

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	21-1474
Introduction Date	6/23/21
Enactment Number	21-1152
Enactment Date	6/23/2021 er



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Juan Du, Executive Director, Research, Assessment and Data (RAD)

**Meeting Date** June 23, 2021

**Subject** Data Sharing Agreement - University of California, Berkeley

**Ask of the Board** Approval by the Board of Education of a Data Sharing Agreement between the District and the University of California, Berkeley, CA, authorizing OUSD to share data with the latter, which will allow graduate student Austin Land to complete a research project, for the period of April 20, 2021 through April 19, 2023, at no cost to the District.

**Background** Recipients will use student-level data to characterize the influence of publicly supported preschool programming (Head Start and OUSD preschool) on children’s early learning and developmental trajectories through TK and kindergarten and examine the predictive power of common instruments of early development and learning (e.g. Desired Results Development Profile) with respect to kindergarten-entry measures of the same (e.g. Early Development Instrument).

OUSD will share the following identified data: English Language Proficiency Assessments for California (ELPAC) results, local benchmark assessment results, attendance rate, number of absences, number of suspensions, days suspended, Gender, Race/Ethnicity, Special ed. Flag, home language, language proficiency, birth country, school, grade level, OUSD Transitional Kindergarten and preschool experience, English language learner status, Title 1 flag (schoolwide), student name, family address, family email, Desired Results Development Profile (DRPD), Fountas & Pinnell (F&P), Dynamic Indicators of Basic Early Literacy Skills (DIBELS), Early Development Instrument (EDI) & Ages and Stages Questionnaire (ASQ) results, kindergarten transition form, Quality Rating and Improvement System (QRIS), and Birthdate.

**Discussion** This Data Sharing Agreement will allow graduate student Austin Land to complete a research project analyzing the influence of publicly supported preschool programming on children’s early learning and developmental trajectories through TK and Kindergarten. This research project will provide OUSD with important

insights into the impact of OUSD's preschool program on student outcomes in elementary school.

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

**Attachment(s)** Data Sharing Agreement



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## **DATA SHARING AGREEMENT 2020-2021**

This Data Sharing Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity(ies) or individual(s) (“RECIPIENT,” together with OUSD, “PARTIES”):

The Regents of the University of California, on behalf of the Berkeley Campus

The PARTIES hereby agree as follows:

1. **Limited Purpose of Agreement.** This Agreement pertains only to OUSD’s transmission of data to RECIPIENT, and RECIPIENT’s protection of such data. To the extent that OUSD seeks to impose any other legal obligations on RECIPIENT (e.g., RECIPIENT’s provision of services to OUSD), or RECIPIENT seeks to impose any other legal obligations on OUSD (e.g., OUSD payment of compensation to RECIPIENT), such obligations shall be set forth in a separate agreement. If such an agreement exists at the time of execution of this Agreement, the Parties shall identify it in **Exhibit A**.
2. **Data to be Provided.** The Parties shall list the categories of data to be provided in the Schedule of Data, attached hereto as **Exhibit B**, and such data shall be referred to hereinafter as OUSD Data.
3. **Term.**
  - a. This Agreement shall start on the below date (“Start Date”):  
April 20, 2021

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):

April 19, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. For OUSD Data being transmitted as part of research approved by OUSD’s Department of Research, Assessment, and Data, the maximum term is one calendar year, in accordance with Administrative Regulation 6162.8.

4. **Family Educational Rights and Privacy Act.** Check any of the following that apply:

OUSD Data is limited to student directory information, as defined in 34 C.F.R. § 99.31(a)(11), for those students who have not opted out of disclosure of directory information.

OUSD Data is limited to de-identified student information, as defined in 34 C.F.R. § 99.31(b).

OUSD Data includes personally identifiable information from a student record other than directory information. RECIPIENT is responsible for obtaining parental consent, as defined in 34 C.F.R. § 99.30, and presenting evidence thereof to OUSD.

OUSD Data includes personally identifiable information from a student record, and:

RECIPIENT is a contractor, consultant, volunteer, or other party to whom OUSD has outsourced institutional services or functions, and RECIPIENT performs an institutional service or function for which the agency or institution would otherwise use employees; is under the

direct control of the agency or institution with respect to the use and maintenance of education records; and is subject to the requirements of § 99.31(a) governing the use and redisclosure of personally identifiable information from education records. (See 34 C.F.R. § 99.31(a)(1)(i)(B).)

RECIPIENT is another school, school system, or institution of postsecondary education where an OUSD 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. (See 34 C.F.R. § 99.31(a)(2).)

RECIPIENT is an authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the Secretary of Education; or State and local educational authorities. (See 34 C.F.R. § 99.31(a)(3).)

RECIPIENT requires the data in order to determine an OUSD student's eligibility for financial aid; amount of aid; conditions for aid; or to enforce the terms and conditions of the aid. (See 34 C.F.R. § 99.31(a)(4).)

RECIPIENT is an organization conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. (See 34 C.F.R. § 99.31(a)(6).) Any RECIPIENT receiving OUSD Data pursuant to this subsection must first submit a research application pursuant to OUSD's Department of Research, Assessment, and Data protocols, and such application shall be incorporated into this Agreement by reference.

The disclosure is in connection with a health or safety emergency. (See 34 C.F.R. §§ 99.31(a)(10) & 99.36.)

5. **Privacy Compliance.** RECIPIENT shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including the Family Educational Rights and Privacy Act, the Children’s Online Privacy Protection Act, the Protection of Pupil Rights Amendment, the Student Online Personal Information Protection Act, AB 1584, and all other California privacy statutes.
6. **Authorized Use.** OUSD Data, including persistent unique identifiers, shall be used for no purpose other than as agreed herein and/or otherwise legally authorized. RECIPIENT shall not make any re-disclosure of any OUSD Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the OUSD Data, without the express written consent of OUSD.
7. **Advertising Prohibition.** RECIPIENT is prohibited from using or selling OUSD Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a RECIPIENT; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than performing the Research in Exhibit A; or (d) use the OUSD Data for the development of commercial products or services.
8. **OUSD Data Property of OUSD.** All OUSD Data transmitted to the RECIPIENT pursuant to this Agreement is and will continue to be the property of and under the control of OUSD. RECIPIENT acknowledges and agrees that all copies of such OUSD Data transmitted to the RECIPIENT, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original OUSD Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to OUSD Data contemplated per a Service Agreement if executed shall remain the exclusive property of OUSD.

9. **Correction of Records.** OUSD shall establish reasonable procedures by which a parent, guardian, or eligible student may review OUSD Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. RECIPIENT shall respond in a timely manner to OUSD's request for OUSD Data in a pupil's records held by RECIPIENT to view or correct as necessary.
10. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact RECIPIENT with a request for data held by RECIPIENT, RECIPIENT shall redirect the Third Party to request the data directly from OUSD. RECIPIENT shall notify OUSD in advance of a compelled disclosure to a Third Party.
11. **Employee Obligation.** RECIPIENT shall require all employees and agents who have access to OUSD Data to comply with all applicable provisions of this DPA with respect to the data shared to perform the Research in Exhibit A.
12. **Subprocessors.** RECIPIENT shall enter into written agreements with all Subprocessors performing functions pursuant to this Agreement or any other Agreement identified in **Exhibit A**, whereby the Subprocessors agree to protect OUSD Data in manner consistent with the terms of this Agreement.
13. **No Re-Identification or Re-Disclosure.** RECIPIENT agrees not to attempt to re-identify de-identified OUSD Data and not to transfer de-identified OUSD Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to OUSD who has provided prior written consent for such transfer. RECIPIENT shall not copy, reproduce or transmit any data obtained except as necessary to perform the Research in Exhibit A.
14. **Disposition of Data.** RECIPIENT shall dispose or delete all OUSD Data upon written request by OUSD or when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any OUSD Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make

it unreadable or indecipherable by human or digital means. Nothing in this Agreement authorizes RECIPIENT to maintain OUSD Data beyond the time period reasonably needed to complete the disposition. RECIPIENT shall provide written notification to OUSD when the OUSD Data has been disposed.

15. **Data Security.** RECIPIENT agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect OUSD Data from unauthorized disclosure or acquisition by an unauthorized person.
  
16. **Data Breach.** In the event that OUSD Data is accessed or obtained by an unauthorized individual, RECIPIENT shall provide notification to OUSD within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. RECIPIENT shall follow the following process:
  - a. The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
  - b. The security breach notification described above shall include, at a minimum, the following information:
    - (i) The name and contact information of the reporting OUSD subject to this section.
    - (ii) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
    - (iii) If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
    - (iv) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to



- determine at the time the notice is provided.
      - (v) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
    - c. RECIPIENT agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the OUSD Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
    - d. RECIPIENT further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of OUSD Data or any portion thereof, including personally identifiable information and agrees to provide OUSD, upon request, with a copy of said written incident response plan.
    - e. RECIPIENT is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by OUSD. If OUSD requests RECIPIENT's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to RECIPIENT, RECIPIENT shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed above. If requested by OUSD, RECIPIENT shall reimburse OUSD for costs incurred to notify parents/families of a breach not originating from OUSD's performance of the Research in Exhibit A.
- 17. **Equipment and Materials.** RECIPIENT shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
- 18. **Termination.**
  - a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD

- Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
- b. Due to COVID-19. Notwithstanding any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of RECIPIENT to perform the Research, OUSD may terminate this Agreement upon seven (7) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
  - c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
  - d. Upon termination, RECIPIENT shall provide OUSD with all materials produced, maintained, or collected by RECIPIENT pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.
19. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii)

sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

**OUSD**

Name: Joshua R. Daniels  
Site/Dept: Office of General Counsel  
Address: 1000 Broadway, Suite 300  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: ousdlegal@ousd.org

**RECIPIENT**

Name: Lynne Hollyer  
Title: Associate Director, UC Berkeley IAO  
Address: 2150 Shattuck Ave. 10<sup>th</sup> floor  
City, ST Zip: Berkeley, CA 94704  
Phone: 510.642.5758  
Email: lhollyer@Berkeley.edu

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

20. **Status.**

- a. This is not an employment contract. RECIPIENT, in the performance of this Agreement, shall be and act as an independent contractor. RECIPIENT understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. RECIPIENT shall assume full responsibility for

payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to RECIPIENT's employees.

- b. If RECIPIENT is a natural person, RECIPIENT verifies all of the following:
  - (i) RECIPIENT is free from the control and direction of OUSD in connection with RECIPIENT's work;
  - (ii) RECIPIENT's work is outside the usual course of OUSD's business; and
  - (iii) RECIPIENT is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
  
- c. If RECIPIENT is a research institution, RECIPIENT verifies all of the following:
  - (i) RECIPIENT is free from the control and direction of OUSD in connection with the performance of the work;
  - (ii) the contract between OUSD and RECIPIENT is in writing;
  - (iii) RECIPIENT has the required non-profit business license or business tax registration, if the work is performed in a jurisdiction that requires RECIPIENT to have a business license or business tax registration;
  - (iv) RECIPIENT maintains a business location that is separate from the business or work location of OUSD;
  - (v) RECIPIENT is customarily engaged in an independently established business of the same nature as that involved in the work performed;
  - (vi) RECIPIENT actually contracts with other businesses to research with entities other than OUSD;
  - (vii) RECIPIENT advertises and holds itself out to the public as available to perform the same or similar research;
  - (viii) RECIPIENT provides its own tools, vehicles, and equipment to perform research;
  - (ix) RECIPIENT can negotiate its own rates;
  - (x) RECIPIENT can set its own hours and location of work; and
  - (xi) RECIPIENT is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

21. **Certificates/ Permits/ Licenses/ Registration.** RECIPIENT's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with performance of Research pursuant to this Agreement.
  
22. **Coronavirus/COVID-19.**
  - a. Through its execution of this Agreement, RECIPIENT declares that it is able to meet its obligations and perform Research required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
  - b. Consistent with the requirements of the paragraph titled Incident/Accident/Mandated Reporting, RECIPIENT agrees to notify OUSD, via email pursuant to the paragraph titled Legal Notices, within twelve (12) hours if RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to RECIPIENT possible COVID-19 exposure.
  - c. RECIPIENT agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT and information necessary to perform contact tracing.
  - d. RECIPIENT shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
  
23. **Assignment.** The obligations of RECIPIENT under this Agreement shall not be assigned by RECIPIENT without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
  
24. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical

disability, medical condition, marital status, sexual orientation, gender, or age; therefore, RECIPIENT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, RECIPIENT agrees to require like compliance by all its subcontractor (s). RECIPIENT shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

25. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, RECIPIENTS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
26. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.
27. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
28. **Conflict of Interest.**
  - a. RECIPIENT shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. RECIPIENT shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
  - b. RECIPIENT affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between RECIPIENT's family, business or financial interest and the Research performed under this Agreement, and in the event of change in either private interest or research under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

- c. Through its execution of this Agreement, RECIPIENT acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event RECIPIENT receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, RECIPIENT agrees it shall notify OUSD in writing.
29. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, RECIPIENT certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
  30. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Research performed in connection with this Agreement.
  31. **Indemnification.**
    - a. To the furthest extent permitted by California law, RECIPIENT shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of RECIPIENT’s performance of this Agreement. RECIPIENT also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by, RECIPIENT, RECIPIENT shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at

RECIPIENT's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that RECIPIENT proposes to defend OUSD Indemnified Parties. All such indemnification is in proportion to and to the extent that any such damages are the direct result of the actions of RECIPIENT, its students, employees or officers.

- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless RECIPIENT, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("RECIPIENT Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend RECIPIENT Indemnified Parties at OUSD's own expense, including attorneys' fees and costs. All such indemnification is in proportion to and to the extent that any such damages are the direct result of the actions of OUSD, its students, employees or officers.
32. **Audit.** RECIPIENT shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of RECIPIENT transacted under this Agreement. RECIPIENT shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. RECIPIENT shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all records and other data related to Research covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to RECIPIENT and shall conduct audit(s) during RECIPIENT'S normal business hours, unless RECIPIENT otherwise consents.
  33. **Litigation.** This Agreement shall be deemed to 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.



34. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. RECIPIENT agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Data Sharing Agreement, the terms and provisions of this Agreement shall govern.
35. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES 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.
36. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
37. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
38. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
39. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
40. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and

delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

41. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
42. **Signature Authority.**
  - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
  - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. RECIPIENT agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
43. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to RECIPIENT absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLACK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

**RECIPIENT**

Name: Lynne Hollyer

Signature: *Lynne Hollyer*

Position: Associate Director, Industry Research Alliances and Intellectual Property Office

Date: May 13, 2021

**OUSD**

Name: Juan Du

Signature: *J Du*

Position: Executive Director, Research, Assessment & Data

Date: May 17 2021

- Board President
- Superintendent
- Chief/Deputy Chief

Shanthi Gonzales, President, Board of Education

6/24/2021

*Shanthi Gonzales*

Name: Kyla Johnson-Trammell

Signature: *Kyla Johnson-Trammell*

Position: Secretary, Board of Education

Date: 6/24/2021

Approved as to form by OUSD Staff Attorney Joanna Powell on 5/13/2021.

*Joanna J. Powell*

## EXHIBIT A

**1) Anticipated Use of Data:** *Describe the purpose for which the Recipient seeks access to the OUSD Data identified in Exhibit B.*

Recipients will use student-level data to characterize the influence of publicly supported preschool programming (Head Start and OUSD preschool) on children's early learning and developmental trajectories through TK and kindergarten and examine the predictive power of common instruments of early development and learning (e.g. DRDP) with respect to kindergarten-entry measures of the same (e.g. EDI).

**2) Description of Existing Agreements between OUSD and Recipient:** *To the extent that OUSD and Recipient have entered separate agreements imposing legal obligations in addition to data sharing, list their date, Enactment Number (if applicable), and a brief summary below.*

Research application ID # 210301b approved 04/20/21

**3) Site/Department to Provide Data** (e.g., Research, Assessment, & Data Department, Tech Services Department, specific school site):

RAD

## EXHIBIT B

Please indicate each data element requested below.

Category	Elements	Check if Requested
Application Technology Metadata	IP Addresses of users, use of cookies, etc.	<input type="checkbox"/>
	Other application technology metadata - please specify	<input type="checkbox"/>
Application Use Statistics	Metadata on user interaction with application	<input type="checkbox"/>
Assessment	SBAC results	<input type="checkbox"/>
	ELPAC results	<input checked="" type="checkbox"/>
	IAB Results	<input type="checkbox"/>
	Local benchmark assessment results	<input checked="" type="checkbox"/>
Attendance	Attendance rate	<input checked="" type="checkbox"/>
	Number of absences	<input checked="" type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Number of Suspensions	<input checked="" type="checkbox"/>
	Days suspended	<input checked="" type="checkbox"/>
Demographics	Gender	<input checked="" type="checkbox"/>
	Race/Ethnicity	<input checked="" type="checkbox"/>
	Special ed. flag	<input checked="" type="checkbox"/>
	Home language	<input checked="" type="checkbox"/>
	Language proficiency	<input checked="" type="checkbox"/>
	Birth country	<input checked="" type="checkbox"/>
Enrollment	School	<input checked="" type="checkbox"/>
	Grade level	<input checked="" type="checkbox"/>
	Other - please specify	<input checked="" type="checkbox"/> TK & OUSD PK

Category	Elements	Check if Requested
Parent/Guardian Contact Information	Name	<input type="checkbox"/>
	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language learner	<input checked="" type="checkbox"/>
	Low income status (only available if data requested is de-identified)	<input type="checkbox"/>
	Title 1 flag (schoolwide)	<input checked="" type="checkbox"/>
	Other - please specify	<input type="checkbox"/>
Student Contact Information	Name	<input checked="" type="checkbox"/>
	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input type="checkbox"/>
Local Identifiers	Local student ID number	<input type="checkbox"/>
	Teacher ID number	<input type="checkbox"/>
	State student ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app password(s)	<input type="checkbox"/>
	Dummy identifiers (please check here if data requested are de-identified)	<input type="checkbox"/>

Student In App Performance	Program/application performance (typing program - student types 60wpm, reading program - student reads below grade level) - Please specify	<input type="checkbox"/>
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Category	Elements	Check if Requested
Student Work	Student generated content; writing, pictures etc.	<input type="checkbox"/>
	Other - please specify	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Current year GPA	<input type="checkbox"/>
	Cumulative GPA	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other - Please specify	<input type="checkbox"/>
Other	Please list each additional data element used, stored, or collected	<input checked="" type="checkbox"/> DRPD, F&P, DIBELS, SRA, EDI & ASQ results, kindergarten transition form, QRIS, Birthdate