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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Lucia Moritz, High School Network Superintendent  
Vinh Trinh, OUSD Liaison to the Oakland Promise Manager, Master Scheduling and Comprehensive Student Supports

**Board Meeting Date** June 10, 2020

**Subject** Data Sharing Agreement - i3Digital PD  
Services For: High School Linked Learning Department

**Action Requested and Recommendation** Approval by the Board of Education of Data Sharing Agreement between the District and i3DigitalPD, Henderson, NV, for the latter to compile information collected through interviews with central office staff, administrators, counselors and teachers; review the information collected via online surveys of administrators, counselors, teachers and students; individual student APEX Learning data and usage reports for 2019-20, 2018-19, 2017-18, 2016-2017, and 2015-16; student Information: Student first name, middle name, last name, date of birth, grade, student ID, race/ethnicity, school site code, sex, zip code, student number, active status; staff Information: staff first name, last name, ID, school site, position; this process will show how the program is used in our schools and its effectiveness in improving student outcomes via the High School Linked Learning, for the period of February 12, 2020 through June 30, 2020, at no cost to the District.

**Background** i3Digital PD requires a data sharing agreement with OUSD in order to conduct and external multi-year programmatic evaluation of the implementation of the online credit recovery program, APEX Learning. Upon review of current practice and data analysis, i3Digital PD will work with OUSD staff to craft new policies that ensure the integrity of online courses across all schools and increase the effectiveness of the program in supporting student outcomes. An external evaluation of our Apex program is needed to learn how it is used in our schools and its effectiveness in improving student outcomes. In addition to improving student outcomes using the credit recovery program, the findings with the external evaluation will be used to amend our current policies and practices.

**Competitively Bid** Was this contract competitively bid? No  
If no, exception: No cost to the District

**Fiscal Impact** Funding resource(s): No Fiscal Impact

**Attachments**

- Data Sharing Agreement

**DATA SHARING AGREEMENT  
BY AND BETWEEN 13 DIGITAL PD AND OAKLAND UNIFIED SCHOOL  
DISTRICT**

**I. PARTIES**

This Data Sharing Agreement ("Agreement") establishes the terms by which data will be shared between 13 Digital PD ("RECIPIENT") and Oakland Unified School District ("OUSD" or "DISTRICT") (collectively referred herein as "the Parties").

This Agreement is further to the Professional Service Agreement entered into by the Parties on February 12, 2020.

**II. PURPOSE**

13 Digital PD requires a data sharing agreement with OUSD in order to conduct an external multi-year programmatic evaluation of the implementation of the online credit recovery program, APEX Learning. Upon review of current practice and data analysis, 13 Digital PD will work with OUSD staff to craft new policies that ensure the integrity of online courses across all schools and increase the effectiveness of the program in supporting student outcomes.

**III. TERM**

The term of this Agreement shall be from February 12, 2020 to June 30, 2020. The term may be extended with the written consent of both Parties.

**IV. CONTENT/SCOPE OF SERVICE**

Subject to the conditions stated herein, the Parties agree to share the following data:

- Information collected through interviews with central office staff, administrators, counselors and teachers.
- Information collected via online surveys of administrators, counselors, teachers and students
- Individual student APEX Learning data and usage reports for 2019-20, 2018-19, 2017-18, 2016-2017, and 2015-16
- Student Information: Student first name, middle name, last name, date of birth, grade, student ID, race/ethnicity, school site code, sex, zip code, student number, active status
- Staff Information: staff first name, last name, ID, school site, position

**V. FERPA-PERSONALLY IDENTIFIABLE INFORMATION**



DATA SHARING AGREEMENT  
OAKLAND UNIFIED SCHOOL DISTRICT/I3 DIGITAL PD

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- The data to be shared under this Agreement does **not** include personally identifiable information of students as defined under the Family Education Records Privacy Act of 1974 ("FERPA") (see 20 U.S.C. § 1232g).
- The data to be shared under this Agreement **does** include personally identifiable information of students as defined under the Family Education Records Privacy Act of 1974 ("FERPA") (see 20 U.S.C. § 1232g). Disclosure is permitted based on the following exemption (check all that apply):
- RECIPIENT is a contractor, consultant, volunteer, or other party to whom the DISTRICT has outsourced institutional services or functions and:
    - (1) Performs an institutional service or function for which the DISTRICT would otherwise use employees;
    - (2) Is under the direct control of DISTRICT with respect to the use and maintenance of education records; and
    - (3) Is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
  - RECIPIENT receives personally identifiable student information in connection with financial aid for which the student has applied or which the student has received, and the information is necessary for such purposes as to:
    - (A) Determine eligibility for the aid;
    - (B) Determine the amount of the aid;
    - (C) Determine the conditions for the aid; or
    - (D) Enforce the terms and conditions of the aid.
  - RECIPIENT is an organization conducting studies for, or on behalf of the DISTRICT to:
    - (A) Develop, validate, or administer predictive tests;
    - (B) Administer student aid programs; or
    - (C) Improve instruction.

AND

RECIPIENT further agrees:

- (A) The study shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the RECIPIENT who have legitimate interests in the information;



(B) The information shall be destroyed when no longer needed for the purposes for which the study was conducted; and

(C) The RECIPIENT shall use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in this Agreement.

- RECIPIENT is, subject to the requirements of 34 C.F.R. § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled and the disclosure is for purposes related to the student's enrollment or transfer.
- RECIPIENT is, subject to the requirements of 34 C.F.R. § 99.35, an authorized representatives of:
  - (i) The Comptroller General of the United States;
  - (ii) The Attorney General of the United States;
  - (iii) The Secretary; or
  - (iv) State and local educational authorities.
- RECIPIENT will first obtain written consent from the student's parent/legal guardian (or the student if s/he is no longer a minor) and provide copies to the DISTRICT. The consent form will identify with specificity the information to be disclosed.

## VI. DIRECTORY INFORMATION

- The data to be shared under this Agreement includes identifiable "directory information" as defined under 20 U.S. Code § 1232g (a)(5). Such information may include the student's:
  - name,
  - address,
  - telephone listing,
  - date and place of birth,
  - major field of study,
  - participation in officially recognized activities and sports,
  - weight and height of members of athletic teams,
  - dates of attendance,
  - degrees and awards received, and/or
  - the most recent previous educational agency or institution attended by the student.
- a. The Parties understand that the following information is not "directory information" and cannot be disclosed as identifiable information unless an exemption applies under Section IV above:
  - ethnicity or race



- o gender
  - o nationality
  - o social security number
  - o religious affiliation
  - o grades or grade point average (GPA)
- b. **Public Notice.** Prior to disclosure of directory information, the District shall give public notice on an annual basis which identifies the categories of such information and the RECIPIENT. Parents shall have a reasonable period of time after such notice has been given for to inform the DISTRICT that any or all of the information designated should not be released without the parent's prior consent. (20 U.S. Code § 1232g (a)(5); see also California Education Code sections 49061, 49073.)
- c. **McKinney-Veto Homeless Assistance Act.** RECIPIENT shall not receive identifiable information (directory or otherwise) regarding students who are regarded as "homeless children and youths" under the McKinney-Vento Homeless Assistance Act (see 42 U.S. Code § 11434a) unless RECIPIENT obtains express written consent from the student's parent/legal guardian (or the student ifs/he is not a minor). Students covered under this requirement shall include:
- I. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
  - II. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S. Code § 11302(a)(2)(C));
  - III. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  - IV. migratory children (as such term is defined in 20 U.S. Code § 6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii) above.

## VII. COPPA

- a. To the extent RECIPIENT shall be obtaining data directly from students, RECIPIENT agrees to comply with all obligations (if applicable) of the Children's Online Privacy Protection Act (15 U.S.C. §§ 6501-6506).

## VIII. RECIPIENT'S RESPONSIBILITIES

- a. **Scope of Access.** Recipient shall obtain access to only those education records in which they have legitimate educational interests.



- b. **Compliance.** All RECIPIENT employees, contractors and agents of any kind shall comply with all applicable provisions of this Agreement, FERPA and any other state or federal laws with respect to the data shared under this Agreement. RECIPIENT agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this Agreement. Nothing in this paragraph authorizes sharing data provided under this Agreement with any other entity for any purpose other than completing the RECIPIENT'S work under this Agreement.
- c. **Storage.** RECIPIENT shall maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of the original request. 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. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from the RECIPIENT to any other institution or entity or unauthorized individual or agent. Any cloud storage or processing will require the express written consent of DISTRICT. Data from DISTRICT shall not be taken outside the United States.
- d. **Publication.** RECIPIENT shall not to disclose any data obtained under this Agreement in a manner that could identify an individual student, except as authorized by FERPA, to any other entity. RECIPIENT may publish results of general information (e.g., scope of participation), but specifically agrees to delete any data items that include identifiable student information, and to require all employees, contractors and agents of any kind to also abide by this paragraph.
- e. **Data Transfer.** Data provided under this Agreement shall be transferred via a secure and private channel.
- f. **Prohibited Disclosure.** RECIPIENT shall not provide any data obtained under this Agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity by virtue of a finding under Sections 99.67(c), (d), or (e) of Title 34, Code of Federal Regulations.
- g. **Destruction of Data.** RECIPIENT shall destroy all data and provided verification in writing of the destruction of all copies of the data obtained under this Agreement to the DISTRICT within six (6) months if this Agreement is terminated for any reason. All data no longer needed shall be destroyed or returned to the DISTRICT in compliance with 34 CFR Section 99.35(b)(2). RECIPIENT agrees to require all employees, contractors, or agents of any kind to comply with this provision.
- h. **Data Requests.** The DISTRICT may decline to comply with a request if it determines that providing the data requested would not be in the best interest of the

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, located in the bottom right corner of the page.

DISTRICT. All requests shall include a written statement of the purpose for which it is requested and an estimation of the time needed to complete the project for which the data is requested. Data requests may be submitted in writing by post, electronic mail or facsimile.

- i. **Assignment/Subcontractors.** RECIPIENT shall not assign or subcontract this Agreement to any other entity without the express written consent of the DISTRICT.
- J. **Authorized Representative.** The Parties shall designate in writing a single authorized representative from each organization who will be able to send and request data under this Agreement. The authorized representatives shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the completion of any projects and the return or destruction data as required by this Agreement. The DISTRICT or its agents may upon request review the records required to be kept under this section.

**DISTRICT REPRESENTATIVE**

Name: Vinh Trinh  
Title: OUSD Liaison to the Oakland  
Promise, Manager, Master Scheduling  
and Comprehensive Student Supports  
Address: 1000 Broadway, Suite 440  
Oakland, CA 94607  
Email: Vinh.Trinh@ousd.org  
Telephone: 415-939-2933

**RECIPIENT REPRESENTATIVE**

Name: Kim Loomis  
Title: Chief Executive Officer  
Address: 2232 Tedesca Dr.  
Henderson, NV 89052  
Email: [kim\(@i3digitalpd.com](mailto:kim(@i3digitalpd.com)  
Telephone: 702-279-4910  
Fax:

- k. **Termination.** This Agreement takes effect upon signature by the authorized representative of each party and will remain in effect until termination of this agreement (see Term above). The parties further understand that the DISTRICT may cancel this Agreement at any time, upon thirty (30) days' notice. The DISTRICT specifically reserves the right to cancel this Agreement should the DISTRICT, in its sole discretion, determine that student information has been released in a manner inconsistent with this Agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available through any other mechanism approved by the DISTRICT.
- l. **Ownership.** RECIPIENT understands that this Agreement does not convey ownership of data to the RECIPIENT. The DISTRICT shall remain owner of the data at all times.
- m. **Intellectual Property.** RECIPIENT shall not publish any work based on the data obtained through this Agreement without the prior written consent of the DISTRICT. In order to protect the confidentiality of previously identified directory



information disclosed to the RECIPIENT, the authorized representatives agree to provide to the DISTRICT any proposed publications or presentations which are to make public any findings, data, or results based on the data obtained through this Agreement for the DISTRICT's review at least thirty (30) days prior to submission of said publication or the date of the presentation. The DISTRICT reserves the right to withdraw consent at any time.

- n. **Distribution.** RECIPIENT will provide the DISTRICT with an electronic copy of the final versions of any and all reports or other documents based on the data obtained through this Agreement (if applicable). The DISTRICT, as the owner of the data, reserves the right to distribute and otherwise use the final report and associated documents in its discretion, in sum or in part. The RECIPIENT or its agents retain the right to publish findings in other publications, provided that prior notice of report is first shared with the DISTRICT and the DISTRICT's approval is first obtained.
- o. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regards to data sharing and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- p. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- q. **Applicable Law.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement. Should any litigation be commenced between the parties hereto relating to the construction, effect, breach or enforcement of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Entered into this 10th day of June, 2020

Accepted on behalf of the Oakland Unified School District

By:   
Kyla Johnson-Trammell,  
Secretary, Board of Education

Date: 6/11/2020

  
\_\_\_\_\_  
Jody London  
President, Board of Education 6/11/2020





Accepted on behalf of the RECIPIENT

By:  Date: 2-1-20

Kim Loomis, CEO  
Print Name, Title

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Print Name, Title

Approved as to form by Joanna Powell, OUSD Staff Attorney, on 5/29/2020.

