

Ohio Department of Education's Data Sharing Agreement Understanding ODE's MOU Template

Memorandum of Understanding

By and Between the Ohio Department of Education and _____

This agreement is entered into by the Ohio Department of Education ("ODE") and _____ ("Researcher") for the purpose of sharing information between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 ("FERPA"). The information will be used by researchers at _____ to conduct evaluative studies designed to improve instruction for children in the state of Ohio. Topics of these studies will include: _____. In order to complete these studies and in order to have a positive impact on the instruction of children, the Researcher requires the use of student data from the ODE.

The introductory paragraph of the MOU identifies the entities engaging in the data sharing agreement. Note that, as a general policy, ODE does not engage in data sharing agreements with individuals, only with institutions. The introduction includes a brief list of research topics, to be supplemented by a more detailed Scope of Work in Appendix A.

The Family Educational Rights and Privacy Acts Statute (FERPA) describes circumstances under which State Educational Agencies (SEAs) are authorized to release data from an education record. This information can be disclosed to organizations conducting studies on behalf of SEAs, provided that Federal, State or local law authorizes the evaluation in question. Ohio Revised Code § 3301.12 grants to the ODE State Superintendent of Public Instruction the authority to conduct studies of education programs, but the provision prohibits access to a student's name, address or social security number.

The second paragraph of Ohio's MOU cites FERPA regulations and state law allowing the State Superintendent of Public Instruction to conduct studies on Ohio's education programs.

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I. PARTIES. The ODE is an SEA that is authorized to receive information from local educational agencies ("LEAs") subject to FERPA, as authorized by 34 CFR Section 99.31. Researcher desires to conduct studies on behalf of ODE for the purpose of improving instruction in Ohio public schools in accordance with the Scope of Work Agreement attached hereto as Appendix A. The parties wish to share data collected by the ODE regarding education in Ohio, none of which will allow the identification of individual students.

Section I cites the section of federal regulation that allows ODE to disclose student level data without parents' prior consent if Researcher is performing a service that ODE would otherwise perform. In addition, Section I announces the parties as using this regulation for research purposes.

II. COMPLIANCE WITH FERPA. To effect the transfer of data subject to FERPA, Research agrees to:

ODE's legal department has determined that the following eight agreements are necessary for SEA compliance with FERPA.

1. In all respects comply with the provisions of FERPA. For purposes of this agreement, FERPA includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.

The MOU requires research institutions to uphold all federal regulations, including, but not limited to FERPA. This statement supersedes anything else in the MOU that might be misinterpreted as allowing the research institution to violate federal regulation.

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2. Use the data shared under this agreement for no purpose other than research authorized under Section 99.31(a)(3)(iv) of Title 34 of the Code of Federal Regulations. Researcher further agrees not to share data received under this MOU with any other entity without the ODE's approval. Researcher agrees to allow the Office of the State Auditor, subject to FERPA restrictions, access to data shared under this agreement and any relevant records of Researcher for the purposes of completing authorized audits of the parties. Researcher shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. ODE shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. In the event that the audit exception results from the act or omissions of both parties, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault.

Per Section II.2, Researcher cannot give data shared with them by ODE to another party without prior approval by ODE. This section also indicates that the research institution is subject to auditing by the State Auditor. Both the Researcher and ODE will be solely or proportionally legally and financially liable for audit exceptions based on their respective actions.

3. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA and other federal laws with respect to the data shared under this agreement. Researcher agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this agreement. Nothing in this paragraph authorizes sharing data provided under this Agreement with any other entity for any purpose other than completing Researcher's work authorized under this Agreement.

Holds research institution responsible for ensuring that all individuals granted access to the data by the researcher have agreed to protect the data's confidentiality. The language also indicates that this section does not grant the researcher authority to share the data without ODE's prior approval (see II.2).

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4. In accordance with all statewide data security policies and procedures (ITS-SEC-02), maintain all data obtained pursuant to this agreement in a secure computer environment and will not copy, reproduce, or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modification or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Researcher to any other institution or entity.

Research institutions are required to maintain data in a secure environment. Researcher can only make copies of shared data if it is necessary to complete the research plan authorized in the MOU. The Researcher cannot transfer this MOU to any other institution.

5. Not to disclose any data obtained under this agreement in a manner that could identify an individual student to any other entity in published results of studies as authorized by this agreement, nor attempt to infer or deduce the identity of any individual student based on data provided by ODE, nor claim to have identified or deduced the identity of any student based on data provided by ODE.

The researcher cannot publish any results that would allow for the identification of individuals students, nor can the researcher attempt to or claim to identify individual students. Note that even aggregate data can be considered identifiable in cases of small cell sizes.

6. Not to provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity.

Restricts entities with which Researcher can share data.

7. Provide to the ODE a list of specific research studies, updated annually, for which the data are being used, and to notify the ODE in advance of any new project or research question researcher proposes to address. This list of research studies will identify linkages of all data possessed by researcher under this agreement and covered by FERPA to specific research studies. Further, it will include the fixed ending date for use of all data linked to each project.

Researcher is required to report back annually to ODE on the research studies being conducted based on ODE data.

8. Provide to ODE any materials designed for public dissemination, based in whole or in part on data obtained under this agreement, at least ten days prior to dissemination.

Researcher must share with ODE reports or presentations that utilize ODE's data prior to releasing said reports to the public.

9. Destroy all data obtained under this agreement, within the time frame established in Appendix A, Section II, when it is no longer needed for the purpose for which it was obtain. Nothing in this agreement authorizes either party to maintain data beyond the time period reasonably needed to complete the purpose of this request. All data no longer needed shall be destroyed or returned to the ODE in compliance with 34 CFR Section 99.35(b)(2). Researcher agrees to require all employees, contractors, or agents of any kind to comply with this provision.

Per federal regulation, researcher is required to destroy data when research study is complete.

III. DATA REQUESTS.

1. The ODE may decline to comply with a request it if determines that providing the data in the manner requested would violate FERPA and/or would not be in the best interest of current or former students in Ohio public schools. All requests shall include a statement of the purpose for which it is requested and an estimation of the time needed to complete the project for which the data is requested. Data requests may be submitted by post, electronic mail, or facsimile.
2. Researcher agrees that ODE makes no warranty concerning the accuracy of the student data provided.

ODE is under no obligation to comply with student level data requests.

In the data request, the researcher must include an estimated project completion timeline.

ODE does not guarantee the accuracy of the of the student level data provided.

IV. AUTHORIZED REPRESENTATIVE. Researcher shall designate in writing a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requests and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement. The ODE or its agents may upon request review the records required to be kept under this section.

The research institution must identify a single representative who will be responsible for requesting, receiving, and maintaining records related to their data request.

V. RELATED PARTIES. Researcher represents that it is authorized to bind to the terms of this contract, including confidentiality and destruction or return of student data, all related or associated institutions, individuals, employees or contractors who may have access to the data or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or used in any way by Researcher. This Agreement takes effect only upon acceptance by an authorized representative of _____, by which that institution agrees to abide by its terms and return or destroy all student data upon completion of the research for which it was intended or upon the termination of its current relationship with Researcher.

The individual who enters into this agreement on behalf of the research institution must be someone with sufficient authority to make agreements on behalf of the research institution and its employees, contractors, and other parties who have access to the data.

VI. TERM. This agreement takes effect upon signature by the authorized representative of each party and will remain in effect until _____. The parties further understand that the ODE may cancel this agreement at any time for reasonable cause, upon thirty-day written notice. Notice of such cancellation shall be sent or otherwise delivered to the persons signing this agreement. The ODE specifically reserves the right to immediately cancel this agreement should the ODE, in its sole discretion, determine that student information has been released in a manner inconsistent with this agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the ODE. In the event of immediate cancellation, a notice specifying the reasons for cancellation shall be sent as soon as possible after the cancellation to the persons signing the agreement.

The MOU includes an effective end date. ODE reserves the right to cancel the MOU at any time if the terms of the MOU have been violated or if the data becomes readily available to the public. ODE must notify the researcher of the cancellation.

VII. BREACH AND DEFAULT. Upon breach of any of the provisions, obligations, or duties embedded in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

There may be legal, financial or other consequences to breaching the data sharing agreement. Both ODE and the researcher are subject to consequences.

VIII. AMENDMENT. This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the parties to this agreement. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendment.

Changes to the specific details of the agreement between ODE and the Researcher must be noted in a signed amendment. The MOU will automatically be updated with changes in relevant regulations.

IX. ASSIGNMENT OF RIGHTS. Neither this agreement, nor any rights, duties, or obligations described herein shall be assigned by Researcher without the prior express written consent of ODE.

The researcher cannot assign or delegate parts of this MOU to third parties without written permission from ODE.

X. ENTIRETY OF AGREEMENT. All terms and conditions of this agreement are embodied herein. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

Agreements between the two parties are not valid unless they are part of this MOU and agreed upon in writing.

Entered into by the following representatives of the
Ohio Department of Education and _____

Dr. Richard A. Ross
Superintendent of Public Instruction

Date

Matthew Cohen
Chief Research Officer

Date

[Signature]
[Printed Name and Title]
[Name of Organization]

Date

Ohio Department of Education Memorandum of Understanding Appendix A: Scope of Work Agreement

I. **Scope of Work**

Provide a brief description of the research study for which the researcher is requesting data per this data sharing agreement. Include a description of the research questions being addressed, as well as a description of any reports expected to be generated as a result of this research study. Note that Ohio's MOU (Section II.7) requires the researcher to provide ODE with annual updates on the list of research studies for which the data shared per this agreement is being used.

II. **Estimated Project Timeline**

Provide a brief description of the estimated timeline for the research study supported by this MOU. Note that Ohio's Memorandum of Understanding (Section VI) requires the researcher to identify an effective end date for the MOU. Include in this description the estimated time frame needed to destroy or return the data in accordance with the MOU (Section 11.8). Any extensions to the effective end date or the time frame for destruction or return of the data will require a signed addendum to the original MOU.

III. **Authorized Representative**

Ohio's Memorandum of Understanding (Section IV) requires the researcher to designate in writing a single authorized representative responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement.

Authorized Representative:

(Name)

(Title)

(Address)

(Phone Number)

(Email Address)

IV. **Description of Data Being Requested**

Provide a detailed description of the data elements requested per this data sharing agreement. Include in your description information about the years of data being requested, the educational entities for which you would like data (i.e., all schools, specific schools, specific types of schools, etc...), and the specific data elements being requested for this research study.