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Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
Jean Wing, Executive Director, Research Assessment & Data

Board Meeting Date

Subject Data Sharing Agreement
Contractor: UC Regents/California Policy Lab at UC Berkeley
Services for: Research to support OUSD conducted by The California Policy Lab at UC Berkeley and UCLA

Action Requested and Recommendation Approval by the Board of Education of a Data Sharing Agreement with UC Regents/California Police Lab at UC Berkeley for research to support OUSD conducted by The California Policy Lab at UC Berkeley and UCLA.

Background

(Why do we need these services? Why have you selected this vendor?)

The University of California is a world-renowned public research university, and its California Policy Lab at neighboring UC Berkeley is partnering with OUSD to conduct research in partnership with OUSD Enrollment Office and others. This study encompasses a series of analyses intended to support the Enrollment Workgroup that is being convened starting in March 2020 as a result of OUSD’s Citywide Plan. The analytical questions include sections designed to support the Work Group conversations with the goal of submitting recommendations to the Board of Education later in 2020. The questions will build on work already performed by OUSD related to enrollment by analyzing data across both charter schools through Oakland Enrolls as well as OUSD district-run schools. The partnership with The California Policy Lab at UC Berkeley and the data sharing is necessary because the study is beyond the scope of what our internal Research Assessment and Data office can conduct at this time.

Fiscal Impact No fiscal impact

Attachments

- Data Sharing Agreement

**DATA SHARING AGREEMENT
BY AND BETWEEN THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, ACTING ON BEHALF OF THE CALIFORNIA POLICY
LAB AT ITS UCLA AND UC BERKELEY CAMPUSES AND OAKLAND
UNIFIED SCHOOL DISTRICT**

I. PARTIES

This Data Sharing Agreement (“Agreement”) establishes the terms by which data (“Data”) will be shared between The Regents of the University of California, acting on behalf of The California Policy Lab at its UCLA and UC Berkeley campuses (“CPL” or “RECIPIENT”) and Oakland Unified School District (“OUSD” or “DISTRICT”) (collectively referred herein as “the Parties,” and each individually referred to as a “Party”).

II. PURPOSE

- a. CPL, operating out of the University of California Berkeley and Los Angeles campuses, aims to improve outcomes for Californians who utilize public services by building lasting research partnerships with state and local governments, and is committed to the mission of research, education, and public service on a wide range of issues including poverty, education, social programs, health, employment, and criminal justice; and
- b. OUSD is a public agency committed to the public good, which desires to understand and better serve the citizens of California; and
- c. The purpose of this Agreement is to outline the terms and conditions agreed to by the Parties regarding the provision of Data, from OUSD to RECIPIENT for research. No Data shall be provided by OUSD to RECIPIENT until the execution of a “Research Project Description,” which is attached hereto as “Exhibit A.” Each Research Project Description describes the Research, as defined in Exhibit A, for which that Data shall be used; and
- d. Research planned by RECIPIENT that involves generalizable research on human subjects shall be submitted in advance to an Institutional Review Board (“IRB”) for IRB review and approval, if applicable to the Research.

III. TERM

The term of this Agreement shall be effective upon execution by all Parties (“Effective Date”) and continue for a period of ten (10) years, unless terminated pursuant to Section V(k). The term may be extended with the written consent of both Parties.

IV. 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).

V. RECIPIENT'S RESPONSIBILITIES

- a. **Scope of Access.** RECIPIENT shall obtain access to only those education records in which they have legitimate educational interests. RECIPIENT shall not access and use the Data except: (1) to accomplish the Research described in each Exhibit A; (2) to complete mutually agreeable projects that DISTRICT requests in writing; or (3) for administrative purposes related to data security.
- 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 a signed Acknowledgment for Use of Confidential Data from each employee, contractor or agent with access to Data. Nothing in this paragraph authorizes sharing Data provided under this Agreement with any other entity for any purpose other than: (1) completing the RECIPIENT'S Research, as defined in each Exhibit A, for which that Data shall be used. With the written permission of OUSD, RECIPIENT may provide access to Data to faculty, employees, research staff, and affiliated graduate students at other University of California campuses ("Other UC Campus" or "Other UC Campuses") or third parties, including faculty, employees, research staff, and affiliated graduate students at other academic research institutes or research organizations ("Third Party" or "Third Parties"). Any such access to Data will be described in and governed by a Research Project Description and the applicable terms of this Agreement. In the event OUSD grants permission to RECIPIENT to provide access to Data to a Third Party, Third Party will be required to accept Sections V(a), (d), (i), (m), and (n) and VI (a), (c), and (d) of this Agreement. Third Party's acceptance of those provisions, as well as any other provisions pertaining to Third Party's relationship with CPL, will be attached as Exhibit B to 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 except as authorized in writing by

DISTRICT. Any cloud storage or processing of Data will require the express written consent of DISTRICT. Data from DISTRICT shall not be taken outside the United States.

- d. **Publication.** RECIPIENT shall not 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 but specifically agrees (i) not to publish any data items that could permit direct or indirect identification of a student and (ii) 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 provide 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), provided, however, that CPL may retain one (1) copy of the Data to the extent necessary to comply with the records retention requirements under any law or regulation and for the purposes of research integrity and verification and shall alert DISTRICT in writing prior to any disclosure. 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. **Designated Representative.** The representatives designated below 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 of Data

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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: Dr. Jean Wing
Title: Executive Director
Address: 1000 Broadway Ste 150
Oakland, CA 94607

Email: jean.wing@ousd.org
Telephone: 510-879-2286
Fax: 510-879-2336

RECIPIENT REPRESENTATIVE

Name: Evan White
Title: Executive Director
Address: 2521 Channing Way
Berkeley, CA 94720

Email: evanbwhite@berkeley.edu
Telephone: 510-642-3875
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' written 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. **Publication Review.** In order to protect the confidentiality of previously identified directory information disclosed to the RECIPIENT, the RECIPIENT agrees 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. DISTRICT shall keep such proposed publications or presentations confidential for a period of one (1) year or until the publication or presentation is released publicly, whichever date is earlier. RECIPIENT shall make changes to ensure that no individuals can be directly or indirectly identified by the publication. DISTRICT will make every effort to work with RECIPIENT to resolve outstanding questions. RECIPIENT shall interpret the absence of feedback from DISTRICT within that thirty (30)-day period that no Data has been identified in the publication or presentation that may permit direct or indirect identification of any individual and the publication or presentation may be published, released and/or disseminated as originally written.

- 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). To the extent allowable by law, and subject to the rules and rights of the publishing journal or other entity, after RECIPIENT's researchers have had the opportunity to publish such publications or presentations, or upon written approval of RECIPIENT, RECIPIENT shall grant DISTRICT a non-exclusive, irrevocable, royalty-free, worldwide license to use, display, reproduce, copy, and distribute, for non-commercial purposes, publications and presentations, provided such use, display, reproduction, copy, and/or distribution entails no substantial alteration of said publications. The RECIPIENT or its agents retain the right to publish findings in other publications or presentations, provided that prior notice of report is first shared with the DISTRICT and the DISTRICT has opportunity to review pursuant to Section V(m) of this Agreement.

VI. GENERAL TERMS

- a. **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.
- b. **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.
- c. **Applicable Law.** This Agreement shall be 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.
- d. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST REVENUES OR PROFITS, ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR ANY OTHER CAUSE.

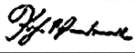
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Entered into this 25th day of June, 2020.

Accepted on behalf of the Oakland Unified School District

By:  Date: 6/25/2020
Kyla Johnson-Trammell, Superintendent
Oakland Unified School District

By:  6/25/2020
Jody London, President, Board of Education
Oakland Unified School District

Accepted on behalf of the RECIPIENT

By:  Date: 5/11/20
Brian Roe, Director, Industry Research and Material Transfer
The Regents of the University of California

Approved as to form



Joshua R. Daniels
OUSD General Counsel
June 16, 2020

Exhibit A- __[#]__ - Research Project Description [SAMPLE] – [Project Title]

This Research Project Description is issued under the Data Sharing Agreement (the “Agreement”) between The Regents of the University of California, on behalf of the California Policy Lab at its UCLA and UC Berkeley campuses (“CPL” or “RECIPIENT”) and Oakland Unified School District (“OUSD” or “DISTRICT”), with an effective date _____.

Together with the Agreement, this Research Project Description governs the conduct of the research contemplated herein.

1. Project Title:
2. Year-Number (e.g., 2017-3): _____
3. Description of the research (“Research”):

4. Subject to the conditions stated in the Agreement, the Parties agree to share the following data (“Data”):

5. Individual(s) authorized to access the Data, and their corresponding UC campus or other research organization affiliation (“Authorized Users”):

6. OPTIONAL: List any additional compliance, research use, or data security requirements beyond those specified in the Agreement that apply to this specific Data:

A. FERPA – PERSONALLY IDENTIFIABLE INFORMATION

*Check/Initial
all that apply*

- _____ The Data to be shared under this Research Project Description 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 OUSD Data to be shared under this Research Project Description **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 Research Project Description.

□ 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.

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_____ 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.

A. DIRECTORY INFORMATION

_____ The Data to be shared under this Research Project Description 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.

e. The Parties understand that the following information is not “directory information” and cannot be disclosed as identifiable information unless an exemption applies under Section 6.A. above:

- ethnicity or race
- gender
- nationality
- social security number
- religious affiliation
- grades or grade point average (GPA)

f. **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.)

- g. **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-Veto 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.

7. In the event the Data provided by Data Owner contains data elements that directly identify an individual (“Direct Identifiers”), can the Direct Identifiers be used to link with other datasets? Yes No
 If yes, restrictions on how the Data can be linked:

8. Upon completion or termination of this project, Data shall be:

Retained by CPL _____ Returned to Data Owner _____ Destroyed _____

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed by their duly authorized representatives:

The Regents of the University of California

Signature _____

Date: _____

Name

Title

The Regents of the University of California

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Oakland Unified School District

Signature _____
[authorized official]

Date: _____

[Additional Signatory, as applicable]

Signature _____
[authorized official]

Date: _____

Read and Understood By:

Signature _____
[Principal Investigator Name]
[Institution]

Date: _____