

**DATA SHARING AGREEMENT
BY AND BETWEEN AVID CENTER AND OAKLAND UNIFIED SCHOOL
DISTRICT**

I. PARTIES

This Data Sharing Agreement (“Agreement”) establishes the terms by which data will be shared between AVID Center (“RECIPIENT”) and Oakland Unified School District (“OUSD” or “DISTRICT”) (collectively referred herein as “the Parties”).

II. PURPOSE

Our Senior Data Collection is a survey given to AVID seniors, wherein they report on themselves and their secondary experiences including: demographics; years enrolled in AVID; AP, IB, Cambridge and dual-enrollment courses and exams taken; GPA; completion of college entrance requirements; college credit accumulated; colleges applied to, accepted at and planning to attend. In addition, we ask if they are interested in being contacted regarding AVID tutoring opportunities near the college they plan to attend; if they are interested in being a part of AVID Alumni activities. Additionally, we use this information to follow students forward into post-secondary, and report this back to the school.

III. TERM

The term of this Agreement shall be from July 1, 2017 to June 30, 2018. 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:

- a. The data we collect in our Site Data Collection, is reported in aggregate at the school’s level, and has no PII included.

We do collect names and birthdates in this collection, and parents’ consent as part of the AVID contract that schools are to have them sign. Parents sign this contract because AVID is not an easy class, and it’s not a study period. Most schools incorporate parental consent for their AVID seniors as part of that contract. Alternatively, the school has the option to create de-identified logins in whatever manner they choose. Some districts have opted to use random number assignments, student id number, etc. Should this option be chosen, we would not be able to report on their AVID students’ post-secondary enrollment, persistence and graduation as we do for other AVID schools.

V. FERPA – PERSONALLY IDENTIFIABLE INFORMATION

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 representative 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
 - gender

- nationality
 - social security number
 - religious affiliation
 - 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 if s/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 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:
Title:
Address:

Email:
Telephone:
Fax:

RECIPIENT REPRESENTATIVE

Name: Jeff Popp
Title: Director of Data
Address: 9797 Aero Drive
Suite 100
San Diego, CA 92123

Email: jpoppp@avid.org
Telephone: 858-380-4783
Fax: n/a

- 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.

DATA SHARING AGREEMENT
OAKLAND UNIFIED SCHOOL DISTRICT/AVID CENTER
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Entered into this 26th day of March 2017.

Accepted on behalf of the Oakland Unified School District

Aimee Eng

Date: 4/26/18

Aimee Eng, President, Board of Education

Kyla Johnson Trammell

Kyla Johnson Trammell, Secretary, Board of Education

Oakland Unified School District

Accepted on behalf of AVID Center

By: *David Greulich*

Date: 29 MAR 2018

David Greulich, Controller
AVID Center

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM AND SUBSTANCE

By: *[Signature]*
Michael L. Smith, Attorney at Law

(4/12/18; 26004/12/18)

OUSD or the District verifies that
the Contractor does not appear on
the Excluded Parties List at
<https://www.sam.gov/>