

**DATA SHARING AGREEMENT  
BETWEEN  
THE BUREAU OF INDIAN EDUCATION  
AND  
THE NAVAJO NATION**

**THIS DATA SHARING AGREEMENT** (“Agreement”) is made by and between the Bureau of Indian Education (“BIE”) and the Navajo Nation.

**WHEREAS**, BIE operated schools, grant schools, and contract schools operate on the Navajo Nation pursuant to Title X, Part D of the No Child Left Behind Act of 2001 (Pub. L. 107-110) at 25 U.S.C. § 2000 et seq. (Pub. L. 95-561, as amended), 25 U.S.C. § 2501 et seq. (Pub. L. 100-297, as amended), and 25 U.S.C. § 450 et seq. (Pub. L. 93-638, as amended); and

**WHEREAS**, the Navajo Nation, through the Navajo Nation Board of Education and the Department of Diné Education (DODE) are authorized pursuant to the Navajo Nation Code at 10 N.N.C. § 106(A) and 107(A) to oversee the operations of all schools that serve the Navajo Nation; and

**WHEREAS**, many BIE-funded schools on and near the Navajo reservation have not been successful in meeting the student performance criteria established by the states the schools are located in and so far seventeen (17) grant schools are in School Improvement, Corrective Action and Restructuring status under Pub. L. 107-110; and

**WHEREAS**, the Navajo Nation is working with the Department of the Interior and the Department of Education on enacting an alternative definition of adequate yearly progress under 25 C.F.R. Part 30 that would better serve the specific needs of Navajo students; and

**WHEREAS**, both the BIE and the Navajo Nation desire to evaluate and improve adequate yearly progress on the Navajo reservation and improve compliance with the No Child Left Behind Act of 2001; and

**WHEREAS**, the FERPA, set forth in 20 U.S.C. § 1232g, and its regulation at 34 C.F.R. § 99.1, et seq. (as amended in 2012) generally prohibits the disclosure of a student’s Personally Identifiable Information without consent subject to certain exceptions; and

**WHEREAS**, 20 U.S.C. § 1232g(b)(1), 34 C.F.R. §§ 99.31(a)(3), 99.35, and 25 C.F.R. § 43.14(i) allow for distribution of student Personally Identifiable Information to authorized representatives of state and local educational authorities in connection with an audit or evaluation of Federal or State supported education programs; and

**WHEREAS**, the purpose of this Agreement is for the BIE to designate DODE as an authorized representative able to receive student data consistent with FERPA so that it may conduct an evaluation of academic achievement of Navajo students attending BIE-funded schools on or near the Navajo reservation and receive Personally Identifiable Information without written consent under 25 C.F.R. § 43.14(g) and 34 C.F.R. § 99.31(a)(3); and

**WHEREAS**, FERPA requires that such information be shared in a way which does not permit personal identification of parents and students by individuals other than employees, officers, or agents of the BIE and the Navajo Nation and requires further that the information be destroyed when no longer needed for the purposes for which the evaluation was conducted; and

**WHEREAS**, the Privacy Act, 5 U.S.C. § 552a(b)(3)(5), requires that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be for a routine use as defined in subsection (e)(4)(D) of this section; and to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable. Furthermore, the Privacy Act, 5 U.S.C. § 552a(c)(1)(A)(B),(2)(3)(4), states that each agency, with respect to each system of records under its control, shall:

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of-- (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and (B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

**WHEREAS**, FERPA provides that if any party allowed access to Personally Identifiable Information does not destroy that information when no longer needed for the purposes for which the evaluation was conducted, then that party will be prohibited from access to Personally Identifiable Information from educational records for at least five (5) years.

**NOW, THEREFORE, IT IS AGREED** as follows:

**I. TERM OF AGREEMENT**

This Agreement shall be effective upon signature by the authorized representatives of the BIE and the Navajo Nation, and shall remain in effect until November 12, 2018 or until termination by the BIE or the Navajo Nation pursuant to Paragraph V herein, whichever occurs first. Upon termination of this Agreement, the Navajo

Nation shall provide written assurance to the BIE that all data obtained under this Agreement has been promptly destroyed or returned in accordance with the requirements of 34 C.F.R. § 99.35(b).

## II. DEFINITIONS AND ABBREVIATIONS

- a) "Disclose" or "disclosure" means 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 that provided or created the record. Further disclosure of any information released to the Navajo Nation by the BIE is prohibited by this Agreement in that it constitutes a re-disclosure of information. See 34 C.F.R. § 99.33.
- b) "FERPA" refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means Title 20 U.S.C. § 1232g, as well as all requirements of 34 C.F.R. Part 99; (2012) "Family Educational Rights and Privacy." 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.
- c) "Personally Identifiable Information" has the meaning set forth at 34 C.F.R. § 99.3.
- d) "BIE-funded Schools" means educational programs funded by BIE directly or under the authority of either Pub. L. 100-297 grants or Pub. L. 93-638 contracts.

## III. REQUIRED TASKS UNDER THE AGREEMENT

### a) Joint Responsibilities

1. BIE and the Navajo Nation shall comply with the provisions of FERPA and applicable regulations in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose or share student information in a manner not allowed by federal law.
2. BIE may seek to review or seek written assurances and the Navajo Nation agrees to permit the BIE to review its written assurances regarding the use of data transmitted under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the Personally Identifiable Information and that Personally Identifiable Information has not been redisclosed or released.
3. The parties will reconsider the scope and necessity of this Agreement on an annual basis.

### b) Responsibilities of BIE

1. BIE shall share the requested data with DODE by assigning user right access (READ access) to the Native American Student Information System (NASIS) district edition, Native Star, Northwest Evaluation Association (NWEA), and other student information system data collection programs for purposes of the Navajo Nation conducting a study and evaluation of student achievement of Navajo students in

- grades K-12 in BIE-funded schools.
2. BIE shall designate, and through execution of this Agreement, hereby does designate DODE as an authorized representative for purposes of having access to Personally Identifiable Information of students as detailed in this Agreement and in accordance with 34 C.F.R. § 99.35 and 25 C.F.R. § 43.14(i). DODE is an authorized representative for the purpose of 1) conducting an evaluation of the academic performance of Navajo students in BIE-funded schools on or near the Navajo reservation in compliance with No Child Left Behind Act of 2011, 2) development of an alternative definition of adequate yearly progress for the Navajo Nation under 25 C.F.R. Part 30, and 3) the reauthorization of tribally controlled grant and contract schools, 4) research of educational challenges confronting students, and 5) analysis of schools on or near Navajo Nation's reservation in execution of the feasibility study.
  3. BIE shall post for public access a copy of this Agreement on the BIE website. BIE shall allow the Superintendent and Office of Educational Research and Statistics (OERS) staff access to required federal training to become proficient in the use and management of all student information systems. The training will include security awareness protocols, data management policies, and usage of student information systems. Additionally, BIE shall allow access to DODE/OERS staff any statistical training to improve the analysis of academic achievement of students and other indicators (cultural, demographic, teacher background, etc.).
  4. BIE shall provide technical assistance and guidance on reports developed by the Navajo Nation.
  5. In order to confirm there has been no redisclosure, BIE shall monitor the Navajo Nation's use of shared data, including requesting copies of lists of current DODE/OERS staff authorized to access the data, copies of policies and procedures designed to maintain the security of the data as long as this Agreement is in effect, monitoring activity of user accounts in the NASIS system, and conducting site visits to offices of the DODE/OERS.

c) Responsibilities of the Navajo Nation

1. The Navajo Nation shall use data shared under this Agreement for no purpose other than to conduct an evaluation of federal and state supported education programs in BIE-funded schools on or near the Navajo reservation, including student achievement of Navajo students in grades K-12.
2. The Navajo Nation shall not share or redisclose Personally Identifiable Information received under this Agreement with any other entity, organization, or individual without the prior written approval of the BIE. This restriction on redisclosure does not prohibit the Navajo Nation from sharing aggregate student data and results of its evaluations in which all Personally Identifiable Information has been removed, as verified under procedures in this Agreement, or from redisclosing Personally Identifiable Information back to the BIE.
3. The Navajo Nation shall maintain all data obtained pursuant to this Agreement separate from all other data files that it possesses and not copy, reproduce, or transmit data obtained pursuant to this Agreement, except as necessary to fulfill the purpose of this Agreement, or the Navajo Nation evaluation described in this Agreement. 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. Employees within the Navajo Nation's DODE shall follow current protocols for gaining access to the NASIS system, including completion of Federal Information System Security Awareness plus Privacy and Records Management Training and completion of NASIS Account Access forms and associated Rules of Behavior.
5. Navajo Nation's DODE shall provide to BIE a list of its employees authorized to access NASIS prior to any sharing of Personally Identifiable Information and shall immediately notify the BIE when any of its listed employees leaves employment or is otherwise removed from the list of authorized NASIS users.
6. The ability to access or maintain data under this Agreement shall not, under any circumstances, transfer from or be assigned to any other individual, institution, organization, government, or entity.
7. The Navajo Nation agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student or parent to any other individual, institution, organization, government, or entity.
8. The Navajo Nation shall establish procedures and systems to ensure that all personally identifiable data is processed, stored, and transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure, including the interception, diversion, duplication or other unauthorized access to said data. The Navajo Nation shall provide copies of such procedures and systems to BIE upon request.
9. The Navajo Nation shall establish procedures and systems to ensure all Personally Identifiable Information obtained is kept in secured facilities and media and that access to such records is restricted to the Superintendent and DODE/OERS staff authorized to have access to said data for the purposes of conducting the aforementioned evaluation. The Navajo Nation shall provide copies of such procedures and systems and lists of authorized personnel to the BIE upon request.
10. The Navajo Nation shall within one (1) hour of being made aware, report in detail to the BIE any incidents of any Personally Identifiable Information received from BIE where confidentiality was breached or is believed to have been breached.
11. The Navajo Nation agrees to destroy all Personally Identifiable Information obtained under this Agreement within 30 days of when it is no longer needed for the evaluations described by this Agreement or the termination of this Agreement, whichever occurs first. Nothing in this Agreement authorizes the Navajo Nation to maintain data received from the BIE beyond the time period reasonably needed to complete the evaluation, and in no case beyond the termination date of this Agreement. Any destruction of the referenced data must be witnessed by one other person who can later attest that a complete destruction of the data occurred. The Navajo Nation agrees to submit a letter to BIE within 30 days of the termination of this Agreement, attesting to the destruction of any referenced Personally Identifiable Information received from the BIE and describing the method of destruction. No new Agreement will be agreed to by the BIE until the data is returned or destroyed as set forth herein.
12. Unless the data is returned to the BIE, the Navajo Nation shall maintain records that document and verify the destruction of the data provided by BIE under this Agreement.
13. The Navajo Nation agrees to adhere to any Department of the Interior, Indian

- Affairs, or BIE protocols or directives prohibiting disclosure of data, which would permit public identification of students because of the small cell sizes (i.e., subgroups of 10 or fewer students) of the data. If data is so identified by the BIE 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.
14. The Navajo Nation shall use data to perform descriptive statistical analyses with a variety of predictor variables. Specifically, they will identify students' academic performance.
  15. 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 the Navajo Nation of any of the information provided by the BIE in that this would constitute a redisclosure of Personally Identifiable Information.
  16. Under the applicable federal FERPA regulations, that is 34 C.F.R. § 99.33 and 25 C.F.R. 43.19(a), redisclosure is only permitted upon obtaining prior consent of the parent or eligible student of the Personally Identifiable Information. The Navajo Nation shall submit any proposed publication arising from this work to the BIE prior to publication in order to allow the BIE to verify that disclosure of student and parent identities has properly been avoided.
  17. Under no circumstance shall the Navajo Nation become owners, proprietors, or custodians of any data or Personally Identifiable Information provided by the BIE under the terms of this Agreement.

#### IV. SCOPE OF THE AGREEMENT

This Agreement incorporates all the understandings between the BIE and the Navajo Nation concerning this subject matter. No prior agreements, verbal representations, or understandings shall be valid or enforceable unless embodied in writing in this Agreement.

#### V. TERMINATION OF THE AGREEMENT

This Agreement may be terminated by the BIE or the Navajo Nation, upon advance written notice of 14 (fourteen) days. The BIE may terminate the Agreement immediately upon confirmation of fraud, negligence, unauthorized redisclosure, or abuse of confidentiality. This Agreement shall terminate automatically on November 12, 2018, unless extended by a written agreement for intervals of no greater than one year.

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.

BUREAU OF INDIAN EDUCATION

BY: \_\_\_\_\_ Date: 4/28/2015  
Vicki Forrest, Deputy Bureau Director  
Bureau of Indian Education

NAVAJO NATION

BY: Ben Shelly \_\_\_\_\_ Date: MAY 04 2015  
Mr. Ben Shelly, President  
Navajo Nation