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# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Lucia Moritz, Executive Director, College and Career Readiness

**Meeting Date** April 14, 2021

**Subject** Memorandum of Understanding - Kaiser Foundation Hospital Oakland/Richmond

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**Ask of the Board** Approval by the Board of Education of a Memorandum of Understanding between the District and Kaiser Foundation Hospital Oakland/Richmond, for the latter to provide instruction for school age children who are hospitalized at Kaiser the period of July 1, 2020 through June 30, 2023, at no cost to the District.

**Background** Kaiser Foundation Hospital Oakland/Richmond and the District have an ongoing relationship providing services to chronically ill or temporarily disabled children. This school program allows the District to comply with Education Code section 48206.3 and 48207.

- 48206.3 requires districts to provide public education to any temporarily disabled student for whom regular day classes or other alternative programs are impossible or inadvisable. Individual instruction is to be provided in pupil's homes, hospitals, or other residential health facilities.
- 48207 requires that districts provide education to all students residing in hospitals or medical facilities within the district, regardless of the pupil's home residence.

**Discussion** This agreement will allow the District to continue providing educational services to students hospitalized at Kaiser. It details the roles and responsibilities of each organization and allows District employees to maintain a school program within the hospital.

**Fiscal Impact** No Fiscal Impact

**Attachment(s)** Memorandum of Understanding  
Business Associate Agreement

**MEMORANDUM OF UNDERSTANDING BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT AND  
KAISER FOUNDATION HOSPITAL OAKLAND/ RICHMOND**

April

This contract made and entered into this 14<sup>th</sup> day of February, 2021, by and between the Oakland Unified School District ("OUSD"), and Kaiser Foundation Hospital Oakland / Richmond, ("KAISER") (collectively, "Parties").

**RECITALS:**

WHEREAS, the Parties seeks to maintain a school site ("KAISER School"), staffed by OUSD employees, to serve children who receive treatment at KAISER and who are or would be eligible for enrollment in OUSD.

**NOW, THEREFORE, it agreed by the parties hereto as follows:**

**I. SERVICES**

- A. For the duration of this contract, as hereinafter specified, OUSD agrees to:
1. Arrange for teachers to provide instruction to children who receive treatment at KAISER for more than five (5) days and who are or would be eligible to receive instruction in public school for grades K-12 through OUSD's Home and Hospital Program ("Program"). In accordance with 5 C.C.R. § 202, students are not eligible to be enrolled receive instruction in public school while infected with any contagious or infectious disease.
    - a. Selection and delivery of an appropriate instructional program (e.g. flexible learning program, remote learning, and site-based instruction) will be at the discretion of OUSD. OUSD reserves the right to select and deliver an instructional program that is designed to limit the exposure to highly contagious diseases, and is consistent with the educational program(s) being offered District-wide.
  2. Ensure supervision of these teachers by OUSD's Office of Alternative Education.
  3. Issue attendance and grade credits to students in accordance with OUSD and State curriculum requirements.
  4. Supply learning materials (i.e., textbooks) and equipment to students as necessary.
  5. Use the ADA funds which are generated from the Program's student attendance for both instructional and support services by KAISER and District support services.
  6. Support KAISER's effort to seek supplemental funds to support the KAISER School by writing letters of support for proposals and identifying, where possible, sources of funding.
  7. Provide assessment and chart notes upon request to monitor student progress (and with parental permission).

- B. For the duration of this contract, as hereinafter specified, KAISER agrees to perform the following services, for the ultimate review, supervision and responsibility of OUSD:
1. Assure fiscal operation accountability and responsibility of the KAISER School pursuant to the terms and conditions of this contract.
  2. Assure proper administration of the program and operation of the KAISER School pursuant to the terms and conditions of this contract.
  3. Assure proper supervision of KAISER staff and proper administrative direction and support by reviewing procedures and evaluations approved by OUSD prior to commencement of the program. These procedures are incorporated herein by reference.
  4. Assure sufficient enrollment of students at the KAISER site by immediate assessment of incoming students.
  5. Provide any training to OUSD staff needed to provide services in a medical facility as required by KAISER policy or state or federal law, including but not limited to protocols designed to limit exposure to COVID-19 and other infectious diseases.
  6. Provide general supplies (pens, paper, etc.) as needed.
  7. Maintain strict confidentiality of all information about individual students received under this MOU and not disseminate such information without the express written consent of OUSD. KAISER will comply with FERPA, and will be allowed to use the data received to solicit funding to continue to expand its services/program, so long as there is no information from which the identity of any student participating in KAISER's program could be made. Any student information deemed confidential under FERPA shall be provided to KAISER only if the parent/guardian has given written consent.
  8. Assure secure storage and a work space for OUSD staff's use with a computer and access to printing.
- C. For the duration of this contract, as hereinafter specified, KAISER and OUSD jointly agree to the following:
1. Matters pertaining to students, such as assignments, transfer, and discipline will be the ultimate responsibility of appropriate OUSD personnel.
  2. The Parties agree to the further confidentiality requirements provided in the Business Associate Agreement, effective February 1, 2021, a copy of which is attached as Exhibit I.

## **II. COVID-19 PROVISIONS**

- A. Each party agrees to carry out this Agreement in a manner that is consistent with all operative shelter-in-place ("SIP") orders, including provisions of those orders related to social distancing and protective equipment.
- B. KAISER shall provide all protective equipment required by any operative SIP order, or by KAISER itself, to OUSD employees who are at KAISER in connection with this agreement

- C. KAISER shall ensure that its facilities are regularly cleaned in accordance with Center for Disease Control guidelines.
- D. Notification
  - 1. KAISER shall immediately inform OUSD upon learning of any individual diagnosed with COVID-19 who was present in the same KAISER room or wing as an OUSD employee who was at KAISER in connection with this Agreement.
  - 2. KAISER shall immediately inform OUSD upon learning of any individual diagnosed with COVID-19 who was present in the same KAISER room or wing as a child receiving instruction pursuant to Section I.A.1 above.
  - 3. OUSD shall immediately inform KAISER upon learning of any OUSD employee diagnosed with COVID-19 who was at KAISER in connection with this Agreement.

### **III. BUDGET AND PAYMENTS**

- A. It is expressly understood and agreed between the parties hereto that students receiving instruction through KAISER School are OUSD students. As such, OUSD is entitled to petition for and collect any revenue in connection with Average Daily Attendance ("ADA") or any other calculation.

### **IV. TERM**

The term of this agreement shall be for the period July 1, 2020 through June 30, 2023. Either Party may terminate this agreement without cause upon thirty days' written notice.

### **V. FACILITY**

KAISER School shall be housed at the KAISER Foundation Hospital Oakland / Richmond Oakland campus located at 275 W. MacArthur Boulevard, Oakland, CA 94611.

### **VI. PROPERTY AND EQUIPMENT**

KAISER agrees to exercise reasonable care in safeguarding all property and equipment belonging to OUSD, and purchased with program funds, in accordance with any terms and conditions of the contract.

### **VII. INDEMNIFICATION**

Each party shall defend, indemnify, and hold harmless the other party and its employees, officers, and directors, and each of them, from and against any and all liability, damage, loss, cost or expense of any nature (including reasonable attorneys' fees and expenses of litigation) incurred or imposed upon any of the indemnified parties in connection with any claims, suits, actions, demands, proceedings, causes of action, or judgments resulting from or arising out of this agreement and the services provided hereunder to the extent attributable to the negligence or intentional misconduct of the indemnifying party or any of its agents or employees.

### **VIII. INSURANCE**

Each party shall maintain in full force and effect throughout the duration of this Agreement insurance sufficient to meet its obligations and liabilities hereunder. Such insurance shall include but not be limited to the following: Commercial General Liability, Professional Liability, and Automobile Liability for bodily

injury, personal injury and property damage; Workers' Compensation coverage with statutory limits; and Employers Liability coverage.

**IX. GOVERNING LAW**

This Agreement shall be performed in Oakland, California, and is governed by the laws of the State of California and County of Alameda.

**X. NO ASSIGNMENT**

Neither party shall assign its rights or delegate its duties under this Agreement without the prior, express written consent of the other party.

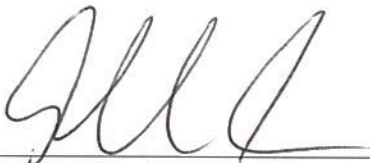
**XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both Parties.

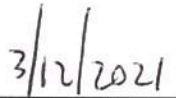
**XII. SIGNATURE IN COUNTERPARTS**

This Agreement and all amendments and supplements to it may be executed in two or more counterparts, each of which shall be deemed an original agreement and all of which shall constitute one and the same agreement. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties 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. This section constitutes a waiver by each party of 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.

IN WITNESS HEREOF, the parties are the authorized representatives of said organizations and have therefore, executed this contract as of this date herein above written for and on behalf of such organization by authority of governing bodies Is within the scope of the powers of said organization.

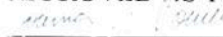


Edmund D. Chan, SVP/Area Manager East Bay Manager  
Kaiser Foundation Hospital Oakland / Richmond



Date

APPROVED AS TO FORM:

  
Joanna Powell, Staff Attorney  
Oakland Unified School District

1/27/2021

Date

RATIFICATION BY BOARD OF EDUCATION

*Shanthy Gonzales* 4/15/2021  
Shanthy Gonzales, President Date  
Oakland Unified School District Board of Education

*Kyla Johnson-Trammell* 4/15/2021  
Kyla Johnson-Trammell, Secretary Date  
Oakland Unified School District Board of Education

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## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into as of and is in effect as of 02/01/2021 ("Effective Date") by and between **Kaiser Foundation Hospitals**, on behalf of the KP Entities (individually and collectively, "KP"), and Oakland Unified School District ("Business Associate").

### RECITALS

- A. KP provides to Business Associate, or Business Associate has access to, certain PHI (as defined below) in the course of the parties' Business Relationship (as defined below).
- B. In order to protect the privacy of the PHI and to comply with HIPAA and the HIPAA Regulations (as defined below), KP and Business Associate desire to enter into this BAA setting forth the terms and conditions of the use and disclosure of PHI.

In consideration of the mutual promises set forth below, the parties agree as follows:

### 1. DEFINITIONS

- 1.1 General Rule. Capitalized terms not otherwise defined in this BAA shall have the same meaning as those terms in the Privacy Rule, the Security Rule, the Breach Notification Rule, and in HIPAA and the HITECH Act, and any regulations promulgated thereunder, as and when amended from time to time.
- 1.2 "Breach" shall have the meaning provided under 45 C.F.R. Section 164.402, as and when amended from time to time.
- 1.3 "Breach Notification Rule" means the Breach Notification for Unsecured Protected health Information interim Final Rule at 45 C.F.R. Parts 160 and 164, Subpart D, as and when amended from time to time.
- 1.4 "Electronic Health Record" shall have the meaning provided under Section 13400(5) of the HITECH Act (42 U.S.C. Section 17921(5)), as and when amended from time to time.
- 1.5 "E PHI" means electronic protected health information as defined in 45 C.F.R. Section 160.103, as and when amended from time to time.
- 1.6 "HIPAA" means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191 as and when amended from time to time.
- 1.7 "HIPAA Regulations" means the regulations promulgated under HIPAA and the HITECH Act by the U.S. Department of Health and Human Services ("HHS"), including, but not limited to the Privacy Rule, the Security Rule and the Breach Notification Rule, as and when amended from time to time.
- 1.8 "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, as and when amended from time to time.
- 1.9 "KP Entity" or "KP Entities" means the Covered Entities comprising Kaiser Permanente's integrated health care organization in each of its regions, including, without limitation, Kaiser Foundation Health Plan, Inc. and each of its subsidiary regional health plans, Kaiser Foundation Hospitals and its subsidiaries, and each regional Permanente medical group and Permanente dental group and their respective subsidiaries.
- 1.10 "Notice of Re-Disclosure Prohibition" means the notice that is required by 42 C.F.R. Section 2.32 to accompany a disclosure of Substance Use Disorder Records.



1.11 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. parts 160 and 164, Subparts A and E, as amended from time to time.

1.12 “PHI” means Protected Health Information, as that term is defined under the Privacy Rule, including but not limited to, 45 C.F.R. Section 160.103, that is provided by a KP Entity to Business Associate, or is created, received, transmitted or maintained by Business Associate on behalf of a KP Entity.

1.13 “Secretary” means the Secretary of HHS.

1.14 “Security Rule” means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. parts 160 and 164, Subpart C, as amended from time to time.

1.15 “Substance Use Disorder Records” means any records, whether paper or electronic, which were created, received or acquired by a federally assisted program that is subject to 42 C.F.R. Part 2 and which relate to a patient (*e.g.*, diagnosis, treatment and referral for treatment information; billing information; emails, voice mails and texts), as such terms are defined in 42 C.F.R. Part 2.

1.16 “Unsecured Protected Health Information” shall have the meaning provided under 45 C.F.R. Section 164.402, as amended from time to time.

## **2. OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 General Requirements. Except as otherwise limited in this BAA, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, KP under the terms of the business relationship between KP and Business Associate described in Exhibit A, attached hereto and incorporated herein (the “Business Relationship”), subject to any limitations described in Exhibit A hereto, and provided that such Use or Disclosure would not violate the Privacy Rule if done by KP. Business Associate shall limit its Use, Disclosure or request of PHI, to the extent practicable, to a Limited Data Set or, if needed by Business Associate, to the Minimum Necessary amount of PHI needed to accomplish the intended purpose of the Use, Disclosure or request, in accordance with any guidance issued by HHS. Business Associate shall comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA Regulations, and shall not Use or Disclose PHI other than as permitted by this BAA or as required by law.

2.2 Uses Permitted By Law. To the extent permitted by law, including, without limitation, the Privacy Rule, Business Associate may (a) Use PHI as is necessary for the proper management and administration of Business Associate's organization, or to carry out the legal responsibilities of Business Associate; and (b) Disclose PHI for the purposes described in subsection 2.2(a) above, provided that (i) the Disclosure is required by law or (ii) Business Associate obtains reasonable assurances from the recipient of the information that the information will be held confidentially and Used or further Disclosed only as required by law or for the purpose for which it was Disclosed to the person, and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.3 Data Aggregation. Business Associate may perform Data Aggregation services relating to the Health Care Operations of KP if required by KP under the Business Relationship.

2.4 Disclosures to Subcontractors. Business Associate shall ensure that any Subcontractor of Business Associate that creates, receives, maintains or transmits PHI agrees in writing to the same restrictions and conditions that apply to Business Associate regarding the Use and Disclosure and security of PHI. Business Associate shall not permit any Subcontractor that fails to abide by any material term of such agreement to create, receive, maintain, transmit, or otherwise Use or Disclose PHI.

2.5 Safeguards. Business Associate shall implement and use appropriate safeguards as necessary to prevent the Use or Disclosure of PHI in any manner that is not permitted by this BAA, as required by the Privacy Rule.



2.6 Mitigation. Business Associate shall mitigate promptly, to the extent practicable, any harmful effect (a) that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this BAA, the Privacy Rule, or other applicable federal or state law or (b) of a Security Incident for which Business Associate is responsible, or of which Business Associate is aware, that involves EPHI and is in violation of this BAA, the Security Rule, or other applicable federal or state law.

2.7 Access and Amendment. To enable KP to fulfill its obligations under 45 C.F.R. Sections 164.524 and 164.526, Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its Subcontractors available to KP for inspection, copying or amendment within ten (10) calendar days of a request by KP. If PHI is maintained in an electronic Designated Record Set, then Business Associate shall provide KP with a copy of such information in electronic format in accordance with 45 C.F.R. Section 164.524 within ten (10) calendar days of a request by KP. If an Individual requests inspection, copying or amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall notify KP in writing within five (5) business days of Business Associate's receipt of the request, and shall defer to, and comply with, KP's direction in a timely manner regarding the response to the Individual regarding the request for inspection, copying or amendment.

2.8 Accounting. Business Associate shall record and make available to KP Covered Disclosures of PHI by Business Associate ("Accounting Information") as necessary to enable KP to comply timely with its obligations under the Privacy Rule including, but not limited to, 45 C.F.R. Section 164.528. For purposes of this BAA, "Covered Disclosure" means any Disclosure of PHI subject to the Individual's right under the HIPAA Regulations to an accounting of such Disclosures. At a minimum, this Accounting Information shall include for each such Disclosure the information required by 45 C.F.R. Section 164.528(b). Within ten (10) calendar days of notice from KP of a request for an accounting of Disclosures of PHI, Business Associate shall make available to KP this Accounting Information. If an Individual requests an accounting directly from Business Associate or its Subcontractors, Business Associate must notify KP in writing within five (5) business days of the request, and shall defer to, and comply in a timely manner with, KP's direction regarding the response to the Individual regarding the request for an accounting. In addition, as of the effective date of Section 13405(c) of the HITECH Act (42 U.S.C. Section 17935(c)), to the extent Business Associate is using or maintaining an Electronic Health Record, Business Associate shall provide to KP, or, at KP's request, to an Individual, an accounting of Disclosures to carry out Treatment, Payment or Health Care Operations through the Electronic Health Record made by Business Associate for the three (3) years prior to the request, unless such an accounting would be otherwise excepted by Section 13405 of the HITECH Act, implementing regulations, or guidance issued from HHS. Such accounting of routine Disclosures shall be in a form that is compliant with any regulations or guidance issued by the Secretary.

2.9 Government Officials. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining KP's compliance with the Privacy Rule. Business Associate shall notify KP regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon KP's request, shall provide KP with a duplicate copy of such PHI.

2.10 Insurance and Indemnity.

(a) Business Associate shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Business Associate and its Subcontractors against any claim or claims for damages arising under this BAA. Such insurance coverage shall apply to all site(s) of Business Associate and to all services provided by Business Associate or its Subcontractors under this BAA. This provision shall govern the Business Associate's insurance and indemnity obligations, unless the Business Relationship between the Business Associate and KP provides for additional and more explicit requirements.



(b) Business Associate shall indemnify, hold harmless and defend KP and KP Entities from and against any and all claims, losses, liabilities, costs and other expenses (including reasonable attorneys' fees and costs, and administrative penalties and fines) incurred as a result of, or arising directly or indirectly out of or in connection with any act or omission of Business Associate, its Subcontractors, under this BAA including, but not limited to, negligent or intentional acts or omissions. The indemnification obligation of Business Associate shall survive termination of this BAA.

2.11 Compliance with the Security Rule. To the extent that Business Associate creates, receives, maintains, or transmits EPHI, Business Associate shall comply with the provisions of the Security Rule, including, without limitation, implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any EPHI that Business Associate may create, receive, maintain or transmit on behalf of KP; implementing policies and procedures; and complying with documentation requirements.

2.12 Reporting of Security Incidents. If the Business Associate creates, receives, maintains, or transmits EPHI, Business Associate shall appropriately report any Security Incident to KP; provided, however, that any security incident that is a Breach of Unsecured Protected Health Information shall be reported pursuant to Section 2.13. Notwithstanding the foregoing, if Business Associate provides services in California to or for Kaiser Foundation Health Plan, Inc., Business Associate shall notify KP by email or fax of any suspected Security Incident or intrusion within 24 hours after discovery. This Section constitutes notice by Business Associate to KP of the ongoing occurrence of attempted Unsuccessful Security Incidents for which no additional notice to KP shall be required. "Unsuccessful Security Incidents" means pings and other broadcast attacks or reconnaissance scans on Business Associate's firewall, port scans, unsuccessful log-on attempts, and any combination of the above, so long as no such incident results in any Breach of EPHI or access, Use or Disclosure of EPHI in violation of this BAA.

2.13 Reporting of Breaches of Unsecured Protected Health Information. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, subject to any law enforcement delay permitted by 45 C.F.R. Section 164.412, shall notify KP of the Breach immediately, but in no event later than five (5) calendar days thereafter (unless a shorter period for notification is required by your Business Relationship with KP), in the manner described or defined by the HIPAA Regulations. A Breach shall be treated as discovered by the Business Associate pursuant to the provisions of 45 C.F.R. Section 164.410(a)(2). The information included in Business Associate's notification shall be in accordance with the HIPAA Regulations, including, without limitation, 45 C.F.R. Section 164.410(c), and guidance provided by the Secretary. Notwithstanding the foregoing, if Business Associate provides services in California to or for Kaiser Foundation Health Plan, Inc., Business Associate shall notify KP by telephone, plus email and fax, immediately upon the discovery of a Breach of Unsecured Protected Health Information.

2.14 Notices of Prohibited Uses or Disclosures. Except in the case of a Breach of Unsecured Protected Health Information, which shall be governed by the provisions of Section 2.13, Business Associate shall provide written notice to KP of any Use or Disclosure of PHI that is in violation of this BAA, the Privacy Rule, or other applicable federal or state law within five (5) business days of becoming aware of such Use or Disclosure. Business Associate shall also notify KP in writing within five (5) business days of receipt of any complaint that Business Associate receives concerning the handling of PHI or compliance with this BAA. Notwithstanding the foregoing, if Business Associate provides services in California to or for Kaiser Foundation Health Plan, Inc., Business Associate shall notify KP of any access, Use or Disclosure of PHI in violation of this BAA by telephone, plus email or fax, immediately upon discovery, and shall notify KP of any suspected unauthorized access, Use or Disclosure of PHI in violation of this BAA by email or fax within 24 hours after discovery.



2.15 Delegated Activities. To the extent that Business Associate is to carry out one or more of KP's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to KP in the performance of such obligations.

2.16 Substance Use Disorder Records. If a Business Associate receives Substance Use Disorder Records from a KP entity, Business Associate shall be fully bound by the provisions of 42 C.F.R. Part 2, including, without limitation, restrictions on the use or further disclosure of such records. Business Associate may not disclose Substance Use Disorder Records to a third party, except disclosures to certain contract agents of Business Associate in accordance with the requirements of 42 C.F.R. Section 2.33(c). If Business Associate is permitted to make such a disclosure to its contract agent, then Business Associate shall provide the contract agent with the Notice of Re-Disclosure Prohibition required by 42 C.F.R. Section 2.32.

### **3. OBLIGATIONS OF KP**

3.1 Notice of Privacy Practices. KP shall notify Business Associate of limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. Section 164.520, to the extent such limitation affects Business Associate's permitted Uses or Disclosures.

3.2 Individual Permission. KP shall notify Business Associate of changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent such changes affect Business Associate's permitted Uses or Disclosures.

3.3 Restrictions. KP shall notify Business Associate of restriction(s) in the Use or Disclosure of PHI requested by an Individual and to which KP has agreed or with which KP is required to comply in accordance with 45 C.F.R. Section 164.522, to the extent such restriction affects Business Associate's permitted Uses or Disclosures.

3.4 Prohibited Requests. KP shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by KP.

### **4. TERM AND TERMINATION**

4.1 Term. This BAA shall commence as of the Effective Date and shall continue in effect unless and until the earlier of the termination of the Business Relationship between KP and Business Associate or termination by KP under this Section 4.1 or Section 4.2. KP may terminate this BAA, without cause, on five (5) calendar days' prior written notice to Business Associate. To the extent that such termination of this BAA without cause necessarily results in a termination of the Business Relationship between the parties, the termination of such Business Relationship shall be subject to any requirements of the Business Relationship with respect to a termination without cause.

4.2 Termination for Cause by KP. If KP determines that Business Associate, or any of its Subcontractors, has breached any material provision of this BAA, which may include a pattern of activity or practice that constitutes a material breach, then KP, in its sole discretion, may (a) notify Business Associate of the material breach and request that it be cured or (b) if feasible, terminate this BAA and KP's Business Relationship with Business Associate immediately or upon such notice as KP may determine. If KP notifies Business Associate of the material breach and requests that it be cured under (a) above, and Business Associate fails to cure the material breach to the reasonable satisfaction of KP, then KP may, in its sole discretion, terminate this BAA and KP's Business Relationship with Business Associate immediately or upon such notice as KP may determine.

4.3 Effects of Termination. Upon termination of the Business Relationship between the parties and/or the BAA for any reason, Business Associate shall, at KP's direction, return or destroy all PHI (including, without limitation, EPHI) that Business Associate or its Subcontractors still maintain in any form, and shall

retain no copies of such PHI, except as provided herein. Upon KP's request, Business Associate shall certify in writing that such return or destruction has occurred. If Business Associate determines that return or destruction is not feasible, Business Associate shall explain to KP in writing why conditions make the return or destruction of such PHI not feasible. If KP agrees that the return or destruction of PHI is not feasible, Business Associate shall retain the PHI, subject to all of the protections of this BAA, and shall make no further Use or Disclosure of the PHI, except as for those purposes that make the return or destruction of the PHI not feasible. In any event, upon termination of the Business Relationship between the parties and/or the BAA, Business Associate shall retain Accounting Information compiled by Business Associate pursuant to Section 2.8 of this BAA for the periods of time required by the Privacy Rule and the HITECH Act, and shall make such Accounting Information available to KP in accordance with Section 2.8 of this BAA.

4.4 Survival. The obligations of Business Associate under this Section 4 shall survive the termination of the Business Relationship between the parties and/or the BAA.

## 5. MISCELLANEOUS

5.1 Assistance. In the event of an administrative or judicial action commenced against KP where Business Associate may be at fault, in whole or in part, as the result of its performance under this BAA, Business Associate agrees to defend or to cooperate with KP in the defense against such action.

5.2 Subcontracts and Assignment. Business Associate shall not assign its rights or delegate its duties under this BAA without the express written consent of KP. Subject to the provisions of this BAA, including, without limitation, Section 2.4, Business Associate may subcontract its obligations under this BAA only in connection with a subcontract of its obligations under the parties' Business Relationship, which shall be subject to the terms of such Business Relationship.

5.3 Amendment. If any modification to this BAA is required for conformity with federal or state law or if KP reasonably concludes that an amendment to this BAA is required because of a change in federal or state law, or by reason of KP's status as a business associate of another covered entity, KP shall notify Business Associate of such proposed modification(s) ("Required Modifications"). Such Required Modifications shall be deemed accepted by Business Associate and this BAA so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice, deliver to KP its written rejection of such Required Modifications. If Business Associate submits a written rejection of the Required Modification, KP may terminate its Business Relationship with Business Associate upon thirty (30) calendar days written notice, or such longer period as may be required by law. Other modifications to this BAA may be made on mutual agreement of the parties.

5.4 Business Relationship. Except as specifically required to implement the purposes of this BAA, and except to the extent inconsistent with this BAA, all terms of the Business Relationship between the parties shall remain in full force and effect. Except as otherwise specifically provided in this BAA or the Business Relationship, in the event of a conflict between the terms of the Business Relationship between the parties and this BAA, this BAA shall control.

5.5 Ambiguity. Any ambiguity in this BAA relating to the Use and Disclosure of PHI shall be resolved in favor of a meaning that furthers the obligations to protect the privacy and security of the PHI, whether electronic or other medium, in accordance with HIPAA and the HIPAA Regulations.

5.6 Compliance with other Laws. In addition to HIPAA and all applicable HIPAA Regulations, Business Associate shall comply with all applicable state and federal security and privacy laws.

5.7 Third Party Beneficiaries. Except as expressly provided for in this BAA or as required by law, there are no third party beneficiaries to this BAA.





5.8 **Counterparts.** This BAA and any exhibits hereto may be executed in one or more counterparts; each counterpart shall be deemed an original.

5.9 **Notices.** All notices required or permitted to be given under this BAA shall be in writing and shall be sufficient in all respects if delivered personally, by nationally recognized overnight delivery service, by registered or certified mail, postage prepaid, by confirmed fax, or by other electronic means, provided that delivery can be confirmed, addressed as specified on the signature page.

Notice shall be deemed to have been given: (a) upon transmittal thereof as to those personally delivered, (b) at the date and time shown on the confirmation or return receipt, if notice is mailed or faxed, or (c) at the date and time shown on the electronic delivery confirmation. The addresses below may be changed by giving notice in the manner provided for above.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the date set forth below.

KP:

By:

Name: Edmund D. Chan

Title: **SVP/Area Manager East Bay**

Date:

If to KP:

Kaiser Oakland Medical Center  
275 W. MacArthur Blvd  
Oakland, CA 94611  
Attention: Richard Contreras  
Email: richard.j.contreras@kp.org

With a copy to:

National Compliance, Ethics & Integrity Office  
Kaiser Permanente  
One Kaiser Plaza, 12 Floor  
Oakland, CA 94612  
Attn: National Privacy and Security Compliance Officer  
Email: [NCO-PRIVACY-AND-SECURITY-BAA-QUESTIONS@kp.org](mailto:NCO-PRIVACY-AND-SECURITY-BAA-QUESTIONS@kp.org)

**BUSINESS ASSOCIATE:**

By:

Name:

Title:

Date:

If to Business Associate:

Oakland Unified School District  
Office of the General Counsel  
1000 Broadway, Suite 300  
Oakland, CA 94607

Attention: Joshua Daniels  
Email: [ousdlegal@ousd.org](mailto:ousdlegal@ousd.org)

Secondary Business Associate Contact:  
Home and Hospital Programs  
Alternative Education

Attention: Gayle Buckles  
Email: [gayle.buckles@ousd.org](mailto:gayle.buckles@ousd.org)

Approved as to form by OUSD  
Staff Attorney Jeanna Fowell on 1/27/21.



**EXHIBIT A**  
**to**  
**BUSINESS ASSOCIATE AGREEMENT**

Notwithstanding the terms of the Business Relationship described in Section 2.1 of this Agreement, Business Associate is permitted to Use and/or Disclose PHI only as provided below:

**1. Description of Business Relationship between KP and Business Associate:**

*Check one box below and provide required information*

☐ Business Associate will provide goods/services to KP as described below:

Describe:

or

☒ Other – Describe: OUSD will provide instruction to students at Kaiser Foundation Hospital Oakland/Richmond, as set forth in concurrently executed Memorandum of Understanding.

**2. Business Associate is permitted to Use and/or Disclose PHI only as provided below:**

*Check one box below and provide required information*

☒ Business Associate may only Use and/or Disclose PHI as necessary to fulfill its obligations for the Business Relationship above;

or

☐ Business Associate may only use or disclose PHI as described below:

*[Insert specific restrictions on Use and/or Disclosures of PHI – if Use and/or Disclosure of PHI is narrower in scope than the Business Relationship described above]*