

Board Office Use: Legislative File Info.	
File ID Number	21-1245
Introduction Date	6/2/21
Enactment Number	21-0938
Enactment Date	6/2/2021 er



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools, Thriving Students*

# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Lucia Moritz, Executive Director, College & Career Readiness  
Rebecca Lacocque, Director, Linked Learning

**Meeting Date** June 2, 2021

**Subject** Data Privacy Agreement, Educational Results Partnership

**Ask of the Board** Ratification by the Board of Education of a Data Privacy Agreement between Oakland Unified School District (“OUSD”) and Educational Results Partnership (“ERP”).

**Background** Oakland Unified is a member educational institution in the California state-wide Cal-PASS Plus program. ERP, a nonprofit public benefit corporation, is a Cal-PASS Plus Partner Organization responsible for facilitating the exchange of Cal-PASS Plus Data. Oakland Unified has been awarded a Strong Workforce Program (“SWP”) grant to create, support and expand quality Career Technical Education programs in K-12. The SWP grant requires recipients to submit data related to CTE programs in K-12 to ERP as part of Cal-PASS Plus.

**Discussion** All student data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of OUSD. OUSD shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.

**Fiscal Impact** The Data Privacy Agreement is required for OUSD to receive Strong Workforce funds. Annually, OUSD receives approximately \$1 million from the SWP.

**Attachment(s)**

- Educational Results Partnership Data Privacy Agreement

## **EDUCATIONAL RESULTS PARTNERSHIP DATA PRIVACY AGREEMENT (for use with Cal-PASS Plus MOU)**

This Data Privacy Agreement (“**DPA**”) is entered into by and between **Oakland Unified School District** (“**OUSD**”) and Educational Results Partnership (“**ERP**”). District Name and ERP are each referred to herein as a “**Party**” and collectively, as the “**Parties.**” Capitalized terms used but not defined herein shall have the meaning set forth in the MOU (as that term is defined in the first recital below). The Parties agree to the terms as stated herein.

### **RECITALS**

**WHEREAS, OUSD** is a member educational institution in the California state-wide Cal-PASS Plus program (“**Cal-PASS Plus**”) and, as a result, **OUSD** has executed the Memorandum of Understanding (“**MOU**”) required of all Cal-PASS Members;

**WHEREAS, ERP**, a California nonprofit public benefit corporation, is a Cal-PASS Plus Partner Organization responsible for facilitating the exchange of Cal-PASS Plus Data in order to fulfil the purposes of Cal-PASS Plus as set forth in the MOU;

**WHEREAS, ERP** will receive or create, and the District Name will provide documents or data as part of the Cal-PASS Plus Data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act (“**COPPA**”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“**PPRA**”) 20 U.S.C. 1232h;

**WHEREAS, the Cal-PASS Plus Data** also is subject to California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act (“**SOPIPA**”) found at California Business and Professions Code section 22584;

**WHEREAS, for the purposes of this DPA, ERP** is a school official with legitimate educational interests in accessing educational records pursuant to the Cal-PASS Plus;

**WHEREAS, OUSD** has been awarded a Strong Workforce Program (“**SWP**”) grant to create, support and expand quality CTE programs in K-12;

**WHEREAS, the SWP grant requirements** provide that to participate in the SWP, District Name is required to submit data related to CTE programs as required by CA EDUC 88828(d)(8) by November 1<sup>st</sup> of each year;

**WHEREAS, OUSD** will provide student data to ERP (“**SWP Data**”) as part of Cal-PASS Plus necessary for ERP to compile the data required for under the SWP grant; and

**WHEREAS, the Parties wish to enter into this DPA** to ensure that the exchange of Cal-PASS Plus Data conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties with respect to Cal Pass Plus and SWP.

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

### ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities of ERP to protect the Cal-PASS Plus Data transmitted to ERP from **OUSD** pursuant to Cal-PASS Plus, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time. In performing the services as a Partner Organization, ERP shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the **OUSD**. With respect to the use and maintenance of Student Data, ERP shall fulfill the purposes of Cal-PASS Plus as set forth in the MOU.
2. **SWP Grant Compliance.** **OUSD** shall submit those data requested by the K12 Strong Workforce Program ("SWP Data") to ERP at OUSD's discretion throughout the term of this DPA. . ERP shall use the SWP Data to provide the data necessary for **OUSD** to meet the grant requirements contained in CA EDUC 88828(d)(8) ("**Grant Requirement Data**"). For purposes of this DPA and the MOU, SWP Data shall be considered Cal-PASS Plus Data.
3. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit "A".

### ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of OUSD.** All Student Data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of the **OUSD**. ERP further acknowledges and agrees that all copies of such Student Data transmitted to ERP, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the MOU shall remain the exclusive property of the **OUSD**. For the purposes of FERPA, ERP shall be considered a School Official, under the control and direction of the **OUSD** as it pertains to the use of Student Data notwithstanding the above. ERP may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** **OUSD** shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student 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. ERP shall respond in a timely manner (and no later than 45 days from the date of the request) to the **OUSD** request for Student Data in a pupil's records held by ERP to view or correct as necessary. In the event that a parent of a pupil or other individual contacts ERP to review any of the Student Data accessed pursuant to the Services, ERP shall refer the parent or individual to the

**OUSD**, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account.** If pupil generated content is stored or maintained by ERP as part of Cal-PASS Plus, ERP shall, at the request of the **OUSD**, transfer said pupil generated content to a separate student account upon termination of **OUSD** participation in Cal-PAS Plus; provided, however, such transfer shall only apply to pupil generated content that is severable from Cal-PASS Plus Data.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact ERP with a request for Student Data held by the ERP pursuant to Cal-PASS Plus, ERP shall redirect the Third Party to request the data directly from the **OUSD**. ERP shall notify the **OUSD** in advance of a compelled disclosure to a Third Party.
5. **Subprocessors.** ERP shall enter into written agreements with all Subprocessors performing functions pursuant to Cal-PASS Plus where the Subprocessor will have access to Student Data, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA.

#### **ARTICLE III: DUTIES OF OUSD**

6. **Privacy Compliance.** **OUSD** shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
7. **Annual Notification of Rights.** If **OUSD** has a policy of disclosing education records under FERPA (4 CFR § 99.31 (a) (1)), **OUSD** shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
8. **Reasonable Precautions.** **OUSD** shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data as required in the MOU.
9. **Unauthorized Access Notification.** **OUSD** shall notify ERP promptly of any known or suspected unauthorized access. **OUSD** will assist ERP in any efforts by ERP to investigate and respond to any unauthorized access.

#### **ARTICLE IV: DUTIES OF ERP**

10. **Privacy Compliance.** ERP shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes (as applicable).
11. **Authorized Use.** The data shared pursuant to the MOU and this DPA, including persistent unique identifiers, shall be used only as set forth in the MOU, this DPA and/or otherwise authorized under the statutes referred to in subsection (1), above. ERP also acknowledges and agrees that it shall not make any re-disclosure of any Student 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 Student Data, without the express written consent of the **OUSD** and as may be required under the SWP grant.

12. **Employee Obligation.** ERP shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under Cal-PASS Plus.
13. **No Disclosure.** De-identified information may be used by the ERP as set forth in the MOU, this DPA and for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Except in furtherance of Cal-PASS Plus, as specifically set forth in the MOU and this DPA, upon the written consent of the student (or if the student is a minor, the student's parent or legal guardian) or as otherwise permitted by law, ERP agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student 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. ERP shall not copy, reproduce or transmit any Student Data obtained from **OUSD** as part of Cal-PASS Plus, except as necessary to conduct Cal-PASS Plus.
14. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsection a or b, below, ERP shall dispose or delete all Student Data obtained as part of Cal-PASS Plus 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 Student 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 the MOU or this DPA authorizes ERP to maintain Student Data obtained as part of Cal-PASS Plus beyond the time period reasonably needed to complete the disposition. ERP shall provide written notification to **OUSD** when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. **OUSD** may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "B". Upon receipt of a request from the **OUSD**, ERP will immediately provide the **OUSD** with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.
  - a. **Partial Disposal During OUSD Participation in Cal-PASS Plus.** While **OUSD** is still participating in Cal-PASS Plus, **OUSD** may request partial disposal of Student Data provided as part of Cal-PASS Plus that is no longer needed. Partial disposal of data shall be subject to **OUSD** request to transfer data to a separate account, pursuant to Article II, section 3, above.
  - b. **Complete Disposal Upon Termination of OUSD Participation in Cal-PASS Plus.** Upon termination of **OUSD** participation in Cal-PASS Plus, ERP shall dispose or delete all Student Data obtained from **OUSD**. Prior to disposition of the

data, ERP shall notify OUSD in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall ERP dispose of data pursuant to this provision unless and until ERP has received affirmative written confirmation from **OUSD** that data will not be transferred to a separate account.

15. **Advertising Prohibition.** ERP is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a ERP; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than for Cal-PASS Plus; or (d) use the Student Data for the development of commercial products or services, other than as necessary for the Cal-PASS Plus. This section does not prohibit ERP from using Student Data for adaptive learning or customized student learning purposes.

## ARTICLE V: DATA PROVISIONS

16. **Data Security.** ERP agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of ERP are set forth below. These measures shall include, but are not limited to:
- a. **Passwords and Employee Access.** ERP shall secure usernames, passwords, and any other means of gaining access to Student Data, at a level suggested by the applicable standards, as set forth in Article 4.3 of NIST 800-63-3. ERP shall only provide access to Student Data to employees or contractors that are performing services related to Cal-PASS Plus. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.
  - b. **Destruction of Data.** ERP shall destroy or delete all Student Data obtained under Cal-PASS Plus when **OUSD** is no longer a Cal-PASS Plus member, or transfer said data to **OUSD** or **OUSD** designee, according to the procedure identified in Article IV, section 5, above.
  - c. **Security Protocols.** Both Parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. ERP shall maintain all **OUSD** Student Data in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to Cal-PASS Plus, except as necessary for Cal-PASS Plus to fulfill the purpose of data requests by **OUSD**.
  - d. **Employee Training.** ERP shall provide periodic security training to those of its employees who operate or have access to the system. Further, ERP shall provide **OUSD** with contact information of an employee who **OUSD** may contact if there are any security concerns or questions.

- e. **Security Technology.** When the service is accessed using a supported web browser, ERP shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. ERP shall host data pursuant to the MOU in an environment using a firewall that is updated according to industry standards.
  - f. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, ERP shall provide the name and contact information of ERP's Security Coordinator for the Student Data received pursuant to the MOU.
  - g. **Subprocessors Bound.** ERP shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. ERP shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
  - h. **Periodic Risk Assessment.** ERP further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.
17. **Data Breach.** In the event that Student Data in ERP's possession is accessed or obtained by an unauthorized individual, ERP shall provide notification to **OUSD** within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. ERP 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 in section 2(a) 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. At **OUSD** discretion, the security breach notification may also include any of the following:
  - i. Information about what the agency has done to protect individuals whose information has been breached.
  - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. ERP agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. ERP 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 Student 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.
- f. ERP is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by **OUSD**. If **OUSD** requests ERP's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to ERP, ERP shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by **OUSD**, ERP shall reimburse **OUSD** for costs incurred to notify parents/families of a breach not originating from **OUSD** use of the Service.
- g. In the event of a breach originating from **OUSD** use of the Service, ERP shall cooperate with **OUSD** to the extent necessary to expeditiously secure Student Data.

## ARTICLE VI: MISCELLANEOUS

- 18. **Term.** ERP shall be bound by this DPA for the duration of **OUSD** participation in Cal-PASS Plus or so long as ERP maintains any Student Data.
- 19. **Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long **OUSD** is no longer participating in Cal-PASS Plus. **OUSD** shall have the right to terminate the DPA in the event of a material breach of the terms of this DPA.



20. **Effect of Termination Survival.** If OUSD is no longer participating in Cal-PASS Plus, ERP shall destroy all of OUSD Student Data pursuant to Article V, section 1(b), and Article II, section 3, above.

21. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

**a. Designated Representatives:**

The designated representative for OUSD for this DPA is:

Name: Josh Daniels  
Title: General Counsel

Contact Information:  
1000 Broadway, Suite 300  
Oakland, CA 94607  
[josh.daniels@ousd.org](mailto:josh.daniels@ousd.org)

The designated representative for ERP for this DPA is:

Name: Alex Barrios  
Title: Executive Vice President, External Relations

Contact Information:  
428 J Street, Ste. 320  
Sacramento, CA 95814  
[abarrios@edresults.org](mailto:abarrios@edresults.org)

22. **Entire Agreement.** This DPA constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and power, or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

23. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of

this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

24. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS DPA IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS MOU.
25. **Authority.** ERP represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored maintained or used in any way.
26. **Waiver.** No delay or omission of **OUSD** to exercise any right hereunder shall be construed as a waiver of any such right and **OUSD** reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
27. **Successors Bound.** This DPA is and shall be binding up on the respective successors in interest to ERP in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this 3rd day, June 2021 DPA as of the last day noted below.

**ERP:**

BY: 

Date: February 24, 2021

Printed Name: Alex Barrios

Title/Position: Executive Vice President, External Relations



**OUSD:** Shanthi Gonzales, President, Board of Education 6/3/2021

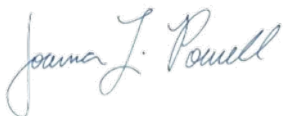
BY: 

Date: \_\_\_\_\_

Kyla Johnson Trammell, Secretary, Board of Education 6/3/2021

Printed Name: \_\_\_\_\_ Title/Position: \_\_\_\_\_

Approved as to form by OUSD Staff Attorney Joanna Powell on 2/26/2021.



## **EXHIBIT "A"**

### **DEFINITIONS**

**AB 1584, Buchanan:** The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

**De-Identifiable Information (DII):** De-Identification refers to the process by which the ERP removes or obscures any Personally Identifiable Information (“**PII**”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

**Educational Records:** Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

**NIST:** Draft National Institute of Standards and Technology (“**NIST**”) Special Publication Digital Authentication Guideline.

**Personally Identifiable Information (PII):** The terms “**Personally Identifiable Information**” or “**PII**” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of ERP's software, website, service, or app, including mobile apps, whether gathered by ERP or provided by **OUSD** or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**Pupil Generated Content:** The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of 1 pupil content.

**Pupil Records:** Means both of the following: (1) Any information that directly relates to a pupil that is maintained by and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other **OUSD** employee. For the purposes of this DPA, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this DPA.

**School Official:** For the purposes of this DPA and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

**SOPIPA:** Once passed, the requirements of SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

**Student Data:** Student Data includes any Cal-PASS Plus Data provided by **OUSD**, whether gathered by ERP or provided by **OUSD** or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this DPA, and for the purposes of California and federal laws and regulations. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data.

**Student Personal Information:** “Student Personal Information” means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

**Subprocessor:** For the purposes of this DPA, the term “**Subprocessor**” (sometimes referred to as the “**Subcontractor**”) means a party other than **OUSD** or ERP, who ERP uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

**Targeted Advertising:** Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the ERP's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

**Third Party:** The term “Third Party” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

## **EXHIBIT "B"**

### DIRECTIVE FOR DISPOSITION OF DATA

OUSD directs ERP to dispose of data obtained by ERP pursuant to the terms of the Service Agreement between **OUSD** and ERP. The terms of the Disposition are set forth below:

<b>Extent of Disposition</b>	Partial. The categories of data to be disposed of are as follows:
Disposition shall be:	X Complete. Disposition extends to all categories of data.
<b>Nature of Disposition</b>	X Destruction or deletion of data.
Disposition shall be by:	Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from <b>OUSD</b> that data was successfully transferred, ERP shall destroy or delete all applicable data.
<b>Timing of Disposition</b>	
Data shall be disposed of by the following date:	As soon as commercially practicable
	X Upon termination of either the MOU
	Between OUSD and CalPASS or this DSA.

Authorized Representative of DISTRICT

Date

Verification of Disposition of Data by Authorized Representative of ERP

Date

