teacher for grade 4 students

## Appendix 2 – Security Representative

Lane Wiley  
Enterprise Architect  
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 # 2789



# Appendix 3 NCES Affidavit of Nondisclosure

Affidavit of Nondisclosure

(Job Title) (Date Assigned to Work with NCES Data)

(Organization, State or Local Agency Name)

(Organization or Agency Address) (NCES Database or File Containing Individually Identifiable Information\*)

I, \_\_\_\_\_, do solemnly swear (or affirm) that when given access to the subject NCES database or file, I will not -

- (i) use or reveal any individually identifiable information furnished, acquired, retrieved or assembled by me or others, under the provisions of Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279) and Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347) for any purpose other than statistical purposes specified in the NCES survey, project or contract;
- (ii) make any disclosure or publication whereby a sample unit or survey respondent (including students and schools) could be identified or the data furnished by or related to any particular person or school under these sections could be identified; or (iii) permit anyone other than the individuals authorized by the Commissioner of the National Center for Education Statistics to examine the individual reports.

\_\_\_\_\_  
(Signature)

[The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both. The word "swear" should be stricken out when a person elects to affirm the affidavit rather than to swear to it.]

City/County of \_\_\_\_\_ Commonwealth/State of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_\_. Witness my hand and official Seal.

(Notary Public/Seal) My commission expires \_\_\_\_\_.

\* Request all subsequent follow-up data that may be needed. This form cannot be amended by NCES, so access to databases not listed will require submitting additional notarized Affidavits.  
Form last revised 02/08/07

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 20 day of November, 2014.

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.

