

**DATASHARING AGREEMENT BETWEEN
THE UTAH STATE OFFICE OF EDUCATION
AND
THE NAVAJO NATION**

THIS DATA SHARING AGREEMENT (Agreement) is made by and between the Utah State Office of Education (USOE) and the Navajo Nation or Department of Dine Education (Navajo Nation).

RECITALS:

WHEREAS, [Designation] the USOE designates the Navajo Nation or Department of Dine Education as an authorized representative under 34 CFR §99.3;

WHEREAS, [Purpose and description of activity] the Navajo Nation has requested the USOE student assessment data on English/language arts, mathematics and science for Navajo students who attend Utah public schools, including traditional school districts and charter schools; specifically, available state level English/language arts, mathematics and science proficiency data for all Navajo students in grades 3-12, beginning with the 2011-2012 school year;

WHEREAS, the purpose of this request is to evaluate and study the success of Navajo students in Utah public schools pursuant to the implementation of federal and state educational programs; establish baseline data that can be used to recommend interventions and alternatives to the Utah State Board of Education (Board), the Bureau of Indian Education (BIE), BIE grant schools, and BIE tribally controlled schools; to recommend interventions to and alternatives by the Navajo Nation Department of Dine Education;

WHEREAS, the Family Educational Rights and Privacy Act of 1974 (FERPA), set forth in Title 20 U.S. Code Section 1232g and its regulation at Title 34 CFR § 99.1 et seq. (as amended in 2012) generally prohibits the disclosure of students' personally identifiable information without consent, subject to certain exceptions;

WHEREAS, 34 CFR §99.31(3) and §99.35 allow for disclosure of student personally identifiable information to authorized representatives of state authorities in connection with an audit or evaluation of *Federal* or State supported education programs;

WHEREAS, the purpose of this Agreement is to share information between the USOE and the Navajo Nation, in a manner consistent with FERPA in regard to data necessary to fulfill the request from the Navajo Nation, so that it may evaluate or audit education programs that are supported by federal and state funds;

WHEREAS, FERPA requires that information be shared in a way which does not permit personal identification of individual student information other than to employees, officers or agents of the USOE and allows the USOE to share student information with the Navajo Nation;

WHEREAS, [Destruction/return of records when no longer needed and time period] FERPA requires that the information be destroyed when no longer needed for the purposes for which the evaluation and study are conducted; data will be destroyed or returned no later than December 30, 2017 or upon termination of the Agreement, whichever occurs first;

WHEREAS, [Penalty] FERPA provides that if any party allowed access to personally identifiable information does not destroy that information when no longer needed for the purposes for which the evaluation was conducted, then that party will be prohibited from access to future personally identifiable student information from educational records for at least five (5) years.

NOW, THEREFORE, IT IS AGREED as follows:

I. TERM OF AGREEMENT

This Agreement shall take effect upon signature by the authorized representatives of the USOE and the Navajo Nation, and shall remain in effect until the sooner of December 30, 2013, or termination by the USOE or the Navajo Nation pursuant to Paragraph V here in. Upon termination of the Agreement, the Navajo Nation shall provide assurances to the USOE by letter that all data obtained under this Agreement will be promptly destroyed or returned in accordance with the requirements of 34 CFR § 99.35(b).

II. DEFINITIONS AND ABBREVIATIONS

- a) "Disclosure" or "disclosure" means the release, transfer or other communication of personally identifiable information contained in student education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. Further disclosure of any personally identifiable information provided by the USOE to the Navajo Nation is prohibited by this Agreement in that it constitutes a redisclosure of information under 34 CFR 99.33 .
- b) "FERPA" refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means Title 20 U.S. Code Section 1232g as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations (as amended in 2012, "Family Educational Rights and Privacy"). Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.

III. RESPONSIBILITIES UNDER THE AGREEMENT

a) Joint Responsibilities

1. The USOE and the Navajo Nation shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose or share student education records in a manner not allowed by federal law or regulation.
2. The USOE and the Navajo Nation shall identify at least one authorized representative or data custodian from the respective agencies who shall be responsible for processing and responding to data requests from the other party. Within 20 days of signing this Agreement, both sides shall exchange in writing the name(s), mailing address, telephone number, fax number and email address of their authorized representative(s). These names may be changed by written notice to the other party.

3. The USOE may seek to review or seek written assurances and the Navajo Nation shall agree to permit the USOE to review or to provide written assurances regarding the use of data transmitted under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the personally identifiable student records and that personally identifiable records have not been disclosed or released inappropriately.

b) Responsibilities of the USOE:

1. The USOE shall share the requested data with the Navajo Nation, but only for purposes of the Navajo Nation evaluating and studying student achievement of Navajo Students in Utah public schools.
2. The USOE shall assign, and through execution of this Agreement, hereby does designate the Navajo Nation as an authorized representative for purposes of having access to personally identifiable student information as detailed in this Agreement. The Navajo Nation is an authorized representative only for the sole purpose of evaluating and studying federal and state-supported education programs as detailed in this Agreement.
3. The USOE shall, consistent with December 2011 guidance from the U.S. Department of Education, post for public access a copy of this Agreement on the Indian Education Division page of the USOE's website.

c) Responsibilities of the Navajo Nation:

1. The Navajo Nation agrees to use data shared under this Agreement for no purpose other than to evaluate and study student federal and state-supported education programs in Utah public schools.
2. The Navajo Nation agrees not to share or re-disclose personally identifiable data received under this Agreement with any other entity, organization or individual without the prior written approval from the USOE. This does not prohibit the Navajo Nation from sharing de-identified aggregate student data consistent with FERPA.
3. The Navajo Nation agrees to maintain all data obtained pursuant to this Agreement separate from all other data files that the Navajo Nation otherwise possesses and not copy, reproduce or transmit data obtained pursuant to this Agreement, except as necessary to fulfill the purpose of this Agreement, or the Navajo Nation evaluation and study described in this agreement. Transmission of all FERPA-protected data must be by SECURE electronic systems and/or networks. All copies of data of any type including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of

this Agreement in the same manner as the original data.

4. The ability to access or maintain data under this Agreement shall not, under any circumstances, transfer from or be assigned to any other individual, institution, organization, government or entity.
5. Despite any contrary provisions in the Agreement, the Navajo Nation agrees not to disclose any data obtained under this Agreement in a manner which would allow for identification of an individual student or students to any other individual, institution, organization, government or entity.
6. The Navajo Nation agrees that procedures and systems will be established to ensure that all confidential data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure of the data, including the interception, diversion, duplication, or other unauthorized access to said data.
7. The Navajo Nation agrees to establish procedures and systems to ensure all personally identifiable student data obtained is kept in secured facilities and media and that access to such records is restricted to the Navajo Nation personnel who are authorized to have access to said data for the purposes of conducting the aforementioned evaluation and study.
8. The Navajo Nation shall promptly, that is, within one (1) hour of learning, report to the USOE, any incidents in detail of any personally identifiable information received from the USOE whose confidentiality was breached or is believed to have been breached.
9. The Navajo Nation agrees to destroy or return to the USOE all personally identifiable student records or information obtained pursuant to data requests under this Agreement when they are no longer needed for the purposes of this Agreement. Nothing in this Agreement authorizes the Navajo Nation to maintain data received from the USOE beyond the time period reasonably needed to complete the purpose of the request, and in no case beyond the termination date of this Agreement. Any destruction of the referenced data must be witnessed by one other person who can later attest that a complete destruction of the data occurred. The Navajo Nation agrees to submit a letter to the USOE within 30 days of the termination of this Agreement, attesting to the destruction of any referenced personally identifiable data received from the USOE. No new Agreement will be agreed to by the USOE until the data is returned or destroyed as set forth herein.
10. Unless the data is returned to the USOE's specifications, the Navajo Nation shall maintain records that document and verify the destruction of the data provided by the USOE under this Agreement.

11. The Navajo Nation agrees to adhere to any USOE protocols or directives prohibiting disclosure of data which may not seem personally identifiable, but could permit identification of students if the data were grouped in certain ways. Data may only be used as directed by the USOE and in an aggregated or other manner consistent with generally accepted statistical principles that do not permit identification of individual students.
12. The Navajo Nation may use the student data in the following ways:
 - a. Data may be used to perform descriptive statistical analyses with a variety of predictors of struggling students.
 - b. Data may align at-risk predictors such as free/reduced lunch status, ELL eligibility and sporadic school attendance with K-3 reading scores. The USOE will not provide data about at-risk predictors under this Agreement.
13. Subject to the agreed-upon and limited use of requested data provided and only for the purposes asserted in this Agreement, there shall be no further disclosure by the Navajo Nation of any of the information provided by the USOE; this would constitute a redisclosure of information. Under the applicable federal FERPA regulation, that is, 34 CFR 99.33, redisclosure is only permitted upon obtaining prior consent of the parent or eligible student for release of the personally identifiable information.
14. Under no circumstance does the Navajo Nation become owners, proprietors or custodians of any data or personally identifiable information provided by the USOE under the terms of this Agreement.

IV. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings between the USOE and the Navajo Nation concerning the subject matter hereof. No prior Agreement, verbal representations, or understandings shall be valid or enforceable unless embodied in this Agreement.

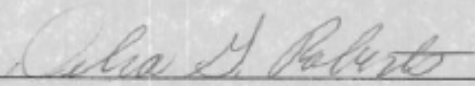
V. TERMINATION OF AGREEMENT

This Agreement may be terminated by the USOE or the Navajo Nation, upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither the USOE nor the Navajo Nation shall negate obligations already incurred or required to be performed prior to the effective date of the termination. The USOE may terminate the Agreement immediately upon confirmation of fraud, negligence or abuse of confidentiality restrictions. This Agreement shall terminate automatically on June 30, 2013, unless extended by a written agreement on a year-to-year basis.

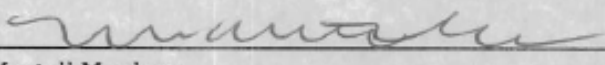
IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

UTAH STATE BOARD OF EDUCATION

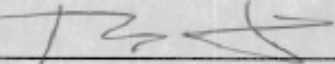
UTAH STATE BOARD OF EDUCATION

By:  Date: 4/12/13
Debra G. Roberts
Chair


UTAH STATE OFFICE OF EDUCATION

By:  Date: 12 April 2013
Martell Menlove
State Superintendent of Public Instruction

NAVAJO NATION

By:  Date: 4/12/2013
Rex Lee Jim
Vice President

DEPARTMENT OF DINÉ EDUCATION

By:  Date: 4/12/13
Johnathan Hale
Chair to the Navajo Board of Education

