



Memorandum of Agreement: Data Sharing Agreement

Introduction

This document is an agreement between the Board of Education of Marion County, Kentucky (“the Board” or the “District”) and [Insert name] (“Contracting Party” or the “non-affiliated third party”). This agreement governs the personal information that the Contracting Party receives (accesses, collects or maintains) from the District pursuant to the contract or agreement.

- This agreement excludes any data which is freely and publicly available through other sources.
- Under this agreement, the Contracting Party will provide the following services:

- Pursuant to KRS 61.932 and KRS 365.734, the parties to this agreement do hereby agree to the following:

Data Security and Breach Protocols

The Contracting Party that receives Personal Information as defined by and in accordance with Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the “Act”), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

“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:

- a) An account number, 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;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver’s license number, state identification card number or other individual identification number issued by any agency;

Find us on the web: www.marion.kyschools.us Follow us on Twitter: @MCPS_KY Like us on Facebook at: facebook.com/MarionCountyPublicSchools
--

e) A passport number or other identification number issued by the United States government; or

f) 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 the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g.”

As provided in KRS 61.931(5), a “non-affiliated third party” includes any person or entity that has a contract or agreement with the Board of Education of Marion County, Kentucky (the “Board” or the “District”) and receives (accesses, collects or maintains) personal information from the District pursuant to the contract or agreement.

The Contracting Party hereby agrees to cooperate with the District in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The Contracting Party shall notify as soon as possible, but not to exceed seventy-two (72) hours, the District, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the Contracting Party abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The Contracting Party hereby agrees to report to the District, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The Contracting Party hereby agrees that the District may withhold payment(s) owed to the Contracting Party for any violation of the Act’s notification requirements.

The Contracting Party hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the Contracting Party hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the Contracting Party shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the Contracting Party is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the District, becomes the equivalent of a cloud computing service provider, the Contracting Party further hereby agrees that:

- The Contracting Party shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the Contracting Party receives express permission from the student's parent. The Contracting Party shall work with the District to determine the best method of collecting parental permission.
- With a written agreement for educational research, the Contracting Party may assist the District to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the Contracting Party 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.
- Pursuant to KRS 365.734, the Contracting Party shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the Contracting Party shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the District discloses to the Contracting Party any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, et seq.), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 et seq., and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 et seq.), the Contracting Party agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The Contracting Party hereby agrees to report to the District, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The Contracting Party agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's

family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The Contracting Party understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The Contracting Party understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

Mechanism for Data Sharing

The District and the Contracting Party will at the appropriate time agree on a file or data sharing process that will involve the encrypted transfer of the data via the public networks.

Additional obligations of the Contracting Party

The Contracting Party warrants that it will:

- Use this data only for the joint project outlined above.
- While in possession of this data maintain it in a secure, non-public location.
- Comply with all applicable federal and state laws.
- Ensure that the student data will be accessed, used and manipulated **only** by those individuals necessary for the successful implementation of the project.
- Advise all individuals accessing the data on proper procedures for securely maintaining the data.
- Take appropriate technical and organizational measures against the unauthorized or unlawful accessing of the data.
- Securely delete all copies of the student data when they are no longer required. "Securely delete" means that industry standard methods will be taken for the purpose of ensuring that no unauthorized person shall be able to reasonably locate or extract the data after the deletion date.
- Promptly comply with any request from the District to amend, transfer or delete the data or a subset thereof.
- Defend, indemnify, and hold harmless the District its agencies, officers and

employees from any and all claims of any nature, including all costs, expenses, and attorney's fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of the District's sole negligence. The legal defense provided by the Contracting Party to the District under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the District is necessary. The Contracting Party also agrees to defend, indemnify, and hold the District harmless for all costs, expenses, and attorneys' fees finally awarded by a court or that are included in a settlement entered into by the parties. The District agrees to notify the Contracting Party of such a claim within a reasonable time and agrees to cooperate with the Contracting Party in the defense and any related settlement.

- The Contracting Party will have at least five million dollars (\$5,000,000) in insurance coverage for any type of breach described under this agreement, and the Contracting Party shall list the District as an additional insured.

Data Opt Out

The District may provide a mechanism for students, parents or guardians to opt out of any data sharing agreement with any Contracting Party.

Board of Education of Marion County, Kentucky

Contracting party representative

Date

Date