

**Memorandum of Understanding**  
**THE INSTITUTE OF EDUCATION SCIENCES**  
**U.S. DEPARTMENT OF EDUCATION**  
**and**

THE \_\_\_\_\_

SUBJECT: Access by the \_\_\_\_\_ to individually identifiable information acquired by the Institute of Education Sciences (IES) of the United States Department of Education.

IES has collected and maintains individually identifiable information, the confidentiality of which is protected by Section 183 of the Education Sciences Reform Act of 2002 (ESRA) (PL 107-279) (20 U.S.C. 9573), and, as applicable, by the Privacy Act of 1974 (5 U.S.C. 552a); the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g); and Title V, subtitle A of the E-Government Act of 2002 (CIPSEA) (PL 107-347) (44 U.S.C. 3501 note); and wishes to make the data available for statistical, research or evaluation purposes to requestors qualified and capable of research and analysis consistent with the statistical, research or evaluation purposes for which the data were provided or are maintained, but only if the data are used and protected in accordance with the terms and conditions stated in this Memorandum of Understanding (MOU), upon receipt of such assurance of qualification and capability.

The \_\_\_\_\_ (hereinafter referred to as the “Agency”) and the Institute of Education Sciences (IES) agree that:

## I. INFORMATION SUBJECT TO THIS MOU

- A. All data containing individually identifiable information about students, their families and their schools maintained by IES under Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279) and Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347) that are provided to the Agency and all information derived from those data, and all data resulting from merges, matches, or other uses of the data provided by IES with other data, are subject to this MOU and are referred to in this MOU as “subject data.”
- B. Subject data under this MOU may be in the form of CD-ROMs, electronic data or hard copy, etc. The Agency may only use the subject data in a manner and for a purpose consistent with:
1. The statistical, research or evaluation purpose for which the data are maintained. All subject data that include individually identifiable information are protected under the Privacy Act, ESRA, and/or CIPSEA and may be used only for statistical, research, or evaluation purposes consistent with purposes for which the data were collected and /or are maintained. The Agency’s description of the research and analysis which is planned is attached and made a part of this MOU (Attachment No. 1),
  2. Subject data that includes personally identifiable information from students’ education records are protected under FERPA and may only be used for the evaluation of Federally-supported education programs or for conducting studies, for, or on behalf of, educational agencies or institutions to improve instruction. (Agency’s description of the evaluation or study which is planned is attached and made a part of this MOU - Attachment No. 1.);
  3. The limitations imposed under the provisions of this MOU, and
  4. Section 183 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9573); and, as applicable, Title V, subtitle A of the E-Government Act of 2002 (44 U.S.C. 3501 note); the Privacy Act of 1974 (5 U.S.C. 552a), and

the Family Educational Rights Protection Act (20 U.S.C. 1232g) which are attached to and made a part of this MOU (Attachment No. 2.)

## **II. INDIVIDUALS WHO MAY HAVE ACCESS TO SUBJECT DATA**

- A.** There are four categories of individuals that the Agency may authorize to have access to subject data. The four categories of individuals are as follows:
1. The Principal Project Officer (PPO) is the most senior officer in charge of the day-to-day operations involving the use of subject data and is responsible for liaison with IES.
  2. Professional/Technical staff (P/T) conduct the research for which this MOU was issued.
  3. Support staff includes secretaries, typists, computer technicians, messengers, etc. The Agency may disclose subject data to support staff who come in contact with the subject data in course of their duties only to the extent necessary to support the research under this MOU.
  4. The System Security Officer (SSO) is responsible for maintaining the day-to-day security of the licensed data, including the implementation, maintenance, and periodic update of security procedures to protect the data in strict compliance with statutory and regulatory requirements.
- B.** The Agency may disclose subject data to only to only seven (7) staff, including the PPO, SSO, P/TS, and support staff, unless IES provides written authorization for a larger number of P/TS.

## **III. LIMITATIONS ON DISCLOSURE**

- A.** The Agency shall not use or disclose subject data for any administrative purposes nor may the subject data be applied in any manner to change the status, condition, or public perception of any individual regarding whom subject data is maintained. (Note: Federal Law pre-empts any State law that might require the reporting or dissemination of these data for any purpose other than

the statistical, research, and evaluation purposes for which they were collected and/or are maintained.)

- B. The Agency shall not disclose subject data or other information containing, or derived from, subject data at fine levels of geography, such as school district, institution, or school, to anyone other than IES employees working in the course of their employment or individuals for whom access is authorized under this MOU agreement. The Agency may make disclosures of subject data to individuals other than those specified in this MOU only if those individuals have executed an Affidavit of Nondisclosure and the Agency has obtained advance written approval from the IES Data Security Office.
- C. The Agency shall not make any publication or other release of subject data listing information regarding individuals or specific educational institutions even if the individual respondent identifiers have been removed.
- D. The Agency may publish the results, analysis, or other information developed as a result of any research based on subject data made available under this MOU only in summary or statistical form so that the identity of individuals or specific educational institutions contained in the subject data is not revealed.

#### **IV. ADMINISTRATIVE REQUIREMENTS**

- A. The research conducted under this MOU and the disclosure of subject data needed for that research must be consistent with the statistical, research, or evaluation purpose for which the data were supplied. The subject data may not be used to identify individuals or specific educational institutions for recontacting unless the Agency has obtained advance written approval from the IES Data Security Office.
- B. Execution of Affidavits of Nondisclosure.
  - 1. The Agency shall provide a copy of this agreement to the SSO and to each P/T and support staff person of the Agency who will have access to

subject data and shall require each of those individuals to execute an Affidavit of Nondisclosure (Attachment No. 4).

2. The Agency must ensure that each individual who executes an Affidavit of Nondisclosure reads and understands the materials provided to her or him before executing the Affidavit.
3. The Agency shall ensure that each Affidavit of Nondisclosure is notarized upon execution.
4. The Agency may not permit any individual specified in paragraph II.A. to have access to subject data until the procedures in paragraphs IV.B.1. through 3 of this MOU are fulfilled for that individual.
5. The Agency shall promptly, after the execution of each Affidavit, send the original Affidavit to the IES Data Security Office and shall maintain a copy of each Affidavit at the Agency's secured facility protected under this MOU.

**C. Notification regarding authorized individuals to IES.**

1. The Agency shall promptly notify the IES Data Security Office when the SSO, or any P/T or support staff who has been authorized to have access to subject data no longer has access to those data.

**D. Publications made available to IES.**

1. The Agency shall provide the IES Data Security Office a copy of each publication containing information based on subject data or other data product based on subject data before they are made available to individuals who have not executed an Affidavit of Nondisclosure.
2. Because the publication or other release of research results could raise reasonable questions regarding disclosure of individually identifiable information contained in subject data, copies of the proposed publication or release must be provided to the IES Data Security Office before that disclosure is made so that IES may advise whether the disclosure is authorized under this MOU and the provisions of Section 183 of the

Education Sciences Reform Act of 2002; Title V, subtitle A of the E-Government Act of 2002; the Privacy Act of 1974; and the Family Educational Rights and Privacy Act. The Agency agrees not to publish or otherwise release research results provided to IES if IES advises that such disclosure is not authorized.

- E. The Agency shall notify the IES Data Security Office immediately upon receipt of any legal, investigatory, or other demand for disclosure of subject data.
- F. The Agency shall notify the IES Data Security Office immediately upon discovering any breach or suspected breach of security or any disclosure of subject data to unauthorized parties or agencies.
- G. The Agency agrees that representatives of IES have the right to make unannounced and unscheduled inspections of the Agency's facilities, including any associated computer center, to evaluate compliance with the terms of this MOU and the requirements of Section 183 of the Education Sciences Reform Act of 2002; Title V, subtitle A of the E-Government Act of 2002; the Privacy Act of 1974; and the Family Educational Rights and Privacy Act.

## **V. SECURITY REQUIREMENTS**

- A. Maintenance of, and access to, subject data.
  - 1. The Agency shall retain the original version of the subject data at a single location and may make no copy or extract of the subject data available to anyone except the SSO or a P/T staff member as necessary for the purpose of the statistical research for which the subject data were made available to the Agency.
  - 2. The Agency shall maintain subject data (whether maintained on a personal computer or on printed or other material) in a space that is limited to access by the PPO, SSO, and authorized P/T staff.

3. The Agency shall ensure that access to subject data maintained in computer memory is controlled by password protection. The Agency shall maintain all print-outs, CD-ROMS, personal computers with subject data on hard disks, or other physical products containing individually identifiable information derived from subject data in locked cabinets, file drawers, or other secure locations when not in use.
4. The Agency shall ensure that all printouts, tabulations, and reports are edited for any possible disclosures of subject data.
5. The Agency shall establish security procedures to ensure that subject data cannot be used or taken by unauthorized individuals.
6. The Agency shall not permit removal of any subject data from the limited access space protected under the provisions of this MOU, without first notifying, and obtaining written approval from, IES.

**B. Retention of subject data.**

1. The Agency shall return to the IES Data Security Office all subject data, or destroy those data under IES supervision or by approved IES procedures when the statistical analysis, research, or evaluation that is the subject of this agreement has been completed or this MOU terminates, whichever occurs first. The Agency, as part of its responsibilities discussed herein, agrees to submit a completed Close-out Certification Form to the IES Data Security Office.

**C. Compliance with established security procedures.**

1. The Agency shall comply with the security procedures described in this MOU.

## **VI. PENALTIES**

- A.** Any violation of the terms and conditions of this MOU may subject the Agency to immediate revocation of the MOU by IES.
1. The IES official responsible for liaison with the Agency shall initiate revocation of this MOU by written notice to the Agency indicating the factual basis and grounds for revocation.
  2. Upon receipt of the notice specified in paragraph VI.A.1 of this MOU, the Agency has thirty (30) days to submit written argument and evidence to the Director of IES indicating why the MOU should not be revoked.
  3. The Director of IES shall decide whether to revoke the MOU based solely on the information contained in the notice to the Agency and the Agency's response and shall provide written notice of the decision to the Agency within forty-five (45) days after receipt of Agency's response. The Director of IES may extend this time period for good cause.
- B.** Any violation of this MOU may also be a violation of Federal criminal law under the Privacy Act of 1974 (5 U.S.C. 552a(i)); Section 183 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9573(d)(2); and/or Title V, subtitle A of the E-Government Act of 2002. Alleged violations under Section 183 of the Education Sciences Reform Act of 2002 and Title V, subtitle A of the E-Government Act of 2002 are subject to prosecution by the Offices of the United States Attorney. The penalty for violation of Section 183 of the Education Sciences Reform Act of 2002 and Title V, subtitle A of the E-Government Act of 2002, is a fine of not more than \$250,000 and imprisonment for a period of not more than five years.



## VII. PROCESSING OF THIS MOU

- A. The term of this MOU shall be for \_\_\_\_ years. If, before the expiration of this MOU, the Director of IES establishes regulatory standards for the issuance and content of MOUs, the Agency agrees to comply with the regulatory standards.
- B. This MOU may be amended, extended, or terminated by mutual written agreement between the Agency and the Director of IES. Any amendment must be signed by a Senior Official specified in paragraph VII.C. of this MOU, PPO, and the Director of IES and is effective on the date that all required parties have signed the amendment.
- C. The Senior Official (SO), who cannot be the same individual designated as the PPO, having the legal authority to bind the organization to the terms of the MOU, shall sign this MOU below. The SO certifies, by his/her signature, that -
  - 1. The organization has the authority to undertake the commitments in this MOU;
  - 2. The SO has the legal authority to bind the organization to the provisions of this MOU; and

3. The PPO is the most senior subject matter officer for the Agency who has the authority to manage the day-to-day statistical, research, or evaluation operations of the Agency.

\_\_\_\_\_  
Signature of the Senior Official                      Date

\_\_\_\_\_  
Type/Print Name of Senior Official

Title: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

- D. The individual described in paragraph II.A1. as the PPO shall sign this MOU below. If the SO also acts as the chief statistical officer for the Agency; viz. as the PPO, the SO shall likewise sign under this paragraph as well as having signed under paragraph VII.C.

\_\_\_\_\_  
Signature of the Principal Project Officer    Date

\_\_\_\_\_  
Type/Print Name of the Principal Project Officer

Title: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

E. The Director of the Institute of Education Sciences or Designee concurs in this MOU and authorizes the access of the Agency to the subject data. This is effective as of the date of the IES Director or Designee's signature below.

\_\_\_\_\_  
Signature of Director or Designee, Institute of Education Sciences

\_\_\_\_\_, \_\_\_\_\_  
Name (Print) Title

\_\_\_\_\_  
Date

MOU Control Number: _____ (Assigned by IES)
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