

**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. 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 allow for an educational agency or institution to share personally identifiable student information with contractors performing work on their behalf,

WHEREAS, FERPA and its implementing regulations at 34 C.F.R. 99.31(b)(1) allow for the sharing of personally identifiable student information with organizations under circumstances in which parental permission has been obtained,

WHEREAS, R.S. 17:3914 allows for Local Educational Agency to contract with a private entity for student and other educational services and release personally identifiable student information pursuant to the terms of the contract,

WHEREAS, R.S. 17:3914 allows for the Louisiana Department of Education to share data outside the state of Louisiana for purposes of academic analysis of assessments,

WHEREAS, the Louisiana Department of Education (hereinafter referred to as "State") and ACT, Inc. (hereinafter referred to as "Contractor") have entered into a contractual arrangement, pursuant to which Contractor will provide the services to State and LEAs.

WHEREFORE, the State and Contractor do enter into this Data Sharing Agreement (hereinafter referred to as "Agreement") subject to the terms and conditions as specified herein.

1. Local Educational Agencies Stipulation

The Contractor acknowledges that local educational agencies (LEAs) in Louisiana submit Student data directly to the Contractor. The Contractor hereby agrees, to be bound, vis-à-vis any and all such Louisiana LEAs that unilaterally sign an addendum to this Agreement, by all of the provisions of this Agreement with respect to any Student data provided directly to the Contractor by such Louisiana LEAs.

The LEAs acknowledge that the Contractor will provide a student level extract to Escholar. Escholar will add a Louisiana Secure ID and remove all personally identifiable information prior to sending student level data to the State.

2. Purpose of the Disclosure

Contractor agrees to collect and use any data disclosed to it pursuant to this Agreement, if any, solely for the purposes of providing services to the State and LEAs for Assessments and Services

related to ACT Explore[®], ACT Plan[®], The ACT[®], ACT WorkKeys[®] and ACT RegiSTAR[™] and as permitted by the terms of the agreement between Contractor and the LEA Student data provided directly to Contractor by the student or the student's parent/guardian is not subject to this Agreement.

3. Data

The following Student data will be provided by the Contractor to Escholar, the authorized third party represented of the State, solely for the purposes of appending a Louisiana Secure ID, removing all personally identifiable information, and providing such de-identified data to the State.

4. Confidentiality

This Agreement is entered into by Contractor and the State in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA) and RS 17:3914. Contractor hereby acknowledges that all documents which include information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and RS 17:3914 and therefore will not be disclosed by Contractor to any third party, except as otherwise provided in this Agreement.

Contractor 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 services referenced in the Contract, including Contractor's vendors who have agreed to maintain the confidentiality of the Student data and use it for the specified purposes for which it was provided. Contractor shall maintain the data, whether in hard copy or electronic form, in an area that has limited access only to Contractor's authorized personnel and authorized vendors assisting with facilitating the testing process. Contractor shall not permit removal of the data from the limited access area. Contractor will ensure that access to the data maintained on computer files or databases is controlled by password protection. Contractor shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. Contractor shall maintain all printouts, discs, or other physical products containing Student data in locked cabinets, file drawers, or other secure locations when not in use. Contractor shall destroy the data provided to Contractor, including all copies, whether in electronic or hard copy form, when the services referenced in Contract are completed or this Agreement is terminated, whichever occurs first.

5. Restrictions on Use

Contractor shall not use the Student data for any purpose not expressly permitted in this Agreement. Contractor cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any unauthorized third party any Student data or information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity traceable, except as otherwise required by law. Contractor may also, upon request, disclose to any student his or her own data or disclose to parents or guardians Student data of their sons, daughters, or other students over whom they have parental rights. Contractor may also disclose Student data to government agencies to comply with the law or in response to legal or administrative processes such as subpoenas. Prior to disclosing any Student data in response to a legal or administrative process such as a subpoena, ACT shall provide notice to affected students or their parents or guardians and provide such students/parents/guardians a reasonable opportunity

to object to the disclosure (move to quash). The term “unauthorized third party” for purposes of this Agreement does not include governmental agencies and educational institutions that have authority over schools or students (e.g., school districts); students or their parents/guardians; parties with whom students or their parents/guardians have authorized Contractor to disclose the Student data; or; subcontractors who have agreed in writing to provide substantially similar protections for student data as this Agreement.

6. Contractor Liability

Contractor will be responsible for any liability arising out of the Contractor’s negligent use of any LEA data provided by the LEA pursuant to this Agreement.

7. Ownership

Any data delivered or transmitted to the Contractor by an LEA pursuant to this Agreement is the property of the LEA and shall only be used by the Contractor as allowed in this Agreement and the agreement between Contractor and the LEA and will be retained and destroyed in accordance with those Agreements.

8. Security Audits

Pursuant to La. R.S. 17:3914, the Contractor shall permit the State, LEA, or its authorized representatives to carry out security audit checks pertaining to Contractor’s security and usage of Student data. Contractor shall cooperate with the State and LEA upon 10 days written notice of all security audits. The State, LEA, or its authorized representatives shall have access at all reasonable times on working days during working hours at Contractor’s business premises to Contractor’s employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Contractor and Contractor’s employees pertaining to this Agreement that are necessary for the State, LEA, or its authorized representatives to carry out such security and audit checks. No person or entity will access Student data except as authorized by law.

9. Security Breach

As used in this Contract “Security Breach” means to the extent so defined by applicable law, any act or omission that compromises either the security, confidentiality or integrity of Student data or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of Student Data, or a breach or alleged breach of this Agreement.

Contractor shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent Security Breaches. Contractor shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any Security Breach and prevent any further Security Breach at Contractor’s expense in accordance with standard industry practices and applicable law.

Contractor shall:(i) provide the State and LEA with the name and contact information for an employee of Contractor who shall serve as the State’s and LEA’s primary security contact and

shall be available to assist State and LEA during regular Contractor business hours as a contact in resolving issues and fulfilling obligations associated with a Security Breach and provide a hotline to utilize outside of Contractor's business hours; and (ii) immediately notify State and LEA via email, SMS text, or a phone call once the Contractor becomes aware of a security breach.

Immediately following Contractor's notification to the State and LEA of a Security Breach, Contractor, the State, and the LEA shall coordinate with each other to investigate the Security Breach. Contractor agrees to fully cooperate with State and LEA in their handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing physical access to the facilities and operations affected that are related to this Agreement; and (iii) making available all relevant, non-trade secret records, logs, files, data reporting and other materials related to this Agreement required to comply with applicable law or industry standards and as otherwise required by the State and LEA and (v) providing any notices to persons or organizations affected by the Security Breach as required by law. Contractor shall determine the content and delivery of any required notices and in accordance with R.S. 51:3071.

10. Term of Agreement

This Agreement shall begin on the date this Agreement is executed and shall terminate on June 30, 2021. 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.

11. Termination for Convenience

Either party may terminate this Agreement upon written notice to the other party in the event that other party breaches its obligations under the Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving thirty (30) days written notice to the other. The State shall pay ACT for all Assessments and Services delivered through the date of termination.

12. Assignment of Contract

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

13. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits between the State and Contractor arising out of, or related to, this Agreement shall be filed and adjudicated in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

Exclusive jurisdiction and venue for any and all suits between the LEA and Contractor arising out of, or related to, this Agreement shall be filed and adjudicated in the appropriate Louisiana State District Court, in the Parish in which the LEA is domiciled.

Exclusive jurisdiction and venue for any and all suits among the Contractor, the State, and one or more LEAs arising out of, or related to, this Agreement shall be filed and adjudicated 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.

14. Survival

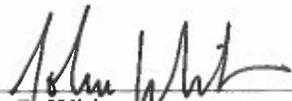
Contractor's obligation under Clauses 2, 4, 5, 6, 7 and 11 shall survive expiration and/or termination of this Agreement. Contractor's obligations under Clauses 8 and 9 shall survive expiration and/or termination of this Agreement until Contractor has fully complied with its obligation to destroy data as set forth herein.

15. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

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 ^{21st} day of May, 2018.



John C. White,
State Superintendent of Education



Marten Roorda
Chief Executive Officer, ACT, Inc.



Thomas J. Goedken
Chief Financial Officer, ACT, Inc.

Amendment to Memorandum of Understanding

Louisiana Department of Education

AND

ACT Inc.

Amendment Provisions

Change Agreement from:

3. Data

The following Student data will be provided by the Contractor to scholar, the authorized third party represented of the State, solely for the purposes of appending a Louisiana Secure ID, removing all personally identifiable information, and providing such de-identified data to the State.

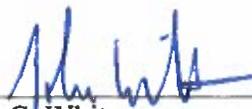
ADD OR CHANGE TO:

3. Data

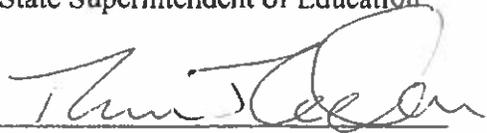
The following Student data will be provided by the Contractor to scholar, the authorized third party representative of the State, solely for the purposes of appending a Louisiana Secure ID, removing all personally identifiable information, and providing such de-identified data to the State.

- First name
- Last name
- Birthday
- Grade
- School and LEA identifiers

This amendment contains or has attached hereto all revised terms and conditions agreed upon by the Contracting parties. **IN WITNESS THEREOF**, this amendment is signed and entered into on this 25th day of June, 2018.



John C. White,
State Superintendent of Education



ACT, Inc.
By: Thomas J. Goedken, CFO