



FLOYD COUNTY BOARD OF EDUCATION
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Steve Slone, Member - District 5

Consent Agenda Item (Action Item): Consider approval of sharing of usage of data collected through the implementation of Math Nation and benchmark, ACT, KSA, and Math Nation data with the Math Nation company, Glen Zollman and Janelle Montroy, research team.

Applicable State or Regulations: Powers and Duties of the Board

Fiscal/Budgetary Impact: No impact or cost to the district.

History/Background: Math Nation is a math resource supplement that is funded through the Kentucky Department of Education. Math Nation has requested district support in sharing math data from the implementation of Math Nation resources along with correlating data from benchmark tests, ACT, KSA, and Math Nation. Any data shared with Math Nation will be protected under FERPA laws, and no individual student names will be shared in any external reporting

Recommended Action: Approve data sharing between Floyd County Schools and Math Nation.

Contact Person(s): Rebecca Morrison, District Assessment Coordinator/Director of District Wide Services

N/A
Principal

Rebecca Morrison
Director

Tonya H. Williams
Superintendent

Date:

DATA SHARING AGREEMENT

This Data Sharing Agreement ("**Agreement**") is entered into by and between

[Party **A**]

("Disclosing Party"), whose current mailing address is

, and

[Party **B**]

("Receiving Party") whose current mailing address is

At times, Disclosing Party and Receiving Party are referred to singularly as "**Party**" and collectively as "**Parties**."

WHEREAS, the Parties have set forth certain relevant definitions on the attached **Exhibit "A"**.

WHEREAS, Receiving Party has agreed to provide Disclosing Party with certain educational or research-oriented services ("**Services**") as more fully described on the attached **Exhibit "B"**.

WHEREAS, in order to provide the **Services**, Receiving Party may receive and Disclosing Party may provide documents or data that are covered by the laws of the United States of America (the "**Federal Laws**").

WHEREAS, the documents and data transferred from Receiving Party and/or accessed by Receiving Party in the performance of the **Services** shall be subject to the laws of the State of

("State", "**State Laws**"), and such additional rules or restrictions as set forth on the attached **Exhibit "E"**;

WHEREAS, this Agreement complies with all relevant State Laws and Federal Laws (collectively, the "**State and Federal Laws**"); and

WHEREAS, the Parties wish to enter into this Agreement to ensure that accessing and/or transferring of data resulting from the performance of the **Services** complies with the requirements of the privacy laws referred to above and to establish implementing procedures and duties.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

Section 1. Background and Purpose

The purpose of this Agreement is to document the rights and obligations of the Parties with respect to the transmission, storage, use, and destruction of certain protected or confidential information with a clear, concise, and comprehensive agreement around key issues related to ethical and legal data sharing. A secondary purpose is to provide transparency for various stakeholders including, but not limited to, parents, educators, administrators, and local school board members. More information regarding the concepts in this Agreement and the benefits and risks of sharing student data is available at www.StudentDataTransparency.com.

Section 2. Term

The term of this Agreement begins upon execution by the last party to sign and ends on either (check only one of the two boxes):

☐ the date of the termination of "**Related Contract**," titled:

which was executed on

, unless terminated earlier by the Parties; or

☐ the specific date of: , or unless terminated earlier by the Parties. The Parties may extend the term of this Agreement by an amendment signed by the Parties.

Section 3. Transfer and Use of Data

Pursuant to this Agreement and in accordance with the State and Federal Laws, Receiving Party will receive from Disclosing Party, via secure data transfer methods, the protected or confidential information set forth in Section 4 below or as more fully described in the attached **Exhibit "D"** (the "**Data**"). Receiving Party

may use such Data only for the purposes of providing the Services and that any data sub-processors or data systems will be held to strict accordance with the terms of this Agreement **and to sub-processors and/or data systems**. The Parties agree and represent that the Data shared under this Agreement is narrowly tailored to meet the applicable exceptions set out in Section 5.03, below. For the purpose of this Agreement, the definitions of "directory information," "education records," and "personally identifiable information" are set out in 34 C.F.R. § 99.3.

Section 4. Data To Be Shared

The Parties agree that Disclosing Party will share with Receiving Party either (check only one of the two boxes):

- ☐ the data set out in **Exhibit "D" Part 1 ("Industry-Standard Data")**, or
- ☐ the data set out in **Exhibit "D" Part 2 ("Additional Data")**

Section 5. Applicable FERPA Provisions

The following FERPA exceptions apply:

- ☐ **Studies Exception:** 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(6). This section of FERPA is meant to allow educational researchers to analyze data and provide results and/or analysis back to the Disclosing Party in order to improve instruction and improve educational outcomes. (If checked, fill out Exhibit C)
- ☐ **School Official or Representative (or Outsourced Services) Exception:** 34 C.F.R. §§ 99.31(a)(1) and 99.7(a)(3)(iii). In which case the following applies "school official", or otherwise qualifies under the "studies exception", under FERPA and has a legitimate educational interest in personally identifiable information from education records because for purposes of this Agreement, Receiving Party: (1) provides a service or function for which the local educational agency ("LEA") would otherwise use employees; (2) is under the direct control of the LEA with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records. A description of Receiving Party's services and qualifications as a "school official" are set forth in **Exhibit "B" ("Services")**.

Section 6. Confidentiality and Data Governance Provisions

The Parties agree to comply with the State and Federal Laws. Each Party agrees to protect with reasonable data security procedures any confidential student information it receives or accesses that could make a student's identity traceable. Each Disclosing Party agrees that the data shall be treated as FERPA-confidential and in accordance with this Agreement regardless of which Party possesses the data. Where applicable, each Party shall comply with such additional privacy and parental consent requirements as set forth in the Children's Online Privacy Protection Act ("COPPA"), at 15 U.S.C. 6501-6506 (16 CFR Part 312). In addition, the Parties shall conduct certain surveys, the collection and use of information for marketing purposes, and certain physical exams in accordance with the relevant provisions of the Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98).

Section 7. Data Studies

For any and all studies to be performed by Receiving Party:

- (a) Receiving Party may use personally identifiable information (PII), which is information that identifies (or could be used to re-identify) an individual, from education records provided by Disclosing Party only to meet the purpose or purposes of the study.
- (b) The Parties agree that Receiving Party may conduct the study in a manner that does not permit the personal identification of parents and students by anyone other than representatives of the organization with legitimate interests in the study.
- (c) Receiving Party understands and agrees that it may not publish any study that contains any PII. Receiving Party agrees to adhere to Privacy Measures when publishing any data or study, in order to protect the privacy and confidentiality of the individuals involved.

(d) Disclosing Party retains an express right to review any data prior to publication by Receiving Party and to verify proper disclosure avoidance techniques have been used.

(e) Receiving Party may allow internal access to PII received in connection with this Agreement only to individuals with a need to know the same and Receiving Party shall take steps to maintain the confidentiality of the PII at all stages of the study, including within the final report, by using appropriate disclosure avoidance techniques.

(f) De-Identified Data: Data that has been de-identified is not considered student data and is not subject to the terms and restrictions in this agreement. Under no circumstances shall Receiving Party attempt to re-identify De-identified Data.

Section 8. Data Ownership

Except as expressly set out in this Agreement, Receiving Party does not own any education record or PII contained therein. The official or representative is authorized to use the record only as set out in this Agreement, or as provided in Related Contract (if applicable).

Section 9. Data Destruction

(a) Receiving Party must return, destroy, or obliterate all education records obtained under this Agreement not later than 60 days after the earlier of the end of the Term, completion of Receiving Party's research or other services, or receipt of a written request by Disclosing Party to destroy the same. This Term may be amended only by a written Agreement that otherwise complies with 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. Part 99. Notwithstanding anything to the contrary, Receiving Party may, with the written consent of Disclosing Party, retain anonymized data received under this Agreement.

(b) Notwithstanding any other term of this or any other Agreement, Disclosing Party retains the right to terminate Receiving Party's access to education records or derivative PII without advance notice as necessary to ensure the security of PII and disclosure of PII in compliance with this Agreement. Furthermore, an authorized representative of Disclosing Party may, upon ten (10) days written notice, inspect Receiving Party's security protocols and arrangements to ensure compliance with this Agreement.

(c) De-Identified Data: Receiving Party's use of De-Identified Data shall survive termination of this Agreement or any request by Disclosing Party to return or destroy PII. De-Identified Data may be used by Receiving Party for those purposes allowed under FERPA and the following purposes: (1) assisting Disclosing Party or other governmental agencies in conducting research and other studies; and (2) research and development of Receiving Party's educational sites, services, or applications, and to demonstrate the effectiveness of the Services. Under no circumstances shall Receiving Party attempt to re-identify De-identified Data.

Section 10. General Data Terms

(a) The Parties each individually and collectively represent that under all terms of this Agreement the disclosure of education records or other Data is for an education purpose and the access is narrowly tailored to permit disclosure of PII and education records or other Data only as essential to carry out the terms of the evaluation, study, project, service, or program.

(b) Receiving Party agrees that it and its employees and authorized representatives who access information pursuant to this Agreement will use the information only for the purpose(s) expressly authorized under this Agreement and the Related Contract (if applicable) and shall not use or disclose the information for any other purpose except by written amendment to this Agreement. This Agreement further expressly prohibits "unauthorized look-ups."

(c) The Parties each individually and collectively represent that Receiving Party will allow access to PII only to those individuals employed by Receiving Party with a need to know.

(d) Receiving Party represents that it will ensure that each individual with whom it shares the PII shall be bound by confidentiality provisions no less strict than the confidentiality provisions in this Agreement.

(e) Notwithstanding anything to the contrary Receiving Party may disclose or share information with a third-party who has also entered into a data sharing agreement with Disclosing Party that is the same or substantially the same as this Agreement.

(f) Receiving Party shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically-maintained or transmitted data received from, or on behalf of Disclosing Party ("**Security Measures**"). Receiving Party shall comply with all State and Federal Laws related to a data breach involving personal information.

Section 11. Breach

Any breach of this Agreement leading to unlawful disclosure of education records, PII, or other Data that is covered under State and Federal Laws constitutes a material breach of this Agreement and constitutes cause for immediate termination by Disclosing Party.

Section 12. Termination

Either party may terminate this Agreement without cause upon fifteen (15) days written notice. Any duty of confidentiality as to information protected by State and Federal Laws at any time subject to the Agreement shall survive this Agreement notwithstanding termination of this Agreement.

Section 13. Data Official

Receiving Party designates the following individual as the Data Compliance Official and Data Custodian for the purpose of this Agreement, which individual may be updated at any time upon notice of Receiving Party to Disclosing Party:

Name: _____

Title: _____

Signature: _____

Section 14. Miscellaneous Contract Terms

14.1 This Agreement, including and together with any exhibits, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. Nothing in this Agreement shall be construed or interpreted to allow either party to maintain, use, disclose, or otherwise share PII in a manner or not allowed by the State and Federal Laws.

14.2 If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.3 No amendment to, or modification of, this Agreement is effective unless it is in writing and signed by each Party. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.4 This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assignees. Neither Party may assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. Notwithstanding the

foregoing, either party may assign this Agreement, without the other party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchase of all or substantially all of such party's assets or to any successor by way of merger, consolidation or similar transaction.

14.5 If a conflict exists between State and Federal Laws, and this Agreement, State and Federal Laws shall govern. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and state courts located in the State.

14.6 This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of the State without giving effect to the conflict of laws provisions thereof.

14.7 This Agreement may be executed electronically and in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

14.8 Any notice, communication, request, approval, or consent that may be given or that is required to be given under the terms of this Agreement shall be in writing, and shall be sent certified mail, return receipt requested, to the address for each party shown on the face of this agreement. Notice given by or to the attorney for either party shall be as effective as if given by or to that party

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

Disclosing Party

Signature: _____

Name: _____

Title: _____

Receiving Party

Signature: _____

Name: _____

Title: _____

Exhibit "A" – Definitions

For purposes of this Agreement, the Parties agree that capitalized terms shall have the following meanings.

"Federal Laws"

Several relevant federal statutes and their implementing regulations including, but not limited to, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), at 15 U.S.C. 6501-6506 (16 CFR Part 312), and Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98).

"Privacy Measures"

When publishing tables, cell suppression and other methods of disclosure avoidance can be used to ensure students cannot be identified through small numbers displayed in table cells. Receiving Party must mask any cells containing fewer than five students and may be required to mask further to avoid any risk that data could be paired with other available data to identify students. Receiving Party agrees to mask data in such a way to avoid this risk.

"Security Measures"

Receiving Party shall develop and implement procedures, and systems to ensure that all confidential student and staff data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data. The procedures and systems developed and implemented to process, store, or transmit data provided under this Agreement shall be designed to ensure that any and all disclosures of confidential student and staff data comply with all provisions of federal (HIPAA, FERPA, E-Government, etc.) and State Laws relating to the privacy rights of students and staff as such laws are applicable to the parties to this Agreement. These measures will be extended by contract to all subcontractors used by Receiving Party who have access to the data provided under this Agreement.

"De-identified Data"

Data where any and all Personally Identifiable Information (PII) has been removed. The process of de-identifying data protects the privacy of students.

Typically, a computer system will store a student's name, student ID number, birthdate, etc. along with their attendance data, assessment scores, and/or usage of a software program. In that situation, a researcher or other party knows exactly which data goes with which student, and the students are "identifiable." De-identified Data, on the other hand, is data where student names, student ID numbers, dates of birth, etc. have all been removed such that no one knows who the students are when analyzing the data. According to the U.S. Department of Education, "De-identified data may be shared without the consent required by FERPA (34 CFR §99.30) with any party for any purpose, including parents, general public, and researchers (34 CFR §99.31(b)(1))."

For further explanation and examples of how and why these and other terms are used, please visit www.StudentDataTransparency.com

Exhibit "B" – Services

Describe the services to be provided pursuant to this Agreement. If attaching a flier or other information, please write 'see attached' on the lines below.

Exhibit "C" - Studies Exception

If you selected "Studies Exception" in Section 4, complete the following (or attach study documentation):

a. Purpose of the study to be conducted:

b. Scope of the proposed study:

c. Duration of the study: _____

d. Information to be disclosed: (see Exhibit D)

Exhibit "D" - Data

Part 1: Industry-Standard Data

- Student name and student ID
- Teacher name and unique teacher ID
- School name and unique school ID
- Course name and unique course ID
- Student grade level
- Demographic data including gender, date of birth, ethnicity, English proficiency status, special education and disability status
- Achievement measures including course grades, national assessment test scores, and state achievement test scores
- Other achievement measures not previously listed which are of interest to stakeholders
- (Approximate) date of administration for each achievement measure provided

Part 2: Additional Data (if applicable)

Part 3: Excluded Data (if applicable):

Notwithstanding the foregoing, the following information will not be transferred to Receiving Party:

For explanation and examples of how and why this data is used, please visit www.StudentDataTransparency.com

Exhibit "E" - Additional Rules or Restrictions (if applicable)

/end

Helpful Sources (for website):

<https://studentprivacy.ed.gov/faq/who-%E2%80%9Cschool-official%E2%80%9D-under-ferpa>

[https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20Exceptions_HANDOU
T_portrait_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20Exceptions_HANDOUT_portrait_0.pdf)

<https://studentprivacy.ed.gov/resources/guidance-reasonable-methods-and-written-agreements>

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms_0.pdf