

**DATA SHARING AGREEMENT WITH
THE LEGISLATIVE DIVISION OF POST AUDIT**

THIS FERPA AGREEMENT (Agreement) is made by and between the Sedgwick County Area Education Services Interlocal Cooperative (Cooperative #618) and the Legislative Division of Post Audit (LPA).

LPA has requested student IEPs for the purpose of the special education audit;

NOW, THEREFORE, IT IS AGREED, pursuant to the Family Educational Rights and Privacy Act (FERPA), set forth in 20 U.S.C. 1232g(b)(3) and its regulations at 34 CFR § 99.31(a)(3) as follows:

I. TERM OF AGREEMENT

This Agreement shall take effect upon signature by the authorized representatives of the Cooperative #618 and LPA and shall remain in effect until the sooner of June 30, 2019 or being terminated by Cooperative #618 or LPA pursuant to Paragraph VI herein. Upon termination of this Agreement, LPA will provide assurances to Cooperative #618 by letter and confirm that all data obtained under this Agreement has been destroyed and/or returned to Cooperative #618 in accordance with the requirements of 34 CFR § 99.35(b).

II. DEFINITIONS AND ABBREVIATIONS

- a) “Disclose”, “disclosure” or “re-disclosure” means to permit access to or the release, transfer or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. 34 CFR § 99.3.
- b) “FERPA” refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means 20 U.S.C. 1232g as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations (as amended in 2012), “Family Educational Rights and Privacy.”
- c) “Authorized representative” means an entity or individual designated by the Cooperative #618 to conduct, with respect to Federal or State supported education programs, any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs. 34 CFR § 99.3.

- d) “Personally identifiable 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; other information that, alone or in a 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; or, information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3.
- e) “Education records” means records that are directly related to a student, and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3.

III. PURPOSE OF THE DISCLOSURE

Cooperative #618 disclosure of personally identifiable information from education records to LPA is in furtherance of an audit and evaluation activity. To estimate the cost to provide special education and related services we will review a number of student IEPs to understand what types of services students with different types of exceptionalities receive.

If LPA wishes to change the purpose of the disclosure in any way, including but not limited to, the methodology utilized, LPA must obtain prior written permission from the Cooperative #618 to do so.

IV. REQUIRED TASKS UNDER THE AGREEMENT

a) Joint Responsibilities

1. Cooperative #618 and LPA shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose, re-disclose or share student information in a manner not allowed by federal law, regulation or this Agreement.
2. Cooperative #618 and LPA shall identify at least one data custodian from their respective agencies who shall be responsible for processing and responding to data requests and general inquiries from the other party. Upon signing of this Agreement, both parties will exchange in writing the name, mailing address, telephone number, fax number and email address of

their data custodian. The data custodian can be changed as conditions change.

3. LPA will permit the Cooperative #618 to review and will provide written assurances to the Cooperative #618 regarding the use of data transmitted under this Agreement for the purpose of ensuring that LPA has appropriate policies and procedures in place to protect the personally identifiable information and that personally identifiable information will not be re-disclosed or released.

b) Responsibilities of Cooperative #618:

1. Cooperative #618 will share the requested data with LPA, but only for purposes of LPA conducting an evaluation or audit of Federal or State supported education programs as described in paragraph III of this Agreement. The Cooperative #618 will determine and disclose only those specific data elements required to complete the audit or evaluation.
2. Cooperative #618, through execution of this Agreement, hereby does assign LPA as its authorized representative for purposes of having access to personally identifiable information of students as detailed in this Agreement and in accordance with 34 CFR 99.35. LPA is an authorized representative only for the sole purpose of conducting an evaluation or audit of federal and State supported education programs as detailed in this agreement.
3. Cooperative #618 will, in light of the December 2011 guidance from the U.S. Department of Education, post for public access, a copy of this Agreement within the Data Request History report located on the Data, Media and Reports portal of the Cooperative #618's website.

c) Responsibilities of LPA:

1. LPA agrees to use data shared under this Agreement for no purpose other than to conduct an evaluation or audit of federal and State supported education programs. Cooperative #618 approval to utilize the personally identifiable information from education records for this audit or evaluation does not confer approval to use it for any other purpose.
2. LPA agrees not to share or re-disclose personally identifiable data received under this Agreement with any other entity, organization or individual without the prior written approval from Cooperative #618. This does not prohibit LPA from sharing aggregate student data if LPA follows the Cooperative #618 disclosure avoidance policies and obtains Cooperative #618 prior written approval before sharing aggregate student data.

In order to comply with the requirement for a triennial peer review as mandated by government auditing standards, LPA is required to make available to the peer reviewers any data that supports the audit's findings and conclusions. LPA agrees to hold all FERPA-protected data securely until the next peer review, after which the data will be destroyed as outlined in paragraph 11 following. LPA will provide Cooperative #618 with reasonable advance notice of the dates of the peer review and the audits containing FERPA-protected data that may be selected for review. If an audit containing FERPA-protected data is selected for peer review, LPA agrees to require the reviewers to sign a copy of the authorization list described in paragraph 9 below.

3. LPA agrees to maintain all data obtained pursuant to this Agreement separate from all other data files that they possess and not copy, reproduce or transmit data obtained pursuant to this Agreement, except as necessary to fulfill the purpose of completing the evaluation or audit described in this Agreement, or as necessary for established data management and backup processes. Transmission of all FERPA-protected data must be by SECURE electronic systems and/or networks. All copies of data of any type including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data.
4. The ability to access or maintain data under this Agreement will not under any circumstances transfer from LPA or be assigned by LPA to any other individual, institution, organization, government or entity.
5. Despite any contrary provisions in the Agreement, LPA agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student to any other individual, institution, organization, government or entity.
6. LPA agrees to establish procedures and systems to ensure that all personally identifiable student data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure of the data, including the interception, diversion, duplication, or other unauthorized access to said data.
7. LPA agrees to establish procedures and systems to ensure all personally identifiable data obtained is kept in secured facilities and media, and that access to such records is restricted to LPA personnel who are authorized to have access to said data for the purposes of conducting the aforementioned evaluation. As part of these procedures and systems, LPA agrees that all personally identifiable data provided by the Cooperative #618 will be stored in a manner that limits access to only those who are authorized. LPA

agrees to provide Cooperative #618 with assurances and general information about its security practices sufficient to reasonably allow Cooperative #618 to assess the adequacy of those practices, but LPA will not provide detailed or confidential information related to its network security. LPA agrees to never place personally identifiable information on an unencrypted flash drive, compact disc or other similar device unless LPA first obtains prior written permission from the Cooperative #618. Failure to obtain prior written permission is considered a violation of this Agreement and must be reported to the Cooperative #618 pursuant to the requirements of paragraph IV.c.10 of this Agreement.

8. LPA agrees to establish a training program to teach its employees about FERPA, and how to protect personally identifiable information from education records. LPA will maintain records of the training provided for 6 (six) years after completion of the training.
9. Upon signing of this Agreement, LPA shall submit to the Cooperative #618 a list in writing of the individuals who are authorized to have access to said data provided by the Cooperative #618 pursuant to this Agreement. This list shall include name(s), mailing address, telephone number, fax number and e-mail address. Along with the list, LPA must submit proof that each individual has completed LPA training program as described in the previous paragraph, and a copy of an affidavit of nondisclosure or other documentation indicating their individual agreement to handle the PII from education records properly. These names may be changed as conditions change as long as the described documentation is provided to the Cooperative #618 at least seven days prior to LPA granting access to the individual.
10. LPA shall, within 24 hours of learning, report to Cooperative #618 in detail any incidents of any personally identifiable information received pursuant to this Agreement whose confidentiality was breached or is believed to have been breached. This initial notification must be by a phone call to the Cooperative #618 authorized representative with a detailed follow up via letter within two (2) days.
11. LPA agrees to destroy or return to Cooperative #618 all personally identifiable information when the audit for which it was obtained is no longer eligible for peer review. Such peer review occurs every three years. LPA agrees to destroy, delete, or return an information obtained under this Agreement within 30 days of completion of the peer review. Any destruction of the referenced data must be witnessed by one other person who shall attest that a complete destruction of the data occurred. LPA agrees to submit a letter to Cooperative #618 within 15 days , attesting to the destruction of any referenced personally identifiable data received from

Cooperative #618. No new Agreement will be agreed to by the Cooperative #618 until the data is returned or destroyed as set forth herein.

12. LPA agrees to adhere to any Cooperative #618 protocols or directives prohibiting disclosure of data, which even though the data may not have been provided by Cooperative #618 in a personally identifiable manner, would still permit public identification of students because of the small cell sizes of the data. If data is so identified by the Cooperative #618 or the data elements, it may only be used in a disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students.
13. Subject to the agreed-upon and limited use of requested data provided and only for the purposes asserted in this Agreement, there shall be no further disclosure by LPA of any of the information provided by the Cooperative #618 in that this would constitute a re-disclosure of information. Pursuant to 34 CFR § 99.33, re-disclosure is only permitted upon obtaining prior consent of the parent or eligible student of the personally identifiable information.
14. LPA agrees that the Cooperative #618 maintains the right to conduct audits or other monitoring activities of LPA's policies, procedures, and systems as they apply to management of this data. This right includes, but is not limited to, the right to verify the existence of disciplinary policies to protect data, verify training programs as previously described, verify the existence of a sound data security plan, and verify the existence of a data stewardship program. LPA agrees that Cooperative #618 may conduct such auditing/monitoring with no prior notice, and agrees to full cooperate with Cooperative #618's auditing and monitoring processes and procedures. LPA reserves the right to restrict access to firewall settings, IP addresses, or other confidential security information.
15. Under no circumstance shall LPA become owners, proprietors or custodians of any data or personally identifiable information provided by the Cooperative #618 under the terms of this Agreement. LPA shall provide all results to the Cooperative #618 prior to publication for review and approval to ensure they reflect the original intent of the Agreement. LPA shall grant to the Cooperative #618 a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use any of the audit or evaluation results completed with data and personally identifiable information pursuant to this Agreement, and to authorize others to use such results for educational and government purposes.

V. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings between Cooperative #618 and LPA concerning the subject matter hereof. No prior Agreement, verbal representations, or understandings shall be valid or enforceable unless embodied in this Agreement. This Agreement may be modified only upon the express written approval of the parties hereto.

VI. TERMINATION OF AGREEMENT

This Agreement may be terminated by the Cooperative #618 or LPA, upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither the Cooperative #618 nor LPA shall negate obligations already incurred or required to be performed prior to the effective date of the termination. The Cooperative #618 may terminate the Agreement immediately upon confirmation of fraud, negligence or abuse of confidentiality restrictions. This Agreement shall terminate automatically on June 30, 2019 unless extended by a written agreement which can be at not greater than 1-year intervals.

VII. VENUE

The Cooperative #618 and LPA agree that this Agreement shall be subject to, governed by and construed according to the laws of the State of Kansas, and jurisdiction and venue regarding any aspect of this Agreement shall reside only in the District Court of Shawnee County, Kansas, and the appellate courts of Kansas.

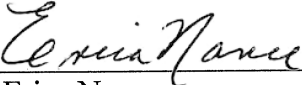
VII. NONDEBARMENT

LPA certifies by its representative's signature hereon that neither it nor its principals have been or are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any agreement similar to this Agreement by any state or federal department or agency.

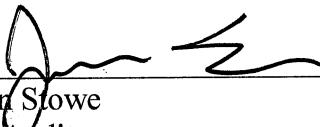
The persons directly responsible for managing the PII and education record data covered by this MOU, and who shall serve as contacts for each party are:

Name	Agency	Phone	Email
Heidi Zimmerman Principal Auditor	Legislative Division of Post Audit	785.296.8910	Heidi.zimmerman@lpa.ks.gov
Dr. Erica Nance Executive Director	Cooperative #618	316.794.8641	enance@sped618.org

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

By 
Dr. Erica Nance
Executive Director, Cooperative #618

Date: 6-13-18

By 
Justin Stowe
Post Auditor

Date: 5/29/2018