



UTAH STATE BOARD OF EDUCATION

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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Aaron Brough, Data and Statistics Coordinator

DATE: August 11-12, 2016

ACTION: Review of Master Data-Sharing Agreement with Utah State Auditor

Background:

The Utah Board of Education entered into a data-sharing agreement with the State Auditor on August 7, 2015. The Master Agreement is effective for one year with a condition to automatically be renewed on a year-to-year basis (*Master Agreement 11.0*).

Board Strategic Plan:

This item supports the following imperative(s) and strategies in the Board's Strategic Plan:

- Imperatives: I. Quality Learning, III. Leadership and Culture

Anticipated Action:

It is proposed that the Standards and Assessment Committee review the "Master Agreement" with the Utah State Auditor and if no objections are presented, that agreement be approved for another year to designate the Utah State Auditor as an "authorized representative" to request student level personally identifiable information as defined in the agreement.

Contact: Aaron Brough, 801-538-7922
Bryan Quesenberry, 801-538-7885
Nicole Call, 801-538-7523
Rich Nye, 801-538-7550

MASTER AGREEMENT

This Master Agreement is entered into this 7 day of August, 2015 by and between the Utah State Board of Education ("Board") and the Utah State Auditor ("Auditor").

RECITALS

1. The Auditor has constitutional and statutory authority to carry out financial post audits, performance audits, and perform financial post audits of public accounts to determine compliance with Federal and State laws and regulations, and to evaluate the efficiency and effectiveness of educational programs pursuant to Utah Code § 67-3-1(4)(a) and the Utah Constitution Article VII, Section 15.
2. The Board has constitutional and statutory authority for the general control and supervision of the public education system pursuant to the Utah Constitution Article X, Section 3 and Utah Code Title 53A Chapter 1.
3. The Auditor and the Board desire to comply with the provisions of the Family Educational Records and Privacy Act, 20 U.S.C. §1232g and §1232h, and 34 C.F.R. Parts 98 and 99 ("FERPA").

Now, therefore, the parties agree as follows:

- 1.0 The Board designates the Auditor as an "authorized representative" pursuant to 34 CFR §99.31(a)(3).
- 2.0 As an "authorized representative" the Auditor is subject to, and agrees to comply with, the requirements of "FERPA" when the Auditor requests, and the Board discloses, an "education record" or "personally identifiable information" ("Board Data"). As the Board's "authorized representative," the Auditor may have access to Board Data when the Board Data will only be used in a manner consistent with FERPA and for the specific purposes set forth in the Auditor Data Request form.
- 3.0 The definitions of an "authorized representative", an "education record" and "personally identifiable information" are as set forth in 34 CFR §99.3.
- 4.0 The Board, by and through its Office of Education, will hereafter assist the Auditor in locating and making accessible to the Auditor data and documentation maintained by the Board that is requested by the Auditor and needed to properly conduct relevant analysis pursuant to any future audits, reviews, analyses, or evaluations ("Audits"). At any time during the term of this Master Agreement, when the Auditor requests Board Data, the Auditor shall set forth such request using the Auditor Data Request form, attached hereto as Exhibit A and incorporated herein by this reference. All such requests using the Auditor Data Request form shall be in compliance with the provisions of 34 CFR §99.35(a)(3), including a specific description of the Board Data to be disclosed, the purpose for which the Board Data is disclosed and how it will be used.

The Auditor Data Request form shall be sufficiently specific and shall be in writing and addressed to the chief data officer of the Board's Office of Education, and may be transmitted electronically. Board shall use Exhibit B, attached hereto and incorporated herein, to describe all the Board Data that is disclosed to the Auditor, all of which shall be subject to the terms of this Master Agreement.

- 5.0 The data requested and disclosed pursuant to the Auditor Data Request form is protected under the Utah Family Education Rights and Privacy Act, Utah Code § 53A-13-3 ("UFERPA"), FERPA, and the Individuals with Disabilities Educational Act, 30 U.S.C. §1400 *et seq.* and 34 C.F.R. Part 300 ("IDEA").
- 6.0 In order to protect the Board Data from unauthorized access, disclosure or use, the Auditor has established, and shall comply with, policies and procedures including: (1) limiting access to, and use of, the data to only employees of the Auditor who have legitimate interest in the audit purpose; (2) no further disclosure, or unauthorized use, of the data, and (3) proper destruction of the data within 30 days after the completion of any audit using secure erasure technologies.
- 7.0 The Auditor will publish the results of any Audit in a way that protects the privacy and confidentiality of the students who were the subjects of the Board Data. The Auditor will ensure that students cannot be directly or indirectly identified in the published report. For example, when publishing tables, cell suppression and other methods of disclosure avoidance will be used so that students cannot be identified through small numbers displayed in table cells.
- 8.0 The Auditor will be solely liable for any data breach resulting in unauthorized access, disclosure, or misuse of Board Data. If the Auditor has a data breach, the Auditor will immediately notify the Board's chief data officer. Within a reasonable time, the Auditor will also notify all personally identifiable individuals and/or their parents or guardians of the data breach, in a manner that they will likely receive the notice. The Auditor will solely bear the cost of such notice.
- 9.0 The Board shall at all times and under all circumstances retain sole ownership of the Board Data.
- 10.0 The Board may request the State's Chief Information Security Officer to review the security protocols used by the Auditor regarding the protection and destruction of Board Data. The Board also agrees that the Auditor may review the Board's security protocols regarding the storage, access, and distribution of "personally identifiable information" within an "education record" held by the Board.
- 11.0 This Master Agreement is effective for one year from the date signed by the parties, and shall automatically be renewed on a year to year basis thereafter. Either party may cancel this Master Agreement at any time to be effective 30 days after written notice is given. In

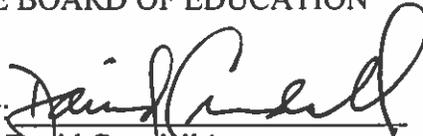
the event the Board has a reasonable belief that Board Data obtained by the Auditor is being accessed, disclosed or used without authorization, the Board's chief data officer shall notify the Auditor in writing of the Board's concern after which the Auditor shall have 5 business days to remedy any breach of this Master Agreement. If the terms of this agreement are not remedied within the allowable timeframe, the Board may cancel this Master Agreement effective immediately upon the Auditor's receipt of the Board's written notice. All modifications to this Master Agreement shall be in writing signed by both parties.

12.0 This Master Agreement is subject to the laws of the State of Utah. This Master Agreement supersedes any previous agreement related to an "educational record" or "personally identifiable information" subject to FERPA.

DATED this 7th day of August 2015

UTAH STATE BOARD OF EDUCATION

Authorized By:


David Crandall

UTAH STATE AUDITOR

Authorized By:

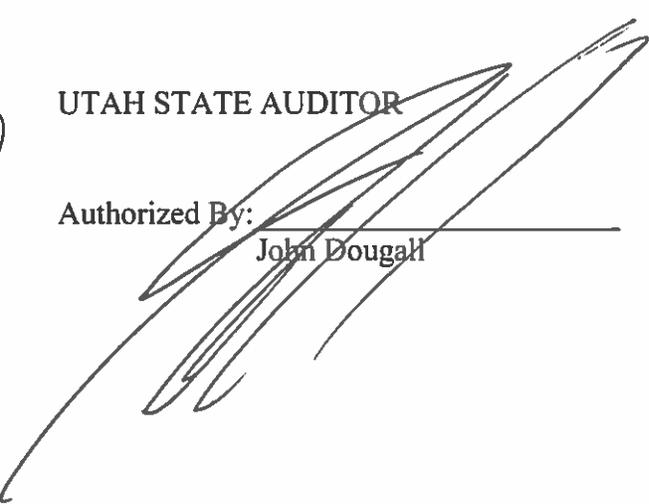

John Dougall

Exhibit A

Auditor Data Request

***All requests using this form need to be in compliance with the provisions of 34 CFR §99.35(a)(3), including a specific description of the “personally identifiable information” to be disclosed, the purpose for which the personally identifiable information is disclosed and how it will be used.**

Date: _____

TO: State Board of Education/Utah State Office of Education

Chief Data Officer:

From: Office of the State Auditor

Requestor: _____

Intended Use of Data (described with sufficient specificity):

Data Requested:

State Auditor Approval:

Name:

Signature: _____

Exhibit B

Office Data Response

Date: _____

Point of Contact: _____

Date of Auditor's Data Request:

Description of data and information being provided (specifically note any Personally Identifiable Information:

Data Protection Protocol:

Standard Protocol: In order to protect the data from unauthorized access, disclosure or use, the Auditor shall (1) limit access to the data to only employees of the Auditor who have legitimate interest in the audit purpose and use specified in the Auditor Data Request form; (2) make no further disclosure of or access to the data, and (3) properly destroy of the data within 30 days after the completion of any audit using secure erasure technologies.

Other Protocol:



OFFICE OF THE
UTAH STATE AUDITOR

**Data Request
for
Personally Identifiable Student Information**

Date: September 14, 2015

To: State Board of Education / Utah State Office of Education

Chief Data Officer: Rich Nye
801-391-5446
Rich.Nye@schools.utah.gov

From (Office/Agency): Office of the State Auditor

Requestor: Patricia Nelson
801-538-1334
patricianelson@utah.gov

Intended Use of Data (described with sufficient specificity):

To be used as part of our Agreed-upon Procedures (AUP) engagement to test Aggregate Student Membership per USOE. Per AUP, USOE instructs auditors to take a sample of students from this report to test for proper recording and reporting to UTREx.

Data Requested:

Year End Student Detail Report from UTREx for the year ending June 20, 2015 for both Weber State University's Charter Academy and Utah State University's Edith Bowen Laboratory School.

State Auditor Approval:

Name: John Dougall

Signature: _____

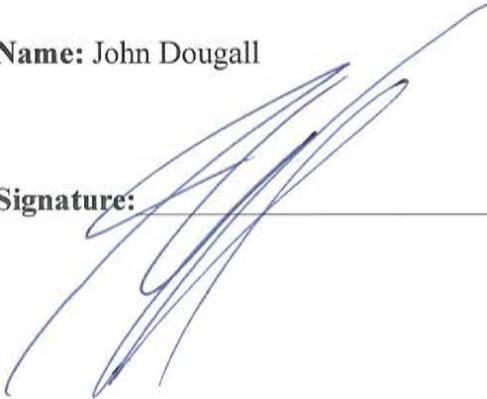


Exhibit B

Office Data Response

Date: **September 14, 2015**

Point of Contact:
Aaron Brough

Date of Auditor's Data Request:
September 14, 2015

Description of data and information being provided (specifically note any Personally Identifiable Information:

Edith Bowen and Weber State University Charter Academy Year End Student Detail Report from UTREx

Report is the Consolidated Membership Report that includes all students information (*i.e. Local Student Id, SSID, Student last and first name, Grade, Gender, Ethnicity/Race, Enrollment Entry Date, Exit Date, School of Record, Exit Code, Year End flag, Membership days, Total Attendance, Scram records and membership type, High school completion status, SES status, EL Status, Resident Status, Part time, Homeless, immigrant, Migrant and Lvl 2 Fatal Error*)

Data Protection Protocol:

Standard Protocol: In order to protect the data from unauthorized access, disclosure or use, the Auditor shall (1) limit access to the data to only employees of the Auditor who have legitimate interest in the audit purpose and use specified in the Auditor Data Request form; (2) make no further disclosure of or access to the data, and (3) properly destroy of the data within 30 days after the completion of any audit using secure erasure technologies.

Other Protocol:

Brough, Aaron

From: Martin, Murrell <Murrell.Martin@schools.utah.gov>
Sent: Thursday, January 7, 2016 2:53 PM
To: McInnis, Kirin; Brough, Aaron; Ipson, Brian
Cc: Barrett, Jaime; White, Matthew
Subject: RE: Schedule A-1

Thanks all.

Kirin, can you work with Matt and Aaron to determine when and how we provide it to Will. I will let Will know it is in process. He email address is in the original email in this chain.

Thanks.

Murrell

From: McInnis, Kirin
Sent: Wednesday, January 6, 2016 4:33 PM
To: Brough, Aaron <Aaron.Brough@schools.utah.gov>; Ipson, Brian <Brian.Ipson@schools.utah.gov>; Martin, Murrell <Murrell.Martin@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>; White, Matthew <Matthew.White@schools.utah.gov>
Subject: RE: Schedule A-1

Thanks Aaron. And, as Brian pointed out, it's true that this request from the State Auditor does not include student data; but rather, financial data. However, it seemed that this financial data may be 'confidential' since Murrell had originally said that their request was "*for data that we do not make public*". That's the main reason I wanted Aaron to be aware of this request, and to ask for his advice there should be any special rules we needed to follow when sharing this data with the State Auditor's Office.

So, does the Auditor's Office need to sign the addendum and download the data from our FTP site, or can we send this information to them via regular email?

Kirin McInnis | Research Analyst | Utah State Office of Education | School Finance
250 E 500 S | PO Box 144200 | Salt Lake City, 84114-4200 | 📞: 801.538.7674 | ✉️: kirin.mcinnis@schools.utah.gov

From: Brough, Aaron
Sent: Wednesday, January 6, 2016 4:00 PM
To: Ipson, Brian <Brian.Ipson@schools.utah.gov>; McInnis, Kirin <Kirin.McInnis@schools.utah.gov>; Martin, Murrell <Murrell.Martin@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>; White, Matthew <Matthew.White@schools.utah.gov>
Subject: RE: Schedule A-1

I don't know what is in the A1 so I can't give advice on that but I can let you know that USOE has a master data sharing agreement set up with the State Auditors in which they are designated as an agency representative. (<http://intranet/sections/DATA/DGPB/MOU/default.aspx> "Master Agreement with Utah Auditors") When it comes to additional data request they complete and sign an addendum and then I sent them the data file through our secure FTP system; MOVEit.

Aaron Brough

Data and Statistics | Data Quality Manager
Chief Privacy Officer - CPO
Utah State Office of Education
SLC, Utah 84114
(801) 538-7922

From: Ipson, Brian
Sent: Wednesday, January 6, 2016 3:52 PM
To: McInnis, Kirin <Kirin.McInnis@schools.utah.gov>; Martin, Murrell <Murrell.Martin@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>; White, Matthew <Matthew.White@schools.utah.gov>; Brough, Aaron <Aaron.Brough@schools.utah.gov>
Subject: RE: Schedule A-1

Kirin,

The A1 doesn't have any student data on it. I wouldn't think anything on there should be confidential information that can't just be emailed.

From: McInnis, Kirin
Sent: Wednesday, January 6, 2016 2:59 PM
To: Martin, Murrell <Murrell.Martin@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>; White, Matthew <Matthew.White@schools.utah.gov>; Ipson, Brian <Brian.Ipson@schools.utah.gov>; Brough, Aaron <Aaron.Brough@schools.utah.gov>
Subject: RE: Schedule A-1

Murrell,

Thanks for including me in your conversation. Yes, there is a definite protocol....

I've copied Aaron Brough on this data request from the State Auditor's Office. A few months ago as part of an audit on student enrollment, I received a request from the State Auditors for student-level data; in other words, data that we do not make public. There are privacy and/or confidentiality issues involved, so I would recommend that Aaron (as USOE's Chief Privacy Officer) is involved in order to both provide authorization to share this data, and also to give permission to transfer of the data via our secure FTP site Move It.

Aaron, can you please provide guidance to us on how to proceed?

Thanks,

Kirin

Kirin McInnis | Research Analyst | Utah State Office of Education | School Finance
250 E 500 S | PO Box 144200 | Salt Lake City, 84114-4200 | 📞: 801.538.7674 | ✉️: kirin.mcinnis@schools.utah.gov

From: Martin, Murrell
Sent: Wednesday, January 6, 2016 2:32 PM
To: McInnis, Kirin <Kirin.McInnis@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>; White, Matthew <Matthew.White@schools.utah.gov>; Ipson, Brian <Brian.Ipson@schools.utah.gov>
Subject: FW: Schedule A-1

Hi Kirin,

This is a data request from the Utah State Auditor Office. It is for data that we do not make public as it is support documentation for our funding reports. Kind of related to our conversation the other day. Matt maintains these reports and we should be able to easily provide them. Just going through protocol for authorization for Matt to provide them. If this is ok, we can have Matt respond to the email below.

Thanks,

Murrell

From: Will Maguire [<mailto:wmaguire@utah.gov>]
Sent: Wednesday, January 6, 2016 2:25 PM
To: Martin, Murrell <Murrell.Martin@schools.utah.gov>
Cc: Barrett, Jaime <Jaime.Barrett@schools.utah.gov>
Subject: Schedule A-1

Hello Murrell,

I'm with the Utah State Auditors and I'm currently working on testing the Guaranteed Transportation Levy line of the 2015 Final Book. I was hoping to get the Schedule A-1 (Year 2013) from you for the following districts:

- Alpine
- Cache
- Davis
- Granite
- Jordan
- Wayne

Thank you,

--

WILL MAGUIRE | JUNIOR STAFF AUDITOR
Office of the Utah State Auditor | auditor.utah.gov
p: [385.226.5593](tel:385.226.5593) | f: [801.538.1383](tel:801.538.1383)

Backup Information regarding Renewal of Master Agreement with Utah State Auditor

The automatic annual renewal clause was included in the negotiation with the State Auditor and former Superintendent Smith was willing to do so even though it may be unenforceable.

It has been respectfully requested that the renewal clause be an item for discussion at the Board meeting, with a report from Aaron Brough the designated Chief Privacy Officer for the Board and if possible, someone from the state auditor's office on how the Master Audit Agreement is working out, so the Board can decide whether to allow the automatic annual renewal and consider if there need to be changes based upon the new data privacy and security addendum.

Agreement article 11.0

This Master Agreement is effective for one year from the date signed by the parties, and shall automatically be renewed on a year to year basis thereafter. Either party may cancel this Master Agreement at any time to be effective 30 days after written notice is given. In the event the Board has a reasonable belief that Board Data obtained by the Auditor is being accessed, disclosed or used without authorization, the Board's chief data officer shall notify the Auditor in writing of the Board's concern after which the Auditor shall have 5 business days to remedy any breach of this Master Agreement. If the terms of this agreement are not remedied within the allowable timeframe, the Board may cancel this Master Agreement effective immediately upon the Auditor's receipt of the Board's written notice. All modifications to this Master Agreement shall be in writing signed by both parties.

Report of Data Request History Utilizing Master Agreement

Only two requests from the Utah State Auditor were received through the Chief Privacy Officer.

Request 1: Year End Student Detail Report from UTREX for year ending June 20, 2015 for the following districts: (Weber State University's Charter Academy, Utah State University's Edith Bowen Laboratory School)

Resolution: *Addendum submitted on September 14, 2015. Data set was shared same day via secure FTP transfer of requested student information. See Master Agreement with Utah Auditors Addendum 1 (Sept 14, 2015).pdf*

Request 2: Guaranteed Transportation Levy line of the 2015 Final Book. Request for the Schedule A-1 (Year 2013) for the following districts: (Alpine, Cache, Davis, Granite, Jordan, Wayne)

Resolution: *Determined no addendum was needed because Schedule A-1 did not contain student personally identifiable information (PII). See Request for Schedule A-1.pdf*