

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT AND  
[Insert organization name]**

This Memorandum of Understanding (the MOU) is entered into on this [ ] day of [ ], 20 [ ] by and between the New Mexico Public Education Department (the Department) and Tribe/Nation/Pueblo of [ (name) ] for the purpose of sharing student data to support academic success of [Tribe/Nation/Pueblo] students.

**I. PARTIES.**

The New Mexico Public Education Department 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 federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. § 1232g(b) and 34 CFR Part 99.

The [ ] Tribe/Nation/Pueblo has requested PED share information included in student educational records, which includes student PII (Shared Data) for the purpose of and for use in the Project described in the Scope of Work. Tribe/Nation/Pueblo affirm that they are authorized to receive information from the state education agency (the Department) subject to FERPA. The parties wish to share data collected by the Department.

**II. PURPOSE.**

The purpose of the MOU is to document the terms under which the Department is authorized to release to [Tribe/Nation/Pueblo] personally identifiable student information for the Project, consistent with applicable state and federal laws relating to access to and confidentiality of student record information, including FERPA. As described herein, [Tribe/Nation/Pueblo] may have temporary access to data in the custody of and as provided by the Department, for use in the Project identified in this MOU and any addenda to it.

**III. AUTHORITY.**

The authority for this MOU is based primarily, but not exclusively, on the federal Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, which allows disclosure of PII without consent, subject to certain exceptions including disclosures related to the Department's audit or evaluation of a federal or state supported education program, or for the enforcement of or compliance with federal legal requirements which relate to those programs (34 CFR §§ 99.31(a)(1) and 99.35(a)) and disclosures related to the Department conducting studies to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction (34 CFR § 99.31(a)(6)(i)).

**IV. DATA DISCLOSURE.**

The Department shall provide [Tribe/Nation/Pueblo] with the following data:

1. iStation K-3 Literacy Assessment Data by school, by grade, by subgroup beginning in 20xx-20xx and annually, thereafter;
2. PARCC proficiency data by school, grade, by subgroup beginning in 20xx-20xx and annually thereafter;
3. Information regarding students who are in danger of failing or are in need of credit recovery to increase graduation success and to support [specific tribal program, if any];
4. Early Warning System Attendance Information for [Tribe/Nation/Pueblo] students with five or more days absent.

Data shall be provided to [Tribe/Nation/Pueblo] for K-12 [Tribe/Nation/Pueblo] students in New Mexico Public Schools.

## **V. TERMS AND CONDITIONS.**

To effect the transfer of data pursuant to the MOU and to ensure that the required confidentiality of the data and personally identifiable information is always maintained:

The Department agrees:

1. To release all data points listed in Article IV of this MOU to [Tribe/Nation/Pueblo].
2. To designate a liaison for all communications with [Tribe/Nation/Pueblo] related to and the MOU.
3. That, as the owner of any report produced using data provided pursuant to the MOU, the Department reserves the right to distribute, and otherwise use as it wishes, Agreement-related documents, including any reports, whether in whole or in part.
4. To provide reasonable notification to [Tribe/Nation/Pueblo] of any changes in Department policies regarding limits on the use of confidential data and to require [Tribe/Nation/Pueblo] to affirmatively agree to uphold the policies or to relinquish access to the data.

[Tribe/Nation/Pueblo] agrees:

1. To comply, in all respects, with the provisions of FERPA. For the purposes of the MOU and the Project, FERPA includes any amendments to FERPA or other

- relevant provisions of federal law, and all requirements of 34 CFR Part 99 and 20 U.S.C. § 1232g. Nothing in the MOU may be construed to allow the Department or [Tribe/Nation/Pueblo] to maintain, use, disclose, or share student record information in a manner not allowed under federal law or regulation.
2. Use of data shared under this MOU shall be for no purpose other than to support the academic success of students and to offer services to Native American and [Tribe/Nation/Pueblo] families. Nothing in the MOU shall be construed to authorize [organization] to have access to additional Department data that is not described in the MOU, or to govern access to the data by other entities.
  3. To comply, in all respects, with all applicable provisions of New Mexico state laws and regulations.
  4. That [Name of person at Tribe/Nation/Pueblo] shall be responsible for transmitting all data requests, maintaining a record of all data requested and received pursuant to the MOU, providing confirmation to the Department of the completion of the Project, and returning or destroying data as described below.
  5. To allow the Department or its agents, upon request, to review the records required to be kept by [Tribe/Nation/Pueblo] pursuant to the MOU.
  6. Not to share data received pursuant to the MOU with any other entity without prior written approval from the Department. [Tribe/Nation/Pueblo] understands that the MOU does not convey ownership of the data to [Tribe/Nation/Pueblo].
  7. To require all employees, contractors, and agents of [Tribe/Nation/Pueblo] who are working on or involved in any way with the Project, to comply with the MOU and all relevant provisions of state and federal law, including FERPA, with respect to the data received pursuant to the MOU. [Tribe/Nation/Pueblo] agrees to require of and maintain an appropriate confidentiality agreement from each employee, contractor, or agent with access to data received pursuant to the MOU. Nothing in this section authorizes [Tribe/Nation/Pueblo] to share data received pursuant to the MOU with any other individual or entity for any purpose other than completing [Tribe/Nation/Pueblo's] work on the Project and as authorized by the Department and the provisions of the MOU.
  8. Not to amend or alter the scope, design, format, or description of the Project or a report generated by [Tribe/Nation/Pueblo] for the Project, except as consistent with the MOU, without prior written notice to the Department.
  9. Provide to the Department any materials designed for public dissemination, based in whole or in part on data obtained under the MOU, at least 10 days prior to dissemination.

10. Maintain all data obtained pursuant to this MOU in a secure computer environment and not to copy, reproduce, or transmit data shared pursuant to the MOU except for [Tribe/Nation/Pueblo]'s own agents as necessary to fulfill the purpose of the Project. [Tribe/Nation/Pueblo] may store data received pursuant to the MOU on a server with other data but may not merge shared data with other data without prior permission from the Department. Data received pursuant to the MOU must be stored using industry-standard encryption and authentication and may not be taken outside the United States. The provisions of the MOU apply to data originally shared by the Department pursuant to the MOU and to all copies of data, including copies that incorporate modifications or additions to the data from any sources.
11. That the ability to access or maintain data shared pursuant to the MOU shall not under any circumstances transfer from [Tribe/Nation/Pueblo] to any other individual, institution, or entity, except as otherwise allowed pursuant to the terms of this MOU.
12. Except as authorized by FERPA, not to disclose data shared pursuant to the MOU in any manner that could identify any individual student to any entity other than the Department, or authorized employees, contractors, and agents of [Tribe/Nation/Pueblo] as approved by the Department, and not attempt infer or deduce the identity of any individual student to any other entity, or claim to have done so. Persons participating on behalf of the Department or [Tribe/Nation/Pueblo] shall neither disclose or otherwise release data or reports relating to an individual student, nor disclose information relating to a group or category of students without ensuring the confidentiality of individual students in that group. Publications or reports of such data and information related to it, including preliminary descriptions and draft reports, shall include only aggregate data and no personally identifiable information or other information that could lead to the identification of any student. [Tribe/Nation/Pueblo] shall not release a report of aggregate data based on an identifiable group of students fewer than ten in number to anyone other than the Department. [Tribe/Nation/Pueblo] shall require that all of its employees, contractors, and agents working on the Project also abide by that statistical cell size and the requirements of this paragraph.
13. Not to provide any data received pursuant to the MOU to any entity or person ineligible to receive data protected by FERPA, or prohibited from receiving data from any entity by virtue of a finding under 34 CFR § 99.31(a)(6)(iii).
14. To promptly destroy all data received pursuant to the MOU when the data are no longer needed for the purpose for which it was received from the Department, or after termination of this MOU pursuant Article IX. [Tribe/Nation/Pueblo] shall not maintain data beyond the time period reasonably needed to complete the purpose of this data. Upon termination of the MOU or publication of reports

generated pursuant to this MOU, whichever occurs first, [Tribe/Nation/Pueblo] shall return all data files and hard copy records received from the Department and shall purge any copies of the data from its computer systems in compliance with 34 CFR §§ 99.31(a)(6)(ii)(b) and 99.35(b)(2). [Tribe/Nation/Pueblo] agrees to require all employees, contractors, or agents working on the Project to comply with this paragraph. No other entity is authorized to continue research or otherwise use the data received pursuant to the MOU after termination of the MOU.

15. To provide the Department with an electronic copy of the final versions of all reports and other documents associated with the MOU.
16. To uphold all Department policies regarding limits on the use of confidential data, including any updates to those policies, or to relinquish access to data shared pursuant to the MOU.
17. The Department may decline to comply with a request if determines that providing the data in the manner requested would violate FERPA and/or would not be in the best interest of current or former students in the District. All requests shall include a statement of the purpose for which it is requested, and an estimation of the time needed to complete the purpose for which the data are requested. Data requests may be submitted by post, electronic mail, or facsimile. [Tribe/Nation/Pueblo] agrees that the Department makes no warranty for the accuracy of the student data provided.

#### **VI. AUTHORIZED REPRESENTATIVE.**

[Tribe/Nation/Pueblo] has designated herein a single authorized representative able to request data under this MOU. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requests and received pursuant to this MOU, including confirmation of the completion of any projects and the return or destruction of data as required by this MOU. The Department or its agents may upon request review the records required to be kept under this Article. The name and contact information of the designated authorized representative for [Tribe/Nation/Pueblo] is: \_\_\_\_\_; \_\_\_\_\_.

#### **VII. RELATED PARTIES.**

[Tribe/Nation/Pueblo] represents that it is authorized to bind to the terms of the MOU, including those related to confidentiality, maintenance, publication, and destruction or return of data shared pursuant to the MOU, all related or associated institutions, individuals, employees, contractors and agents 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 used in any way by [Tribe/Nation/Pueblo]. This MOU takes effect only

upon acceptance by an authorized representative of [Tribe/Nation/Pueblo], by which that institution agrees to abide by its terms and return or destroy all student data upon completion of the purpose for which it was intended or upon the termination of its current relationship with [Tribe/Nation/Pueblo].

## **VII. BREACH AND DEFAULT.**

Any misuse by the [Tribe/Nation/Pueblo] of data shared pursuant to the MOU, including, but not limited to, unauthorized use or release of the data, or storage of the data in an unsecure manner shall constitute a default under this MOU. Upon default or breach of any of the provisions, obligations, or duties embedded in this MOU, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

## **VIII. TERM.**

The MOU takes effect upon signature by the authorized representative of each party and shall remain in effect until [date], until completion of the purpose of this MOU, or until canceled by either party upon 14 days written notice pursuant Article IX, or terminated upon default, whichever occurs first. The parties to this MOU shall review this MOU annually and may elect to renew this MOU through subsequent annual agreements running from July 1 of the then-current year to June 30 of the successive year. The MOU incorporates all the understandings between the parties concerning the subject matter hereof. No prior MOU or understandings shall be valid or enforceable unless embodied in this MOU. Upon termination of the MOU all obligations incurred under the MOU shall also terminate.

## **IX. TERMINATION.**

This MOU may be terminated by the Department or [Tribe/Nation/Pueblo] 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 Department nor [Tribe/Nation/Pueblo] shall negate obligations already incurred or required to be performed prior to the effective date of termination. The Department specifically reserves the right to immediately cancel this MOU should the Department, in its sole discretion, determine that student information has been released in a manner inconsistent with this MOU, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the Department. In the event of immediate cancellation, a notice specifying the reasons for cancellation shall be sent as soon as possible after the cancellation to the persons signing the MOU.

## **X. AMENDMENT.**

This MOU may be modified or amended provided that any such modification or amendment is in writing and is signed by the parties to this agreement. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this MOU, without the necessity for executing written amendment.

**XI. ASSIGNMENT OF RIGHTS.**

Neither this MOU, nor any rights, duties, nor obligations described herein shall be assigned by [Tribe/Nation/Pueblo] without the prior express written consent of the Department.

**XII. GOVERNING LAW; CONSTRUCTION.**

This MOU will be governed, construed and enforced under Federal Law and jurisdiction for any dispute will be in the U.S. Federal Courts for the District of New Mexico. This Agreement will be construed neutrally and not in favor or against any party. Nothing in this MOU shall be construed as a waiver of sovereign immunity of [Tribe/Nation/Pueblo].

**XIII. ENTIRETY OF AGREEMENT.**

All terms and conditions of this MOU are embodied herein. No other terms and conditions will be considered a part of this MOU unless expressly agreed upon in writing and signed by both parties.

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

\_\_\_\_\_  
DR. KURT STEINHAUS  
Secretary of Education  
New Mexico Public Education Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office of General Counsel  
Certifying Legal Sufficiency  
New Mexico Public Education Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Authorized signatory]  
[title]  
[Tribe/Nation/Pueblo]

\_\_\_\_\_  
Date