

**DATA SHARING AGREEMENT
BETWEEN
UTAH STATE BOARD OF EDUCATION, UTAH DEPARTMENT OF HEALTH, AND
THE UNIVERSITY OF UTAH, DEPARTMENT OF PSYCHIATRY**

This Data Sharing Agreement (“Agreement”) is entered into by the Utah State Board of Education (“USBE”), the Utah Department of Health (“UDOH”), and the University of Utah on behalf of its University of Utah School of Medicine, Department of Psychiatry (“University”).

R E C I T A L S

WHEREAS, USBE 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 53E Chapter 3;

WHEREAS, UDOH is authorized by U.C. A. § 26-5-3 and § 26-5-4 to establish programs of community and professional education relevant to the detection, prevention, and control of chronic diseases;

WHEREAS, the Utah Registry of Autism and Developmental Disabilities (URADD), authorized by UCA§ 26-7-4, is managed by the Autism Systems Development Program in the Bureau of Children with Special Health Care Needs, at UDOH, who contracts with University, to promote the early identification of autism spectrum disorder (ASD) and other developmental disabilities (DD), collect information on people in Utah who have an ASD and DD, determine the risk factors and causes of ASD and DD, plan for and develop resources, therapies, methods of diagnoses, and other services for people with an ASD and DD, facilitate measuring and tracking of treatment outcomes, gather statistics relating to ASD and DD, and improve coordination and cooperation between agencies and other programs that provide services to people with an ASD and DD;

WHEREAS, USBE, UDOH, and the University understand the information shared under this Agreement will only be used for the following two purposes: (1) to conduct evaluation and analysis for USBE in order to improve the quality of instruction and education in Utah; and (2) to conduct investigation and analysis in order to meet certain reporting requirements of federal programs;

WHEREAS, the information shared between USBE, UDOH, and the University will include education records with personally identifiable information; and

WHEREAS, USBE, UDOH, and the University intend to comply with privacy laws including 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, the Utah Family Education Rights and Privacy Act, U.C. A. § 53E-9-201, the Student Data Protection Act, U.C.A. § 53E-9 *et seq.*, and the Individuals with Disabilities Educational Act, 30 U.S.C. § 1400 *et seq.* and 34 C.F.R. Part 300.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Purpose.** The purpose of the Agreement is to (1) conduct evaluation and analysis for USBE in order to improve the quality of instruction and education in Utah; and (2) conduct investigation and analysis in order to meet reporting requirements of federal programs. The parties will contribute to a multi-agency research study that collects, analyzes, and provides state-level information regarding the occurrence of ASD and DD in order to investigate prevalence, diagnostic patterns, and risk factors for ASD with a goal of making educational improvement recommendations to USBE and UDOH. For purposes of this study, personally identifiable information about students with disabilities will be provided to URADD. The parties shall not access, collect, store, process, transfer, sell, disclose, de-identify, or use the shared data for any other purpose.

2. **Data Sharing.** It is understood that when one party needs USBE data maintained by the other party for the purpose of supporting its research, study, or evaluation of federal- or state-supported education programs or complying with federal or state law, the other party that maintains the USBE data shall make a written request to the USBE Data Privacy Office at least 10 business days before filling the request.

3. **Term.** This Agreement is effective for ~~five~~three years from the date signed by the parties, unless terminated sooner in accordance with the terms and conditions herein. This Agreement may be renewed twice for a one-year period if agreed in writing by the parties.

4. **Termination.** This Agreement may be terminated without cause, in advance of the specified expiration date, by any party, upon 60 days prior written notice being given to the other parties.

5. **Confidentiality and Disclosure.** The parties agree to share and use data only for those purposes described in paragraph 1 above or as required by law. The following conditions shall apply to the sharing or use of data under this Agreement:

A. The parties shall have sufficient safeguards in place to ensure data is only used for the purposes stated in paragraph 1.

~~B.~~ UDOH will work with the Local Educational Agencies to inform parents of a children whose personally identifiable student data is shared with UDOH and the University.

~~B.C.~~ A parent of a child whose personally identifiable student data is shared with UDOH and the University has the right to access the exact records shared.

~~C.D.~~ A parent of a child whose personally identifiable student data is shared with UDOH and the University has the right to contest and seek to amend

any data that is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

D.E. With written parental consent, UDOH shall expunge any requested student personally-identifiable information from all databases.

E.F. Data in electronic format shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or any other means.

F.G. The data shall not be stored on any server accessible by unauthorized personnel.

G.H. At the request of the donor party, the receiving party shall identify all personnel, by position, authorized to request and receive the data.

H.I. The parties shall limit access to, and use of, the data to only those persons who have a legitimate interest in the data provided under this Agreement, and shall do the following regarding those individuals:

- (1) require a non-disclosure agreement;
- (2) maintain past and current lists of all individuals it has allowed to access education records;
- (3) maintain each non-disclosure agreement signed by its employees and permit inspection of the same by the other parties, upon request;
- (4) notify the donor party in writing within 48 hours when an individual, who has had access to education records, is no longer with the receiving party;
- (5) notify the donor party in writing within 48 hours if an individual's privileges to access education records has been withdrawn and the date withdrawal occurred;
- (6) shall not disclose the data or education records to individuals who have not been determined to have a legitimate educational interest, who have not received training, and who have not signed a non-disclosure agreement;
- (7) ensure that personally identifiable information contained in the data is protected from further disclosure;
- (8) ensure de-identification in accordance with HIPPA's safe harbor standard;
- (9) UDOH and the University shall allow an on-site audit conducted by USBE to monitor for compliance of this Agreement no less than once a year.

I.J. The parties will publish the results of their audits and evaluations in a way that protects the privacy and confidentiality of the students who were the subjects of the data that was provided. The parties will ensure that

students cannot be directly or indirectly identified in published reports. 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. UDOH and the University shall annually provide USBE with a description and the results of all projects and research undertaken using de-identified student data.

J.K. UDOH shall annually report to the USBE Law and Licensing Committee a report describing all uses and results of all projects and research undertaken using student data, both identifying and de-identified. The report shall include how the uses of data have improved the quality of instruction and education in Utah.

6. **Data Security.** The parties will have whole disk encryption on computers used for accessing or storing reports. Each party will limit access to the data using appropriate security controls in accordance with the most recent NIST 800-53 guidelines in transmitting, encrypting, storing, and maintaining data, which is found at: <http://www.nist.gov/publicationportal.cfm>, and comply with the State of Utah Information Technology Resources Acceptable Use Policy found at: <http://dts.utah.gov/employee-state/statewide-dts-policies/index.php>.

7. **User Training.** The parties agree to train individuals accessing information under this Agreement on relevant statutes prescribing confidentiality and safeguarding requirements, disclosure prohibitions, and penalties for unauthorized access or disclosure. The parties shall have the right to review disclosure training and request or suggest any changes necessary. The parties shall maintain past and current lists of individuals attending training and the related training materials.

8. **Security Plans.** The parties shall:

- A. Store any data provided by the other party in an area that is physically secure from access by unauthorized individuals at all times.
- B. Maintain each other's data only until such time that the data is no longer needed or upon termination of this Agreement, whichever occurs first. At that point, the data will be destroyed within 30 days, except for disclosed information possessed by any court.
- C. Refrain from duplicating the data other than as required for disaster recovery.
- D. Report any data breach to the party that provided the information immediately upon discovery, and cooperate to mitigate any concerns.

9. **Indemnity.** Both parties to this Agreement are governmental entities as defined in the Governmental Immunity Act of Utah, U.C.A. § 63G-7-101, et. seq. ("Act"). Nothing in this Agreement shall be construed as a waiver by either or both parties of any rights, limits, protections, or defenses provided by the Act. Nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Agreement is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuits brought against it. There are no indemnity obligations between the parties.

10. **Monitoring.** The parties shall permit each other the right of a compliance review to ensure that the provisions of the Agreement are upheld and will maintain a system sufficient to allow an audit of its compliance with the disclosure and confidentiality and access to data sections above this Agreement.

11. **Amendments.** This Agreement may only be amended by the mutual written agreement of the parties. No provision in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. Any such waiver shall not be construed as a waiver by such party of any subsequent breach under this Agreement.

12. **Public Information.** The parties agree that this Agreement will be a public document, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Each party gives the other express permission to make copies of this Agreement in accordance with GRAMA.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior and contemporaneous agreements and understandings between the parties, whether oral or written.

14. **Governing Law.** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah.

15. **Assignment.** Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party.

16. **Independent Contractors.** The parties are independent contractors, and no agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party may take any binding action on the other party.

17. **Penalties.** A party who knowingly or recklessly permits unauthorized collecting, sharing, or use of student data may be subject to the penalties provided in the Utah Student Privacy and Data Protection Act, U.C.A. §53E-9-310.

IN WITNESS WHEREOF, the parties have executed this Agreement on the above referenced date.

Utah State Board of Education

_____ Date : _____
Sydnee Dickson, Ed.D.
State Superintendent of Public Instruction

University of Utah

_____ Date : _____

Name:

Title:

Utah Department of Health

_____ Date : _____

Name:

Title: