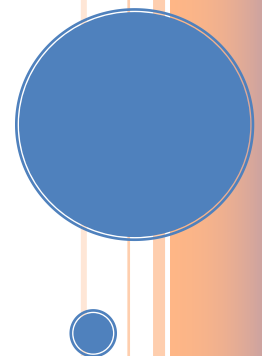


SOUTH DAKOTA DEPARTMENT OF EDUCATION DATA SHARING REVIEW

Last updated May 8, 2015



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PURPOSE

The security and confidentiality of educational data are of paramount concern to the South Dakota Department of Education (DOE). All student data maintained by DOE is protected as required by the Family Educational Rights and Privacy Act (FERPA), South Dakota statute, and DOE policies and procedures.

DOE conducts a periodic review of internal operating procedures and data sharing practices to ensure that these requirements are being met and exceeded. This report summarizes the current procedures employed by DOE with regard to internal and external data sharing and the measures utilized by DOE to ensure student data privacy.

OVERVIEW

In conducting this review, DOE focused on personally identifiable data (PII), as that term is defined in 34 C.F.R. § 99.3. A number of existing regulations at both the federal and state level exist to protect student privacy by requiring the confidentiality of PII. Generally, FERPA requires written consent from parents or “eligible students” (students who are at least 18 years of age or attending a postsecondary institution) in order to release PII from education records. In the absence of the written consent, FERPA permits an educational agency or institution to disclose PII from an education record of a student if the disclosure meets one or more of the conditions outlined in 20 U.S.C. § 1232g(b) and (h) – (j) and 34 CFR § 99.31.

Prior to sharing PII for purposes of educational studies or for the audit and evaluation of programs, DOE enters into a written agreement with the receiving party in order to ensure they are meeting required security and confidentiality standards. Exhibits A and B are two examples of these written agreements, although each agreement may be unique in order to address the specific requirements related to the type of data being shared. The table below comprises the current data sharing agreements DOE has in place.

Table of 3rd party authorized representatives and organizations conducting studies on behalf of DOE

Title		Purpose	Start date	End date
Otis Educational Systems	2012C-457, et al.	State longitudinal data system	12/01/11	12/31/16
Infinite Campus	2015C-002, et al.	Student information system	07/01/06	07/01/18
WIDA	2015A-048, et al.	English Language Learner assessments	05/01/08	07/01/15
Questar	2015C-195	Science Testing	09/01/14	08/31/17
American Institutes for Research	2014A-496, 2015C-229	SBAC Pilot Testing, Ongoing ELA/Math Testing	10/21/13	08/31/17
Westat, et al.	2015A-234, et al.	NAEP Assessment	11/01/14	09/01/15
Management Services for Educational Data	2015C-061, et al.	Migrant student information system	01/11/08	07/01/15
Emetric	2015C-121, et al.	South Dakota Assessment Portal	07/01/08	08/31/17
CTB/McGraw-Hill	2014A-490	SBAC Pilot Testing	10/21/13	12/31/14
Black Hills State University	2014A-318, et al.	Special Education technical assistance	04/01/07	12/31/16
Kerri Whipple	2014A-360, et al.	Special Education technical assistance	09/29/13	07/01/15
Marzano Research Laboratory, et al.	2014A-341	Student growth reports	11/01/13	12/31/14
Educational Testing Service	2014A-311	SBAC Pilot Testing	10/21/13	12/31/14
Anaca	2014C-052	Career Cruising	09/01/13	08/31/18
Department of Legislative Audit	2014A-554	State Audit (FY2014)	04/11/14	
Walsh Taylor	2015C-135	Monitor state IDEA data	07/01/14	07/01/15
East Dakota Coop	2015C-075	SDMyLife technical assistance	07/01/14	07/01/15
Birth to Three Consultants	2015C-064, et al	Birth to Three service coordination	07/01/14	06/30/15
State Performance Plan Consultants	2015C-054, et al	State Performance Plan technical assistance	07/01/14	07/01/15
Educational Research & Training	2015C-028	Migrant program evaluation	07/01/14	07/01/15
Mary Bleeker	2015C-025	Migrant identification and recruitment	07/01/14	07/01/15
Teachscape	2014C-040, 2015C-024	Teacher evaluation and support system	07/01/13	07/01/17

DEPARTMENT TRAINING AND CONFIDENTIALITY

DOE receives PII from students' education records from local education agencies and schools only for the calculation of funding for public education, the determination of student academic progress, state and federal reporting requirements, or other duties prescribed to a school district, the department, or the state board of education by law. This information is only available to employees whose job duties require them to have access to the information. All DOE employees understand the need to maintain the confidentiality of these records and have signed the confidentiality agreement included as Exhibit C.

On September 25, 2013, DOE hosted a FERPA training for employees conducted by the United States Department of Education. In addition, security training is made available to all DOE employees upon hire. This training addresses a number of areas that relate to student data privacy and security including: Email and Messaging, Social Networking, Mobile Devices, Passwords, Encryption, Data Security, Wi-Fi Security, Working Remotely, Physical Security, FERPA, Cloud, Social Security Numbers, Federal PII, and Privacy.

DATA REQUESTS FROM EXTERNAL PARTIES

All requests for data from outside parties are handled by DOE's Data Management Office. Data is only shared with external parties if all the following conditions are met:

- (1) The research aligns with DOE's goals and objectives and approval of the research is obtained by the Secretary of the Department;
- (2) Researchers must complete the Data Request Form;
- (3) Researchers must provide verification of their approval under an Institutional Review Board (IRB);
- (4) The conditions in FERPA regulation 34 CFR 99.31(a) (6) are met;
- (5) A Data Sharing Agreement is signed to ensure compliance with FERPA regulations, National School Lunch Requirements and DOE policies;
- (6) Researcher agrees to return or destroy education records at completion of research use; and
- (7) Researcher understands associated penalties for violation of data privacy, use or re-disclosure.

The Data Request form is attached as Exhibit D. Further information on how DOE handles data requests can be found in the Data Management Office's Data Access Policy.

EXHIBIT A – DATA SHARING AGREEMENT [SAMPLE]

Agreement Number _____

DATA SHARING AGREEMENT BETWEEN THE STATE OF SOUTH DAKOTA DEPARTMENT OF EDUCATION AND _____

1. This Data Sharing Agreement (“Agreement”) is made by and between _____ (“Consultant”), an _____ that provides _____, and the Division of _____, South Dakota Department of Education (“State”).

2. The terms of this Agreement shall commence on _____ and end on _____. This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

3. For purposes of the Family Educational Rights and Privacy Act (“FERPA”), Consultant is [an authorized representative of the State for purposes of compliance with federal legal requirements of Federal or State supported education programs] and [an organization conducting studies for, or on behalf of, the State] pursuant to 20 U.S.C. § 1232g(b)(1)(C) and (F) and 34 C.F.R. § 99.31(a)(3) and (6). Consultant shall also be considered a “school official” with legitimate educational interests pursuant to 20 U.S.C. 1232g(b)(1)(A) and 34 C.F.R. 99.31(a)(1)(i)(B). Consultant and the State shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share student or parent information in a manner not allowed by state or federal law or regulation.

4. “Confidential Information” shall include any personally identifiable student information, as that term is defined 34 C.F.R. § 99.3.

5. “Disclose” or “disclosure” means to permit access to or the release, transfer, or other communication of Confidential Information contained in 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.

6. The State may disclose Confidential Information to Consultant for the purpose of conducting a study on behalf of the State in order to develop, validate, or administer predictive tests and for purposes of the audit and evaluation of, and compliance with federal legal requirements of, Federal or State supported education programs as described in paragraph 9. Further disclosure by Consultant of any Confidential Information released to Consultant by the State is prohibited by this Agreement and shall be grounds for immediate termination as referenced in paragraph 18.

7. Consultant shall not: (i) disclose any Confidential Information to any unauthorized third person; (ii) make any use of Confidential Information except to perform its obligations under this Agreement; or (iii) make Confidential Information available to any of its employees, officers, or agents except those who have agreed to and signed this Agreement. The term “unauthorized third person” for purposes of this Agreement does not include employees, officers, or agents of the State of South Dakota who are authorized to have access to the Confidential Information.

8. The types of Confidential Information which may be necessary to disclose to Consultant under this Agreement may include the following: [list all data elements to be shared] No other personally identifiable student information will be disclosed to Consultant.

9. Consultant agrees to use Confidential Information provided by the State only for the purpose of _____.

10. Consultant shall not conduct the study in a manner that permits personal identification of parents or students by anyone other than representatives of Consultant with legitimate interests.

11. Consultant understands that the Confidential Information is protected under state and federal law and agrees to immediately notify the State if any of the Confidential Information is disclosed, either intentionally or inadvertently.

12. Consultant agrees to protect Confidential Information in such a manner that it will be disclosed only to Consultant personnel whose duties under this Agreement specifically require them to have access to the Confidential Information.

13. Consultant and the State shall identify at least one authorized representative or data custodian from their respective agencies who shall be responsible for processing and responding to data requests from the other party.

Consultant data custodian:

State data custodian:

Name: _____

Name: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

14. Upon request of the State, Consultant shall agree to permit the State to review policies, procedures, and systems governing the confidentiality of the data and shall provide written assurances to the State regarding the use of Confidential Data under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the Confidential Information and that there has been no further Disclosure of the Confidential Information.

15. All Consultant employees, officers, and agents with access to the Confidential Information must acknowledge that they have received and will abide by the provisions of this Agreement by signing the certification included herein. Consultant agrees to remove any person from performing work that has or is suspected to have violated the terms of this Agreement. All persons receiving confidential information of Consultant or State Proprietary Information must acknowledge in writing that they have received and will abide by the provisions of this Confidentiality Agreement by signing the certification included at the end of this Agreement.

16. By disclosing Confidential Information to Consultant, the State is in no way assigning ownership of the Confidential Information to Consultant. Consultant shall destroy or return to the State all Confidential Information in its possession, custody, or control, including all copies, before [date of termination or sooner] or upon earlier termination of this Agreement, whichever is first. If this Agreement is terminated for cause, Consultant shall destroy or return to the State all Confidential Information upon notice of termination. Upon request of the State, Consultant will provide the State with affidavits to this effect.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

18. Violation of this Agreement by Consultant is cause for immediate termination and could subject the violator to criminal prosecution in accordance with state law. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this Agreement, not and hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

EXHIBIT B – CONFIDENTIALITY EXHIBIT [SAMPLE]

STATE OF SOUTH DAKOTA

CONSULTANT CONTRACT 2015C-**XXX**

CONFIDENTIALITY **EXHIBIT**

[SAMPLE]

1. The State agrees not to permit unauthorized access to, and to take reasonable steps to protect, the confidentiality of the Consultant's information, marked "confidential," "proprietary," or with a similar legend indicating its sensitive nature. The State agrees to treat as confidential information all Consultant techniques, processes, methods, and know-how observed at the State's facilities. Except as otherwise provided in this Agreement, the State acknowledges that all processes and materials used or furnished by Consultant pursuant to this Agreement have been developed at great expense to Consultant, contain trade secrets of Consultant, are the sole property of Consultant and shall be kept confidential. These obligations of the State shall not apply to any portion of the confidential information: (i) which was rightfully known or becomes rightfully known to the State without confidential restrictions from a source other than the Consultant; (ii) which was or becomes publicly available or a matter of public knowledge generally, through no fault of the State; (iii) which is approved by the Consultant, in writing, for disclosure without restrictions; (iv) which is independently developed by the State; (v) which is generalized know-how or skills; or (vi) which the State is legally compelled to disclose, provided that the State has given the Consultant reasonable notice and opportunity to contest such compulsive disclosure, and the Consultant requests that the information be treated as confidential. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with open records or open meetings laws. Consultant acknowledges that this Agreement, including all exhibits, is an open record under South Dakota law. SDCL §§ 1-27-1.5, 1-27-1.6, and 5-18D-20.

2. For purposes of this Agreement, "State Proprietary Information" shall include all information disclosed to Consultant by the State or its End Users. "End User(s)" shall include employees, faculty, staff, students, and parents affiliated with the State or Districts and thereby authorized to use the service as herein provided. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents, or subcontractors except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's

information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Consultant agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

State Proprietary Information shall not include information that: (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed by Consultant with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; or (v) becomes known to Consultant without restriction from a source not connected to the State or its End Users.

State's Proprietary Information shall include but not be limited to: (i) names, social security numbers, employer numbers, addresses, and all other data about applicants, employers or other clients to whom the State provides services of any kind; and (ii) personally identifiable student information as defined in 34 C.F.R. § 99.3. Consultant understands that this information is confidential and protected under state and federal law and agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

3. For purposes of the Family Educational Rights and Privacy Act ("FERPA"), State designates Consultant an "authorized representative" pursuant to 20 U.S.C. 1232g(b)(1)(C) and 34 C.F.R. 99.31(a)(3). Consultant shall also be considered a "school official" with legitimate educational interests pursuant to 20 U.S.C. 1232g(b)(1)(A) and 34 C.F.R. 99.31(a)(1)(i)(B). Consultant and the State shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share personally identifiable student information in a manner not allowed by state or federal law or regulation.

The types of personally identifiable information which may be necessary to disclose to Recipient under this Agreement may include Individual Family Service Plans comprising: Student Name, Date of Birth, Gender, Race, Ethnicity, Address, Therapy Plan, Medical Information, Medicaid Information, Resident School, Parents' Information, Family Considerations, Summary of Child's Present Levels of Performance, Family's Desired Results or Outcomes, and Early Intervention Services. No other personally identifiable student information will be disclosed to Recipient under this Agreement.

4. Any State Proprietary Information disclosed to Consultant will further the legitimate educational interests of the State and Districts by assisting the State with evaluations and reports for submission to the U.S. Department of Migrant Education. State Proprietary Information will be used only as necessary to: (a) further these legitimate educational

interests; (b) carry out an audit or evaluation of Federal- or State-supported education programs; or (c) enforce or comply with legal requirements that relate to those programs. By disclosing this information to Consultant, the State is in no way assigning ownership of this information to Consultant.

5. For purposes of this Agreement, "disclose" or "disclosure" means to permit access to or the release, transfer, or other communication of State Proprietary Information contained in 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. Consultant may only use State Proprietary Information for purposes of fulfilling its duties under this Agreement. Consultant will abide by the security standards of this Agreement to protect this information in such a manner that it will be disclosed only to Consultant staff whose duties under this Agreement specifically require them to have access to this information. Under no circumstances shall Consultant disclose State Proprietary Information to any other person. Under no circumstances shall Consultant disclose any other information to any other person which would allow individual students to be directly or indirectly identified.

6. Consultant will return or destroy all State Proprietary Information, in any form, by July 1, 2015 or upon the earlier termination of its duties under this Agreement. Consultant will provide the State with affidavits to this effect upon request of the State.

7. All Consultant employees, officers, and agents with access to the State Proprietary Information must acknowledge that they are aware of and will abide by the provisions of this Confidentiality Agreement. Consultant agrees to remove any person from performing work who has, or is suspected to have, violated the terms of this Confidentiality Agreement. All persons receiving confidential information of Consultant or State Proprietary Information must acknowledge in writing that they have received and will abide by the provisions of this Confidentiality Agreement by signing the certification included as Paragraph 11.

8. The parties will enforce the terms of this Confidentiality Agreement to its fullest extent. The parties agree to remove any person from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Agreement.

9. Violation of this Confidentiality Agreement is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this Agreement, not and hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

10. Neither this Confidentiality Agreement, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Consultant or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.

EXHIBIT C – EMPLOYEE CONFIDENTIALITY AGREEMENT [SAMPLE]

Employee Confidentiality Agreement Regarding Student Data

South Dakota Department of Education

I, _____ agree to safeguard and maintain strict confidentiality regarding any student data received by or accessible to me as an employee of the South Dakota Department of Education. I acknowledge that personally identifiable information, as that term is defined by 34 C.F.R. § 99.3, is confidential and that I am prohibited from further disclosing that information unless disclosure is specifically authorized by the Family Educational Rights and Privacy Act, the Individuals With Disabilities Education Act, the National School Lunch Act, and all other applicable state or federal laws. Unauthorized disclosure of any student data could result in termination of my employment and other civil and criminal penalties. This Confidentiality Agreement amends and supersedes all previous non-disclosure and confidentiality agreements regarding student data signed by me as an employee of the South Dakota Department of Education.

Signature of Employee: _____

Division: _____

Date: _____

EXHIBIT D – DATA REQUEST FORM



800 Governors Drive
 Pierre, SD 57501-2291
 T 605.773.3134
 F 605.773.6139
 www.doe.sd.gov

GENERAL DATA REQUEST FORM

Please email the completed form to

The data you are looking for may already be available on the DOE website. Please review the data at the following URLs prior to submitting this request for data. <http://doe.sd.gov/ofm/fallenroll.asp>; <http://doe.sd.gov/ofm/statdigest.asp> and <http://doe.sd.gov/reportcard/index.aspx>.

Requestor's Name:		Dept/Company:	
Phone:		Email:	
Date Requested:		Date Needed: Note – ASAP is not an acceptable response. It can take 30-45 days to receive your data request. Please plan accordingly.	
Reason for the Data Request and what it will be used for:			
*Be specific (Ex – needed for federal/state reporting purposes, legislative request, research purposes, etc)			
<input type="checkbox"/> This is an informal information request		<input type="checkbox"/> I will publish or share this data with the public	
Frequency of Request: <input type="checkbox"/> One Time Request <input type="checkbox"/> Other, describe frequency:			
Format: <input type="checkbox"/> Excel <input type="checkbox"/> PDF <input type="checkbox"/> Other:		<input type="checkbox"/> Sort data by:	
School Year(s) needed:		Do you want the data pulled as of a certain date?	
		*Be specific (Ex - Need 3 rd graders enrolled as of April 17 th)	
		<input type="checkbox"/> Current production data (changes daily)	
		<input type="checkbox"/> Specific date	
Level of Aggregation		District Type: *Be specific (Ex – Public, Non-Public, BIA, etc) OR Specific Districts needed:	
<input type="checkbox"/> State Level Data <input type="checkbox"/> District Level Data <input type="checkbox"/> School Level Data			
		School Type: *Be specific (Ex – Elem., Jr. High, Home School, etc) or Specific Schools needed:	

Student Data Request

*Please select the appropriate student data elements needed below.

Duplicate Student Count OK (Ex – Count kids who have transferred)

Do Not Duplicate Student Count

Race/Ethnicity, please specify if wanting just certain race/ethnicity categories:

Gender

Grade

Age

Enrollment Start Date

Enrollment End Date

Enrollment Exit Code

Resident District

Attending District

ELL (English Language Learner)

Free/Reduced Lunch

Special Education Data:

Disability, please specify:

Special Ed Category, please specify:

On Child Count Date Other Date, please specify:

Special Ed Start Date

Additional Data Elements Needed:

(If you need data elements not listed above), please specify:

Teacher/Staff/Administrator Data Request

*Please select the appropriate data elements needed below.

Staff Type:

Certified Not Certified Non-Authorized (Has certificate but not authorized for assignment)

Position Type:

Administrators Teachers School Service Specialists

Other School Personnel, please specify:

Assignment Codes:

Class Assignment, please specify:

Assignment Codes can be found at:
<http://doe.sd.gov/ofm/prf/index.asp>

Assignment Category:

CTE Language Arts Math Science Social Science

Music Fine Arts Self Contained PE Health Religion

Special Ed (Non-Core) ESL (Non-Core) World Language

Military Miscellaneous Non-Credit

Number of Staff:

Based on Full Time Equivalency by Assignment

Based on Full Time Equivalency by Total FTE

Headcount

Salary:

Total Salary Instructional Salary Admin/School Service Specialist Salary Salary based on Assignment

Categories:

Age Gender Instructional Experience

Admin/School Service Specialist Experience

Provide a detailed explanation of the data you are wanting with this request for data

Note: Minimum N-Size = 10. All cells with less than 10 students will be suppressed to protect student privacy.

Pursuant to SDCL Chapter 1-27, if there are costs involved in the fulfillment of your above request for data, the Department of Education will provide you with a time/cost estimate prior to moving forward with the data request.