

**FAMILY EDUCATION RIGHTS AND PRIVACY ACT (FERPA) AGREEMENT  
BETWEEN  
THE BUREAU OF INDIAN EDUCATION  
AND  
THE STANDING ROCK SIOUX TRIBE**

THIS FERPA AGREEMENT (“Agreement”) is made by and between the Bureau of Indian Education (BIE) and the Standing Rock Sioux Tribe (SRST).

WHEREAS, three grant schools – Rock Creek Grant School, Sitting Bull School, and Standing Rock Community School – operate on the Standing Rock Reservation 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) and 25 U.S.C. § 2501 et seq. (Pub. L. 100-297, as amended), at 25 U.S.C. § 450 et seq.; and

WHEREAS, the Standing Rock Sioux Tribe is a people with distinct political, economic, and cultural heritage. As part of that heritage, the Tribe possesses and exercises inherent sovereignty, including the furtherance of realizing its goal of self-determination in Tribal education; and

WHEREAS, the grant schools on the Standing Rock Reservation have not been successful in meeting the student performance criteria established by the states in which the schools are located and so far the Standing Rock Sioux Tribe’s grant schools are in Restructuring status under Pub. L. 107-110; and

WHEREAS, both the BIE and the SRST desire to evaluate and improve adequate yearly progress on the Standing Rock Reservation and improve compliance with the No Child Left Behind Act of 2001; and

WHEREAS, the FERPA, set forth in title 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 the Standing Rock Tribal Department of Education as an authorized representative able to receive student data consistent with FERPA so that it may conduct an evaluation of academic achievement of Standing Rock students attending BIE-funded schools within the Standing Rock 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 SRST 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 SRST, and shall remain in effect until June 30, 2018, or until termination by the BIE or

the SRST pursuant to Paragraph V herein, whichever occurs first. Upon termination of this Agreement, the SRST 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 SRST by the BIE is prohibited by this Agreement in that it constitutes a redisclosure of information. 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 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.

## III. REQUIRED TASKS UNDER THE AGREEMENT

### a) Joint Responsibilities

1. The BIE and the SRST 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 SRST 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 the BIE

1. BIE shall share the requested data with SRST by assigning user access rights (READ access only) 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 SRST conducting a study and evaluation of SRST

students' academic achievement in grades K-12 in its three tribally controlled schools.

2. BIE shall designate, and through execution of this Agreement, hereby does designate, Standing Rock Tribal Department of Education 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). The Standing Rock Tribal Department of Education is an authorized representative for the purpose of conducting an evaluation of the academic performance of SRST students in BIE-funded schools on the Standing Rock Reservation in compliance with the No Child Left Behind Act of 2001.

3. BIE shall post for public access a copy of this Agreement on the BIE website.

4. BIE shall allow the Standing Rock Tribal Department of Education 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 and usage policies of BIE student information systems. Additionally, BIE shall allow access to the Standing Rock Tribal Department of Education any statistical training to improve the analysis of academic achievement of students and other indicators (cultural, demographic, teacher background, etc.).

5. BIE shall provide technical assistance and guidance on reports developed by the SRST.

6. In order to confirm there has been no redisclosure, BIE shall monitor the SRST's use of shared data, including requesting copies of lists of the current Standing Rock Tribal Department of Education 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 Standing Rock Tribal Department of Education.

#### c) Responsibilities of the SRST

1. The SRST 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-operated and tribally controlled schools on the SRST reservation including student achievement of SRST Students in grades K-12.

2. The SRST 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 does not prohibit the SRST or the BIE from sharing aggregate student data with one another.

3. The SRST 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 SRST 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 Standing Rock Tribal Department of Education shall follow current protocols for gaining access to the NASIS system, including completion of the Federal Information System Security Awareness Plus Privacy and Records Management Training and completion of NASIS Account Access forms and associated Rules of Behavior.

5. The Standing Rock Tribal Department of Education shall provide to the 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 SRST 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 SRST 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 SRST shall provide copies of such procedures and systems to BIE upon request.

9. The SRST 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 Standing Rock Tribal Department of Education employees authorized to have access to said data for the purposes of conducting the aforementioned evaluation. The SRST shall provide copies of such procedures and systems and lists of authorized personnel to the BIE upon request.

10. The SRST shall, within one (1) hour of being made aware, report in detail to BIE any incidents of any Personally Identifiable Information received from BIE where confidentiality was breached or is believed to have been breached.

11. The SRST 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 SRST 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 SRST agrees to submit a letter to the 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 SRST shall maintain records that document and verify the destruction of the data provided by the BIE under this Agreement.

13. The SRST 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 SRST shall use data to perform descriptive statistical analyses with a variety of predictor variables. Specifically, they will identify factors that are distinctive to the SRST that impact the academic achievement of SRST students.

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 SRST of any of the information provided by the BIE; in that this would constitute a redisclosure of information. 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 SRST 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.

16. Under no circumstance shall the SRST 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 AGREEMENT

This Agreement incorporates all the understandings between BIE and the SRST 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 AGREEMENT

This Agreement may be terminated by the BIE or the SRST, upon advance written notice of 14

(fourteen) days. The BIE may terminate the Agreement immediately upon confirmation of fraud, negligence, redisclosure, or abuse of confidentiality. This Agreement shall terminate automatically on June 30, 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:   
Dr. Charles M. Roessel  
Director, Bureau of Indian Education

Date: 5/20/15

STANDING ROCK SIOUX TRIBE

BY:   
Dave Archambault, II  
Chairman, Standing Rock Sioux Tribe

Date: 5/20/15