

Board Office Use: Legislative File Info.	
File ID Number	21-1698
Introduction Date	8/11/21
Enactment Number	21-1302
Enactment Date	8/11/2021 lf



**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  
Juan Du, Executive Director, Research, Assessment and Data (RAD)

**Meeting Date** August 11, 2021

**Subject** Data Sharing Agreement Organization and Representatives: The Oakland Public Education Fund, The Oakland REACH, CARES for Learning, and The New Teacher Project (TNTP)

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**Ask of the Board** Approval by the Board of Education of a Data Sharing Agreement between OUSD and The Oakland Public Education Fund, The Oakland REACH, CARES for Learning, and The New Teacher Project (TNTP), authorizing OUSD to share data with the latter recipients, which will allow The New Teacher Project to create a dashboard for recipients to use to monitor the progress of students in the literacy programs provided by The Oakland Public Education Fund employees, for the period of April 21, 2021 through June 30, 2022, at no cost to the District.

**Background** OUSD will share the following identified data with the recipients: local benchmark assessment results, attendance rates, counts of absences, special education status, enrolled school, English fluency status, and student name.

**Discussion** Recipients will use student-level data in order to understand students' prior reading performance, monitor and support individual students' literacy growth and overall school engagement, accurately communicate with families about student progress, and support families as needed in all aspects of their child's school experience.

**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) (“RECIPIENTS,” together with OUSD, “PARTIES”):

- The Oakland Public Education Fund
- The Oakland REACH
- CARES for Learning
- The New Teacher Project (TNTP)

The PARTIES hereby agree as follows:

1. **Limited Purpose of Agreement.** This Agreement pertains only to OUSD’s transmission of data to RECIPIENTS, and RECIPIENTS’ protection of such data. The Parties agree that OUSD data will be used for the purposes of the “Learning Hubs” grant project and that the Parties may access some OUSD student data through a data dashboard that is created by and maintained at TNTP. To the extent that OUSD seeks to impose any other legal obligations on RECIPIENTS (e.g., RECIPIENTS’ provision of services to OUSD), or RECIPIENTS seek to impose any other legal obligations on OUSD (e.g., OUSD payment of compensation to RECIPIENTS), 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 21, 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"):

June 30, 2022

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. For OUSD Data transmitted as part of a research project approved by OUSD's Department of Research, Assessment, and Data ("RAD"), if the term is longer than one calendar year, be aware that you must obtain approval from RAD prior to extending the research project into the second and subsequent calendar years, and no data will be shared during the second and subsequent calendar years unless and until this approval is obtained.

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. RECIPIENTS are responsible for obtaining parental consent, as defined in 34 C.F.R. § 99.30, and presenting evidence thereof to OUSD.

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

X RECIPIENTS are contractors, consultants, volunteers, or other party to whom OUSD has outsourced institutional services or functions, and RECIPIENTS perform an institutional service or function for which the agency or institution would otherwise use employees; are under the direct control of the agency or institution with respect to the use and maintenance of education records; and are 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).)

☐ RECIPIENTS are 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).)

☐ RECIPIENTS are 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).)

☐ RECIPIENTS require 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).)

❑ RECIPIENTS are 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 RECIPIENTS 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.** RECIPIENTS 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. RECIPIENTS shall not make any re-disclosure of any OUSD Data or any portion thereof, except as provided in this Agreement, 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. The Parties agree that non-identifiable data, derived from the identifiable data shared by OUSD under this agreement, may be used by the Parties in an aggregate form for grant reporting, media releases and shared learning between the grant participants, with the requirement that such publications and reports be provided to OUSD for review and approval prior to publication or sharing.
7. **Advertising Prohibition.** RECIPIENTS are 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 RECIPIENTS; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to OUSD; 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 RECIPIENTS pursuant to this Agreement is and will continue to be the property of and under the control of OUSD. RECIPIENTS acknowledge and agree that all copies of such OUSD Data transmitted to the RECIPIENTS, 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 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. RECIPIENTS shall respond in a timely manner to OUSD's request for OUSD Data in a pupil's records held by RECIPIENTS to view or correct as necessary.
10. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact RECIPIENTS with a request for data held by RECIPIENTS pursuant to the Services, RECIPIENTS shall redirect the Third Party to request the data directly from OUSD. RECIPIENTS shall notify OUSD in advance of a compelled disclosure to a Third Party.
11. **Employee Obligation.** RECIPIENTS shall require all employees and agents who have access to OUSD Data to comply with all applicable provisions of this Agreement with respect to the data shared under the Agreement.

12. **Subprocessors.** RECIPIENTS 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.** RECIPIENTS agree 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) except as provided in this Agreement, prior written notice has been given to OUSD who has provided prior written consent for such transfer. RECIPIENTS shall not copy, reproduce or transmit any data obtained except as necessary to fulfill the Agreement and purposes of the grant project.
14. **Disposition of Data.** RECIPIENTS 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 RECIPIENTS to maintain OUSD Data beyond the time period reasonably needed to complete the disposition. RECIPIENTS shall provide written notification to OUSD when the OUSD Data has been disposed.
15. **Data Security.** RECIPIENTS agree 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, RECIPIENTS shall provide notification to OUSD within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. RECIPIENTS 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) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - (ii) 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.
  - (iii) 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.
  - (iv) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. RECIPIENTS agree 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. RECIPIENTS further acknowledge and agree 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. RECIPIENTS are prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by OUSD except as provided by this Agreement. If OUSD requests RECIPIENTS' assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to RECIPIENTS, RECIPIENTS 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, RECIPIENTS shall reimburse OUSD for costs incurred to notify parents/families of a breach not originating from OUSD's use of the Service.
17. **Equipment and Materials.** RECIPIENTS 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 RECIPIENTS. 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 RECIPIENTS to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to RECIPIENTS. 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, RECIPIENTS shall provide OUSD with all materials produced, maintained, or collected by RECIPIENTS 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](mailto:ousdlegal@ousd.org)

#### **THE OAKLAND PUBLIC EDUCATION FUND**

Name: Alexandria Medina  
Title: Executive Director  
Address: 520 3<sup>rd</sup> St, Suite 109

City, ST Zip: Oakland, CA 94607  
Phone: 510-221-6053  
Email: ali@oaklandedfund.org

### **THE OAKLAND REACH**

Name: Michael DeSousa  
Title: Chief Program Officer  
Address: 333 Hegenberger Road, Suite 750  
City, ST Zip: Oakland, CA 94621  
Phone: 510-969-5841  
Email: michael@oaklandreach.org

### **CARES FOR LEARNING**

Name: Dana Cilono  
Title: Director  
Address: 13255 Ozark Trail North  
City, ST Zip: Stillwater, MN 55082  
Phone: 925-864-5083  
Email: danac@caresforlearning.org

### **TNTP**

Name: Florrie Chapin  
Title: General Counsel  
Address: 500 7<sup>th</sup> Avenue, 8<sup>th</sup> Floor  
City, ST Zip: NY, NY 10018  
Phone: 718-233-2800  
Email: Florrie.Chapin@tntp.org

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. RECIPIENTS, in the performance of this Agreement, shall be and act as independent contractors. RECIPIENTS understand and agree that they and any and all of their 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. RECIPIENTS 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 RECIPIENTS' employees.
- b. If RECIPIENTS are a natural person, RECIPIENTS verify all of the following:
  - (i) RECIPIENTS are free from the control and direction of OUSD in connection with RECIPIENTS' work;
  - (ii) RECIPIENTS' work is outside the usual course of OUSD's business; and
  - (iii) RECIPIENTS are 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 RECIPIENTS are a business entity, RECIPIENTS verify all of the following:
  - (i) RECIPIENTS are free from the control and direction of OUSD in connection with the performance of the work;
  - (ii) RECIPIENTS are providing services directly to OUSD and the Grantors, rather than to customers of OUSD;
  - (iii) the contract between OUSD and RECIPIENTS is in writing;
  - (iv) RECIPIENTS have the required business license or business tax registration, if the work is performed in a jurisdiction that requires RECIPIENTS to have a business license or business tax registration;
  - (v) RECIPIENTS maintain a business location that is separate

- from the business or work location of OUSD;
- (vi) RECIPIENTS are customarily engaged in an independently established business of the same nature as that involved in the work performed;
- (vii) RECIPIENTS actually contract with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
- (viii) RECIPIENTS advertise and hold themselves out to the public as available to provide the same or similar services;
- (ix) RECIPIENTS provide their own tools, vehicles, and equipment to perform the services;
- (x) RECIPIENTS can negotiate their own rates;
- (xi) RECIPIENTS can set their own hours and location of work; and
- (xii) RECIPIENTS are 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.** RECIPIENTS' employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

22. **Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, RECIPIENTS declare that they are able to meet its obligations and perform the Services 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, RECIPIENTS agree to notify OUSD, via email pursuant to the paragraph titled Legal Notices, within twelve (12) hours if RECIPIENTS or any employee, subcontractor, agent, or representative of RECIPIENTS test positive for COVID-19, show or report symptoms consistent with COVID-19, or report to RECIPIENTS possible COVID-19 exposure.
- c. RECIPIENTS agree 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 RECIPIENTS or any employee, subcontractor, agent, or representative of RECIPIENTS and information necessary to perform contact tracing.

- d. RECIPIENTS shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
23. **Assignment.** The obligations of RECIPIENTS under this Agreement shall not be assigned by RECIPIENTS 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, RECIPIENTS agree 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, RECIPIENTS agree to require like compliance by all its subcontractor (s). RECIPIENTS 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. RECIPIENTS shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. RECIPIENTS 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. RECIPIENTS affirm to the best of their knowledge, there exists no actual or potential conflict of interest between RECIPIENTS' family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services 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 their execution of this Agreement, RECIPIENTS acknowledges that they are familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certify that they do not know of any facts which constitute a violation of said provisions. In the event RECIPIENTS receive any information subsequent to execution of this Agreement which might constitute a violation of said provisions, RECIPIENTS agree it shall notify OUSD in writing.
29. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through their execution of this Agreement, RECIPIENTS certify to the best of their knowledge and belief, that their 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 Services performed in connection with this Agreement.

31. **Indemnification.**

- a. To the furthest extent permitted by California law, RECIPIENTS, with each as a separate entity, 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 RECIPIENTS’ performance of this Agreement. RECIPIENTS, as separate entities, also agree to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, RECIPIENTS, or subcontractor furnishing work, services, or materials to RECIPIENTS arising out of the performance of this Agreement. RECIPIENTS shall individually, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at RECIPIENTS’ own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that RECIPIENTS propose to defend OUSD Indemnified Parties.
- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless each of the RECIPIENTS, their Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“RECIPIENTS 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 each of the RECIPIENTS Indemnified Parties at OUSD’s own expense, including attorneys’ fees and costs.

32. **Audit.** RECIPIENTS shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of each of the RECIPIENTS transacted under this Agreement. RECIPIENTS shall retain these books, records, and systems of account during the term of



this Agreement and for three (3) years after the End Date. RECIPIENTS 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 Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to RECIPIENTS and shall conduct audit(s) during RECIPIENTS' normal business hours, unless RECIPIENTS otherwise consent.

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. RECIPIENTS agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this 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, with the exception of the DSA between TNTP and OUSD effective Jan.15, 2021. 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. RECIPIENTS 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 RECIPIENTS absent such formal approval or valid and proper execution.

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

**THE OAKLAND PUBLIC EDUCATION FUND**

Name: Alexandria Medina Signature: *Alexandria Medina*  
Alexandria Medina (Jun 4, 2021 13:27 PDT)  
Position: Executive Director Date: Jun 4, 2021

**THE OAKLAND REACH**

Name: Michael De Sousa Signature: *Michael De Sousa*  
Michael De Sousa (Jun 4, 2021 14:00 PDT)  
Position: Chief Program Officer Date: Jun 4, 2021

**CARES FOR LEARNING**

Name: Dana Cilono Signature: *Dana Cilono*  
Dana Cilono (Jun 4, 2021 15:47 PDT)  
Position: Director Date: Jun 4, 2021

**TNTP**

Name: Tonya Horton Signature: *Tonya Horton*  
Position: Executive Vice President Date: Jun 9, 2021

**OUSD**

Name: Juan Du Signature: *Juan Du*  
Position: Executive Director, Dept of Research, Assessment and Data Date: Jun 8, 2021

- ☐ Board President  
☐ Superintendent

Shanthi Gonzales  
President, Board of Education

Signature: *Shanthi Gonzales*  
Date: 8/12/2021

☐ Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: 

Position: Secretary, Board of Education Date: 8/12/2021

Approved as to form by OUSD Staff Attorney Joanna Powell on 5/28/2021.



## EXHIBIT A

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

Recipients will use student-level data in order to understand students' prior reading performance, monitor and support individual students' literacy growth and overall school engagement, accurately communicate with families about student progress, and support families as needed in all aspects of their child's school experience.

Student-level data will be transferred to recipient(s) via secure FTP at regularly scheduled intervals (following each assessment administration) for those students who are enrolled in their literacy programs. Recipient will provide a file to OUSD via OUSD's secure FTP containing fields corresponding to student first name, student last name, student date of birth and student school. Data from OUSD will be stored securely by recipient and used to create a data dashboard that will be accessible to program staff for the purposes of monitoring services to students. Access to said data will be restricted by the recipient(s) to protect student data confidentiality.

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

Recipient does not have an active research application on file. This data sharing agreement does not cover research or program evaluation activities.

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

Research, Assessment, & Data

**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 type="checkbox"/>
	IAB Results	<input type="checkbox"/>
	Local benchmark assessment results	X iReady results, SIPPS results
Attendance	Attendance rate	X as of date when data is pulled
	Number of absences	X as of date when data is pulled
Communications	Online communications that are captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Number of Suspensions	<input type="checkbox"/>
	Days suspended	<input type="checkbox"/>
Demographics	Gender	<input type="checkbox"/>
	Race/Ethnicity	<input type="checkbox"/>
	Special ed. flag	X
	Home language	<input type="checkbox"/>



	Language proficiency	<input type="checkbox"/>
	Birth country	<input type="checkbox"/>
Enrollment	School	X
	Grade level	<input type="checkbox"/>
	Other - please specify	<input type="checkbox"/>

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	X
	Low income status (only available if data requested is de-identified)	<input type="checkbox"/>
	Title 1 flag (schoolwide)	<input type="checkbox"/>
	Other - please specify	<input type="checkbox"/>
Student Contact Information	Name	X
	Address	<input type="checkbox"/>

	Email	<input 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"/>

  

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 type="checkbox"/>