

**DATA SHARING AGREEMENT BETWEEN THE
KANSAS STATE DEPARTMENT OF EDUCATION
AND
THE UTAH STATE UNIVERSITY,
TECHNICAL ASSISTANCE FOR EXCELLENCE IN SPECIAL EDUCATION
CENTER FOR PERSONS WITH DISABILITIES**

THIS DATA SHARING AGREEMENT (Agreement) is made by and between the Kansas State Department of Education (KSDE) and the Utah State University, Technical Assistant for Excellence in Special Education Center for Persons with Disabilities (TAESE).

The KSDE contracted with TAESE which entered into an agreement with Data Driven Enterprises (DDE) for a data collection and analysis portion of the contract. In order to fulfill the terms of the contract between the KSDE and TAESE, DDE requires access to personally identifiable student information and TAESE, as the entity which entered into a contract with DDE, also may require access to this personally identifiable information to fulfill the terms of its contract with the KSDE. The DDE, pursuant to its contract with TAESE, has requested KSDE student data on demographics and location for the purpose of conducting an evaluation of state and/or federally supported educational programs.

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 the TAESE, and shall remain in effect until the sooner of **May 2, 2014**, or being terminated by KSDE or the TAESE pursuant to Paragraph VI herein. Upon termination of this Agreement, the TAESE 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) "Authorized representative" means an entity or individual designated by the KSDE to conduct, with respect to Federal or State supported education programs, any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. 34 CFR § 99.3.
- d) "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.
- e) "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 TAESE is in furtherance of the **evaluation of state and/or federally supported educational programs**. TAESE is the organization supervising the evaluation, which DDE will actually conduct, on behalf of KSDE for data elements collected between 2011-2012.

The evaluation of educational programs, in part, involves Indicator 14 which measures the percentage of youth with Individual Educational Plans (IEP) who are no longer in secondary school and have been employed, enrolled in some type of postsecondary school or both within one year of leaving secondary school. This indicator is set forth in the State Performance Plan (SPP) and the Annual Performance Report (APR). The evaluation is required by the U.S. Department of Education Office of Special Education (OSEP) pursuant to IDEA.

The KSDE will provide the following data and personally identifiable information from education records of special education students who exited from Kansas secondary

schools during the 2011-2012 school year:

Student's name (first, last and middle initial)
Student's date-of-birth
Student's unique identification number
Student's gender
Student's race
Student's ethnicity
Student's school district (name and code)
Student's funding building (name and code)
Student's special education disability (exceptionality code w/o gifted)
Student's school year
Student's exit code(s)
Student's phone number*
Student's address (street, city, state, zip)*
Student's email*
Student's parent/guardian phone number*

*if available

Data will be analyzed using descriptive statistics. TAESE will ensure that it, or its contractor DDE, submits its evaluation directly to the KSDE in the format approved by OSEP as described in the Individuals with Disabilities Education Act (IDEA) SPA/APR.

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

IV. REQUIRED TASKS UNDER THE AGREEMENT

a) Joint Responsibilities

1. KSDE and the TAESE 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. KSDE and the TAESE shall identify at least one data custodian from their respective agencies 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 data custodian can be changed as conditions change.

3. The TAESE 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 the TAESE 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 the TAESE, but only for purposes of the TAESE, or its contractor DDE, conducting an evaluation or audit of Federal or State supported education programs as described in paragraph III of this Agreement. The KSDE will determine and disclose only those specific data elements required to complete the audit or evaluation.
2. KSDE, through execution of this Agreement, hereby does assign the TAESE as its authorized representative for purposes of having access to personally identifiable information of students as detailed in this Agreement and in accordance with 34 CFR 99.35. The TAESE is an authorized representative only for the sole purpose of conducting an evaluation or audit of federal and State supported education programs as detailed in this agreement.
3. 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 the TAESE:

1. The TAESE agrees to use data shared under this Agreement for no purpose other than to conduct an evaluation or audit of federal and State supported education programs. KSDE approval to utilize the personally identifiable information from education records for this audit or evaluation does not confer approval to use it for any other purpose.
2. The TAESE agrees not to share or re-disclose personally identifiable data received pursuant to this Agreement with any other entity, organization or individual without the prior written approval from KSDE. However, notwithstanding this provision, the KSDE grants TAESE express permission to share and re-disclose personally identifiable data received pursuant to this Agreement with DDE.
3. The TAESE 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 evaluation or audit described in this Agreement, or as necessary for established data management and backup 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 the TAESE or be assigned by the TAESE to any other individual, institution, organization, government or entity.
5. Despite any contrary provisions in the Agreement, the TAESE agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student to any other individual, institution, organization, government or entity.
6. The TAESE 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. The TAESE 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 the TAESE personnel who are authorized to have access to said data for the purposes of conducting the aforementioned evaluation. As part of these procedures and systems, TAESE 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. The TAESE agrees to provide to KSDE the computer's serial number, location, type of security system, firewall protection as well as any other information about the computer as requested. The TAESE agrees to never place personally identifiable information on an unencrypted flash drive, compact disc or other similar device unless the TAESE 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. The TAESE agrees to establish a training program to teach its employees about FERPA, and how to protect personally identifiable information from education records. The TAESE will maintain records of the training provided for 6 (six) years after completion of the training.

9. Upon signing of this Agreement, the TAESE 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, the TAESE must submit proof that each individual has completed the TAESE 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 the TAESE granting access to the individual.
10. The TAESE shall, within 24 hours 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 authorized representative with a detailed follow up via letter within two (2) days.
11. The TAESE 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 the TAESE 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. The TAESE 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 TAESE shall use attachment one to this Agreement as a template for this letter. No new Agreement will be agreed to by the KSDE until the data is returned or destroyed as set forth herein.
12. The TAESE 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.
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 the TAESE 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. The TAESE agrees that the KSDE maintains the right to conduct audits or other monitoring activities of TAESE's policies, procedures, and systems 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. The TAESE 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 the TAESE become owners, proprietors or custodians of any data or personally identifiable information provided by the KSDE under the terms of this Agreement. The TAESE shall provide all results to the KSDE prior to publication for review and approval to ensure they reflect the original intent of the Agreement. The TAESE shall grant to the KSDE a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use any of the audit or evaluation results completed with data and personally identifiable information pursuant to this Agreement, and to authorize others to use such results for educational and government purposes.

V. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings between KSDE and the TAESE concerning the subject matter hereof. No prior data sharing 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 the TAESE, 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 the TAESE 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 **May 2, 2014**, unless extended by a written agreement which can be at not greater than 1-year intervals.

VII. NONDEBARMENT

The TAESE 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.

VIII. 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.

IX. INDEMNIFICATION

University is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended. Nothing in the Agreement shall be construed as a waiver by University of any protections, rights, or defenses applicable to University under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments.

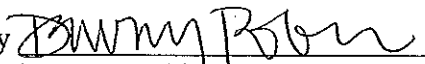
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

KANSAS STATE DEPARTMENT OF EDUCATION

By 
Dale Dennis, Deputy Commissioner
KSDE

Date: 5/6/13

TAESE, UTAH STATE UNIVERSITY

By 
Dawsey Robins
Sponsored Programs Contract Administrator
control# 110936

Date: 5/3/13

KSDE Security Representatives – Attachment A

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 _____ day of _____, 20_____.

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. **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.
3. **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.).
4. **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.

5. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **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.
7. **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.
8. **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.

9. **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.
10. **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.
11. **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."
12. **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.