

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Say Yes To Education, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("Data Provider"), and Say Yes to Education, Inc., a nonstock corporation organized under the laws of New York ("Research Organization") describes the research project proposed by Research Organization, and the means to be used by Research Organization to ensure the confidentiality and security of information and data exchanged between Data Provider and Research Organization.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of November 30, 2017 and will terminate November 30, 2018 unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. **SCOPE OF WORK/PROJECT DESCRIPTION** – The use of data received under this Agreement is limited to the purpose and scope described in a document attached to this Agreement as Exhibit A. Only data elements included in Exhibit A will be provided to Research Organization under this Agreement.
2. Data Provider and Research Organization agree that Research Organization is an organization to which Data Provider can disclose, upon written request, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "studies exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. Part 99 (together, "FERPA"), because the disclosure is to conduct studies for, or on behalf of, Data Provider to: develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.
3. Data Provider shall disclose to Research Organization, upon written request, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "studies exception" of FERPA, 34 C.F.R. 99.31 (a)(6), when the disclosure is to conduct studies for, or on behalf of, Data Provider to: develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. The confidential data including student and non-student information to be disclosed is described in **Exhibit A**, and for no other purpose. Research Organization shall use personally identifiable information from education records and other records in

order to perform the studies described in Exhibit A. The description of the studies, as included in Exhibit A, shall include the purpose and scope of the studies, the duration of the studies, a specific description of the methodology of disclosure and an explanation as to the need for confidential data to perform these studies. Research Organization shall notify Data Provider and Data Provider shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the studies or any changes to the scope, purpose or duration of the studies themselves. Any agreed upon changes to the data disclosed or to the studies shall be reduced to writing and included in a modified version of Exhibit A that shall be mutually agreed by Research Organization and Data Provider pursuant to Section J. All references in this Agreement to any use(s) or application(s) of Exhibit A shall be deemed to refer to the content of Exhibit A as it has been so modified at the time of such use(s) or application(s).

4. Research Organization and Data Provider shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Research Organization shall confirm the transfer of confidential data and notify Data Provider as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Research Organization to Data Provider.

C. CONSTRAINTS ON USE OF DATA

1. Research Organization agrees that the research shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of Research Organization that have legitimate interests in the information.
2. If Research Organization prepares any reports based upon or derived from any of the data, Research Organization will include in any such report only aggregate data and will not include in any such report any individual data, nor will data be reported in any such report in a manner that permits indirect identification of any individual.
3. Research Organization will not contact any individual or individuals included in any data set without obtaining advance written authorization from Data Provider.
4. Research Organization shall not re-disclose any individual – level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by Data Provider.
5. Research Organization shall use the data only for the purpose described in Exhibit A and for no other purpose. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

In addition to and without limitation of the constraints on the use of data set forth in Section C, Research Organization agrees to the following confidentiality and data security statements:

1. Research Organization acknowledges that the data is confidential data and proprietary to Data Provider, and agrees to protect the data from unauthorized disclosures and to

comply with all applicable Data Provider, Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Privacy Act of 1974, 5 U.S.C. 552a; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; the Kentucky Open Records Act, KRS 61.820 et seq.; and the California Education Code.

2. If the performance of this Agreement involves the transfer by Data Provider to Research Organization of any data regarding any Data Provider student that is subject to FERPA, Research Organization agrees to:
 - a. In all respects comply with all applicable provisions of FERPA.
 - b. Use any such data for no purpose other than the purposes set forth in Exhibit A, and not share any such data with any person or entity other than Research Organization and its employees, contractors and agents, without the prior written approval of Data Provider.
 - c. Require all employees, contractors and agents of Research Organization to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes set forth in Exhibit A.
 - e. Conduct the studies described in Exhibit A in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agent of Research Organization having a legitimate interest in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any published results of the studies described in Exhibit A.
 - f. Destroy or return to Data Provider any such data obtained under this Agreement within forty-five (45) days after the date within it is no longer needed by Research Organization for the purposes of the studies pursuant to Exhibit D.
 - g. If free or reduced price lunch eligibility data (i.e., free or reduced price lunch eligibility data which is the student poverty indicator for most education programs) is to be released to the Researcher, then the Data Provider shall disclose this data to the Research Organization, upon written request utilizing the U.S. Department of Agriculture prototype request and confidentiality agreement, and only upon the Data Provider agreeing in writing that the Research organization has demonstrated that disclosure is allowed by 7 C.F.R. 245.6. A description of any data protected by 7 C.F.R 245.6 which is to be disclosed under this Agreement shall be included in Exhibit A. Any agreed upon changes to the data disclosed or to the studies shall be reduced to writing and included in a

modified version of Exhibit A mutually agreed by Data Provider and Research Organization pursuant to Section B.3.

3. Research Organization shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Research Organization becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Research Organization shall use all reasonable efforts to provide Data Provider with prior written notice before disclosure so that Data Provider may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure Data Provider's compliance with the confidentiality requirements of federal or state law; provided, however, that Research Organization will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Research Organization will only disclose that portion of confidential and otherwise personally identifiable data that Research Organization is legally required to disclose.
4. Research Organization shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data, other than publications permitted under Section D.10 and D.12 of this Agreement.
5. Research Organization shall not use data shared under this Agreement for any purpose other than the purposes set forth in Exhibit A. Nothing in this Agreement shall be construed to authorize Research Organization to have access to additional data from Data Provider that is not included in the scope of Exhibit A (or addenda to Exhibit A mutually agreed by Data Provider and Research Organization pursuant to Section B.3). Research Organization understands that this Agreement does not convey ownership of any data to Research Organization.
6. Research Organization shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to the precautions and protections described in Exhibit C and the following precautions and protections:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;

- d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data sign a confidentiality agreement or nondisclosure statement, attached as **Exhibit B**, and maintain copies of signed confidentiality agreements or nondisclosure statements;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.
7. If Research Organization receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), Research Organization shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
- a. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.

- b. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - c. Research Organization shall not re-disclose, without the prior written consent of Data Provider, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
 - d. Research Organization agrees to cooperate with Data Provider in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Research Organization agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
8. If Research Organization is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates a cloud computing service"), Research Organization agrees that:
- a. Research Organization shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Research Organization shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. With a written agreement for educational research, Research Organization may assist an educational institution to conduct educational research as permitted by FERPA.
 - c. Pursuant to KRS 365.734, Research Organization shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - d. Pursuant to KRS 365.734, Research Organization shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - e. Pursuant to KRS 365.734, Research Organization shall certify in writing to the agency that it will comply with KRS 365.734(2).
 - f. Research Organization shall report all known or suspected breaches of the data, in any format, to Dr. Dena Dossett, Chief, Data Management, Planning and Program Evaluation Division. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of

the incident (e.g. system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.

- g. Research Organization shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement as described in Exhibit D. Research Organization agrees to require all employees, contactors, or agents of any kind using Data Provider data to comply with this provision. Research Organization agrees to document the methods used to destroy the data, and upon request, provide certification to Data Provider on the form attached as Exhibit E that the data has been destroyed.
9. For purposes of this Agreement and ensuring Research Organization's compliance with the terms of this Agreement and all application of the state and Federal laws, Research Organization designates Eugene Chasin from Say Yes To Education, Inc. (or an alternative designee(s) specified in Exhibit D) as the temporary custodian ("Temporary Custodian") of the data that Data Provider shares with Research Organization. Any modifications or additions to the list of Temporary Custodians in Exhibit D shall be reduced to writing and included in a modified version of Exhibit D to be mutually agreed by Data Provider and Research Organization pursuant to Section J. Data Provider will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. Data Provider or its agents may, upon request, review the records Research Organization is required to keep under this Agreement.
10. Research Organization has the right, consistent with scientific standards, to present, publish, or use student results it has gained in the course of its analysis, but only if the publication, presentation, or use does not include personally identifiable information of parents, students, or teachers, and not outside the bounds of the studies described in Exhibit A.
11. Should Research Organization use or collect data for conducting any research study that is not within the scope of the studies described in Exhibit A, Research Organization will separately submit an external research request through Data Provider's online system: <https://assessment.jefferson.kyschools.us/DRMS/>.
12. Should Research Organization present, publish, or use student results it has gained in the course of its analysis, Research Organization shall adhere to the following terms:

- a. Research Organization shall not publish, present, or use reports that include a cell size of less than 10. Reports must mask these cells so that the results are not revealed.
- b. Publications and reports of data and information shared, including preliminary descriptions and draft reports, shall involve only aggregate data and no personally identifiable information or other information that could lead to the identification of any student, parent, or teacher.
- c. No less than fifteen (15) business days prior to public disclosure of its data analysis, Research Organization will provide Data Provider a manuscript or other draft of the proposed public disclosure for Data Provider's review and approval. Within fifteen (15) business days following receipt thereof, Data Provider will notify Research Organization in writing if Data Provider has any objections to the manuscript or other draft based upon the disclosure of any confidential information, the inclusion of inaccurate or incomplete information, or other valid reasons and will specify in such notification the portions of the proposed manuscript or other draft to which Data Provider objects. If Data Provider gives such notification, Data Provider and Research Organization shall, with fifteen (15) business days following receipt thereof, discuss in good faith and attempt to mutually resolve Data Provider's objections. If Data Provider's objections are resolved, Data Provider will notify Research Organization in writing that publication of the manuscript or other draft is approved.
- d. Research Organization shall provide Data Provider, free of charge and within thirty (30) days, a copy of any report that is generated using the data.
- e. Reports or articles based on data obtained from Data Provider under this Agreement must include the following acknowledgment: "This report/article was made possible, in part, by the support of the Jefferson County Public Schools. Opinions contained in this report/article reflect those of the author and do not necessarily reflect those of the Jefferson County Public Schools." Data Provider must be cited as the source of the data in all tables, reports, presentations, and papers.

13. Research Organization acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for Data Provider to immediately terminate this Agreement for mutual breach pursuant to Section H

E. FINANCIAL COSTS OF DATA-SHARING; PAYMENTS

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to Data Provider are costs associated with the compiling of student

data requested under this Agreement and costs associated with the electronic delivery of the student data to Research Organization.

No payments will be made under this Agreement by either party.

F. OBLIGATIONS OF DATA PROVIDER

During the term of this Agreement, Data Provider shall:

1. Prepare and deliver student demographic and academic data as defined in Exhibit A – Data File Description. All items will be keyed to a “proxy” student identifier that is different from the official student ID. The link between the official and proxy IDs will not be disclosed by Data Provider. No personally identifiable information will be provided to Research Organization.
2. After the initial data is provided for the requested student population, Data Provider will not provide supplementary data for additional students.
3. Provide Data Stewardship training for data custodian.

G. LIABILITY

Research Organization agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys’ fees) that may arise from or relate to Research Organization’s intentional or negligent release of personally identifiable student, parent or staff data (“Claims”). Research Organization agrees to hold harmless Data Provider and pay any costs incurred by Data Provider in connection with any Claim. The provisions of this Section G shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party immediately in the event of a material breach of this Agreement by another party.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, the confidential information shall be returned or destroyed within forty-five (45) days after the date within it is no longer needed by Research Organization for the purposes of the studies pursuant to Exhibit D. If

this Agreement terminates at the end of the term described in Section A, Research Organization shall return or destroy all confidential information when it is no longer needed for the study. Such return or destruction shall occur within forty-five (45) days after it is no longer needed for the studies pursuant to Exhibit D.

3. Destruction of the confidential information shall be accomplished by utilizing an approved methods of confidential destruction, including shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. Detailed data destruction plan is provided in **Exhibit D**. Research Organization's Certificate of Data Destruction is provided in **Exhibit E**.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this Agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer or researcher. If new materials are developed during the term of this Agreement, ownership and copyright of such will remain with the developing entity.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

Data Provider reserves the right to review Research Organization's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Exhibit A. Failure of Research Organization to perform in a manner that meets or exceeds the quality standards for Data Provider shall serve as grounds for termination of this Agreement pursuant to Section H.

L. BREACH OF DATA CONFIDENTIALITY

Research Organization acknowledges that the breach of this Agreement or its part may result in irreparable and continuing damage to Data Provider for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Research Organization, Data Provider, in addition to the rights set forth in Section H and any other rights and remedies available to Data Provider at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Research Organization has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), Data Provider may not allow Research Organization access to personally identifiable information from education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or claims in any other courts.

N. 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.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

Data Provider is not an employee, agent, partner or co-venturer of or with Research Organization. Neither Research Organization nor Data Provider shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to by the parties shall constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Research Organization shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of Data Provider, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Say Yes to Education, Inc.
320 Park Avenue, 21st Floor
New York, NY 10022

BY: 

Name: Eugene Chasin

Title: President, Say Yes To Education, Inc.

Date: 11/27/17

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Martin Pollio, Ed.D.

Title: Acting Superintendent, Jefferson County Public Schools

Date: _____