

**STATE OF LOUISIANA
DEPARTMENT OF EDUCATION
DATA SHARING AGREEMENT**

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations codified at 34 C.F.R 99. 1 et seq. and La. R.S. 17:3914 make personally identifiable student information in education records confidential and, subject to certain exceptions, prohibits the disclosure of such information to third parties,

WHEREAS, FERPA and its implementing regulations at 34 C.F.R. 99.31 and 99.35, permit the disclosure of personally identifiable student information, to authorized representatives of state educational authorities in connection with an audit or evaluation of federal or state supported education programs pursuant to a written agreement that:

- (1) designates the individual or entity as an authorized representative,
- (2) specifies the student information to be disclosed,
- (3) states the purpose for which the student information is disclosed to the authorized representative,
- (4) provides a description of the audit or evaluation to be performed and of how the student information will be used,
- (5) restricts the authorized representative's use of the student information only for the purposes of conducting the audit or evaluation,
- (6) establishes policies and procedures to protect the student information from further disclosure or other uses, and,
- (7) requires the authorized representative to destroy the student information when it is no longer needed for the audit or evaluation and establishes a timeline for the destruction of the student information.

WHEREAS, pursuant to Louisiana Revised Statute 17:3884, personally-identifiable value-added teacher evaluations and all personally-identifiable documentation related to such evaluations are confidential and cannot be disclosed to third parties.

WHEREAS, pursuant to La. R.S. 24:522, the Louisiana Legislative Auditor (hereinafter referred to as LLA) conduct audits of the Department of Education's (hereinafter referred to as LDOE) processes.

WHEREAS, La. R.S. 24:513, in particular La. R.S. 24:513(I) states that "...the legislative auditor shall comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by law and furnished to the legislative auditor."

WHEREFORE, LDOE hereby appoints LLA as its authorized representative for the purpose of conducting the audits as specified herein pursuant to this Agreement subject to the following terms conditions.

1. Purpose of the Audit

LLA agrees to use any student information (hereinafter referred to as “data”) disclosed to it pursuant to this Agreement solely for the purposes conducting audits in order to provide the legislature with evaluation and audit of the functions and activities of the Louisiana Department of Education.

2. Data

LDOE agrees to provide LLA with student and teacher information as needed to conduct audits of the school and district accountability formula, public charter schools, and the Louisiana Scholarship Program.

3. Confidentiality

This Agreement is entered into by LLA and the LDOE in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA), its administrative regulations, 34 C.F.R. 99.1 et seq, and R.S. 17:3914. LLA hereby acknowledges that all documents, whether in hard copy or electronic form, which include student information contained in or derived from a student’s education records are deemed confidential pursuant to FERPA and R.S. 17:3914 and therefore will not be disclosed by LLA to any third party, absent a lawfully issued subpoena or judicial order. The LLA, to the extent permitted by law, shall provide timely notice to LDOE upon the receipt of any subpoena or court order requiring disclosure of student information or information derived from a student’s education records to a third party.

LLA shall retain the original version of the data at a single location and shall not make a copy or extract of the data available to anyone except those who have a need for the data to perform the audit(s) specified herein. LLA shall maintain the data, whether in hard copy or electronic form, in an area that has limited access only to LLA’s authorized personnel. LLA shall not permit removal of the data from the limited access area. LLA will ensure that access to the data maintained on computer files or databases is controlled by password protection. LLA shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. LLA shall maintain all printouts, discs, or other physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use. LLA shall ensure that all printouts, tabulations and reports are edited for any possible disclosure of student data or any data sets or cells of less than ten (10). LLA shall, under supervision of LDOE, destroy the data, including all copies, whether in electronic or hard copy form, when the audit documentation retention period for the audit as specified herein is completed or this Agreement is terminated, whichever occurs last. LLA shall certify in writing to LDOE, within three business days of the completion of the audit documentation retention period or of the termination of this Agreement that it has destroyed all the data.

4. Restrictions on Use

LLA shall not use the data for any purpose not expressly permitted in this Agreement without the prior written approval of the Louisiana State Superintendent of Education. LLA may publish the results, analysis or other information developed as a result of any audit based on the data provided under this Agreement only in summary or aggregate form, so as to prevent the disclosure of any student information. LLA shall not publish any document, whether in hard copy or electronic form, or otherwise disclose to any third party any student-level data or information in any form whatsoever in data sets and/or cell sizes of less than ten (10) or under any circumstances which would directly or indirectly make a student's identity easily traceable, absent a lawfully issued subpoena or judicial order. The LLA, to the extent permitted by law, shall provide timely notice to LDOE upon the receipt of any subpoena or court order requiring disclosure of student information or information derived from a student's education records to a third party. LLA shall provide the LDOE with a copy of any document containing, incorporating, referencing, or which LLA has prepared in any way utilizing, any data provided to LLA pursuant to this Agreement, whether in hard copy or electronic form, that LLA intends to publish, at least 7 business days prior to its first publication. Advance copies of such documents shall be forwarded to:

Kim Nesmith
Data Governance and Privacy Director
Louisiana Department of Education
1201 N. Third Street
Baton Rouge, LA 70802
225.342.1803
kim.nesmith@la.gov

5. Liaison Officials

LDOE's liaison and the LLA's liaison for the implementation of this Agreement and for receipt of all notices or other communications required or permitted under this Agreement is:

Kim Nesmith
Data Governance and Privacy Director
P.O. Box 94064
Baton Rouge, LA 70804
Kim.Nesmith@la.gov
225-342-1803

Gina Brown
Performance Audit Manager
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397
GBrown@lla.la.gov
225-339-3980

6. Term of Agreement

This Agreement shall begin on October 17, 2016 and shall terminate on October 17, 2019. The effective date of this Agreement may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to said termination date. If either party informs the other that an extension of this Agreement is deemed necessary, an amendment may be prepared by one party for appropriate action by the other party.

7. Security Breach

As used in this Agreement "Security Breach" means any act or omission that compromises either the security, confidentiality or integrity of student information or the physical, technical, administrative or organizational safeguards put in place by LLA that relate to the protection of the security, confidentiality or integrity of PII, or receipt of a complaint in relation to the privacy practices of LLA or a breach or alleged breach of this Agreement relating to such privacy practices.

LLA shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. LLA shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at LLA's expense in accordance with standard industry practices and applicable law.

LLA shall: (i) provide the LDOE with the name and contact information for an employee of the LLA who shall serve as the LDOE's primary security contact and shall be available to assist LDOE twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) immediately notify LDOE in writing of a security breach after LLA becomes aware of it; and

Immediately following LLA's notification to the LDOE of a security breach, LLA and the LDOE shall coordinate with each other to investigate the security breach. LLA agrees to fully cooperate with LDOE in the handling of the matter. LLA will provide any notices to persons or organizations affected by the security breach as required by law.

8. Termination for Improper Disclosure

LDOE may terminate this agreement, upon written notice to the LLA, due to improper disclosure of protected data by the LLA. Upon such termination, all data, including all copies, provided to LLA by LDOE shall be destroyed by LLA immediately and LLA shall certify such in writing to LDOE within three business days of the termination of this Agreement.

9. Assignment of Contract

LLA shall not assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of LDOE.

10. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits between LDOE and LLA arising out of, or related to, this Agreement shall be in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. The laws of the State of Louisiana, without regard to Louisiana law on conflicts of law, shall govern this Agreement.

11. Survival

LLA's obligation under Clauses 1, 3, 4 and 10 shall survive expiration and/or termination of this Agreement. LLA's obligations under Clause 7 shall survive expiration and/or termination of this Agreement until LLA has fully complied with its obligation to destroy data as set forth herein.

THUS DONE AND SIGNED at Baton Rouge, Louisiana, on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 17th day of October, 2016.



John C. White
State Superintendent of Education



Daryl G. Pulpera, CPA, CFE
Louisiana Legislative Auditor