

[REDACTED]

**DATA ACCESS AGREEMENT BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
AND**

[REDACTED]
[REDACTED]

This Agreement (Agreement) is entered into by and between the South Dakota Board of Regents ("SDBOR") a constitutional board of the State of South Dakota, 306 E Capital Ave, Suite 200, Pierre, SD 57501, and [REDACTED]
[REDACTED]

A. LEGAL AUTHORITY:

1. Both parties agree that all data sharing measures will be performed in accordance with the requirements of the following federal laws.
 - a. Section 483 (a)(1) of the HEA, 20 U.S.C. 1090(a)(10) authorized the U.S. Department of Education to disclose FAFSA (ISIR) data. The U.S. Department of Education ("USDE") uses in the applicable System of Records Notice published under the Privacy Act of 1974, as amended, (5 U.S.C. 552a) authorizes the USDE to disclose FAFSA Institutional Student Information ("ISIR") data and permits this disclosure of FAFSA data to SDBOR to permit SDBOR to determine an applicant's eligibility for financial assistance under the state of South Dakota's financial aid programs. Further, to encourage and assist students with the completion of the FAFSA, SDBOR may disclose the FAFSA Filing Status Information of a student to a Local Education Agency ("LEA"), including the secondary school where the student is or was enrolled, or to a designated entity to assist the student with the completion and submission of his or her FAFSA (Federal Student Aid Application File Systems of Record Notice (Aug. 3, 2011. 76 Fed. Reg. 46774).
 - b. Family Education Rights and Privacy Act of 1974 ("FERPA") 20 U.S.C. 1232g and its regulations codified at 34 CFR part 99 of Title 34 of the Code of Federal Regulations (as effective Jan. 3, 2012).
 - (1). FERPA paragraph 1232g(b)(1)(F) provides that education records and personally identifiable information (PII) may be released without student or parental consent to organizations administering student aid programs if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than the representatives of such organizations.
 - (2). Additionally, FERPA regulation §99.31(a)(3) allows for disclosure of PII from education records without consent to authorized representatives of a state or local education authority. This exception allows state agencies to disclose, without consent, PII from education records to audit or evaluate Federal or State supported education programs. Special safeguards to protect the privacy of PII will be followed according to §99.35(a)(3).
 - (3) FERPA permits PII that is otherwise considered confidential under the FERPA to be shared or provided upon the written consent of the student, or their parent or guardian; and

each individual student or their parents or guardians who have submitted PII and other information as part of the FAFSA process are informed about and have given their written consent to the provision of their FAFSA related data to the LEA that they are attending, to be used for the intended purposes, and thus pursuant to 34 CFR 99.30, SDBOR is providing the LEA with this data and information in accordance with such consent and in compliance with the FERPA.

B. FAFSA PURPOSE:

2. SDBOR entered into an Agreement with the USDE, whereby SDBOR was granted access to the web-based data provided through the Student Aid Internet Gateway ("SAIG");
3. The LEA wishes to obtain data and information from SDBOR, made available through the SAIG system, in order to assist the LEA in determining which of its students have not completed a "Free Application for Federal Student Aid ("FAFSA");
4. The FAFSA application data provided to it by SDBOR will enable the LEA to facilitate and encourage student utilization of financial assistance;
5. This Agreement is intended to aid the LEA's students in obtaining financial assistance, thus enabling them to attend postsecondary education institutions;
6. The data that will be provided by SDBOR to the LEA under this Agreement will include the filing status information of identified students of the LEA and such data constitutes personally identifiable information (PII), as defined by 34 CFR 99.3;

C. FAFSA SCOPE:

1. Disclosure of Data.

SDBOR hereby agrees to disclose to the LEA FERPA-protected PII, education records and data obtained from the USDE's SAIG website via EDConnect, for the sole purpose of allowing the LEA to determine which of its students have not completed the FAFSA application process, so that the LEA can encourage such students to do so.

2. Sole Purpose Use.

The LEA agrees that it will not use the data and student information provided pursuant to this Agreement for any purpose other than that set forth and agreed to herein. Such data shall only be used by the LEA for the purpose of determining which of its current students have not begun or completed the FAFSA application process, so that the students thus identified may then be contacted by the LEA to counsel them and offer assistance and encouragement in connection with such students completing the FAFSA application process, thereby promoting college access.

3. Data Disclosed and Disclosure Procedures.

- a. SDBOR will disclose to the LEA the following data and information using the secure protocol described in paragraph B of this section 3:
 - (1). The student's last name;

- (2). The student's first name;
- (3). The student's date of birth;
- (4). A FAFSA completion status flag, indicating one the following statuses: FAFSA Complete, FAFSA Incomplete, FAFSA Not Filed; and
- (5). A FAFSA verification flag.

Such data shall be provided and transmitted to the LEA utilizing the following procedures and methods:

- b. The LEA's authorized representatives, listed in Attachment B, shall be the only persons permitted to login into the SDBOR Secured FAFSA Completion Portal and access information regarding FAFSA filing status for the LEA's students for whom they are responsible.
- c. Authorized representatives, listed in Attachment B, employed by the LEA will have access to the FAFSA completion data provided by SDBOR to provide their students with advice, assistance and information concerning completion of the FAFSA application process. In no event shall any other individuals be permitted access to the SDBOR provided data. In no event shall any of the authorized representatives of the LEA access SDBOR provided data unless it concerns a student for whom they are personally responsible or with whom they are working.

D. Data Sharing Direct Access Campaign Purpose:

1. SDCL 13-28-50 authorizes data sharing between the LEA and the Board of Regents.
2. The SD Department of Education has memorandums of understanding with SDBOR regarding data sharing for financial aid and student demographic purposes.
3. The LEA shall provide Dakota State University, as administrator of the K-12 Data Center, with the authorization to provide student email address (joined by name and student id) for purposes of communicating with the high school and the student messaging as approved by the school district.

E. Direct Access Campaign Scope:

1. LEA hereby agrees to disclose to SDBOR via Dakota State University the email addresses, joined by the student id and first and last name.
2. SDBOR agrees that it will not use the data and student information provided pursuant to this Agreement for any purpose other than that set forth and agreed to herein, and that the data will only be provided to employees or personnel necessary to effectuate the purposes of the Agreement. Email content shall be approved by the school district prior to submission and may only be used for the purpose of Direct Access communication.

F. FAFSA Data Protection and Non-Disclosure of Confidential Data.

1. The LEA agrees that it will not copy, use, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the stated purpose of this Agreement and complete the tasks associated with the purpose set forth in this Agreement.
2. The LEA agrees that the data provided to it by SDBOR will only be used for the purpose of determining which of its current students have not already completed a FAFSA application, and

that any data or information provided to it by SDBOR will only be available to the agents or employees of the LEA who need access to the data to make that determination.

3. Accessing, Transmitting and Storing FERPA-Protected PII:

- (a). The LEA's representatives, noted in Attachment B, will be assigned a unique user ID and password. Such user IDs and passwords shall be kept confidential.
- (b). The LEA shall limit access to FERPA-Protected PII to only those authorized personnel who need to have access to such information for the purpose of performing their duties under this Agreement. The LEA warrants and represents that Confidential Information will only be used for purposes consistent with this Agreement.
- (c). The LEA shall inform all authorized personnel with access to the FERPA-protected PII of his or her responsibilities with respect to this data and criminal sanctions for noncompliance under applicable Federal, State and Local law.
- (d). In the event an authorized individual no longer requires access to SDBOR data pursuant to the terms of this agreement, the LEA shall inform SDBOR of the change in status.
- (e). On an annual basis the LEA shall verify that current authorized personnel still require access as provided.
- (f). The LEA shall not reverse engineer, test, or otherwise exploit any SDBOR software, service, or other tangible objects which embody FERPA-protected PII in performing the services under this Agreement.
- (g). The LEA shall password protect any laptop or computer or mobile device that contains FERPA-protected PII. Additionally, any laptop, computer, or mobile device that contains FERPA-protected PII shall have its full hard drive encrypted. The LEA shall not leave any laptop, computer, or mobile device unattended without enabling a screen-lock or otherwise blocking access to the device's operating system. The LEA shall ensure that no password or other information sufficient to access a laptop, computer or mobile device containing FERPA-protected PII is attached or located near the laptop, computer, or mobile device at any time.
- (h). The LEA agrees that all transmittals of paper or analog versions of the FERPA-protected PII and information provided by SDBOR shall be conducted in the most secure means possible and in accordance with all applicable FERPA requirements. Any electronic transmissions shall be via secure encrypted transmission.

4. All Disclosed Data Subject to FERPA.

All parties agree and understand that all copies of or information derived from records or data disclosed to and from the LEA pursuant to this agreement, of any type and in any form or format are also subject to this Agreement and the FERPA, and that such copies and related information must be protected and kept confidential in the same manner as the originally provided data.

5. No Transfer of Data or Data Ownership.

For purposes of FAFSA data, SDBOR in no way assigns ownership of any PII or education record data to the LEA or any of its agents, employees, or third-party contractors. Except as otherwise provided in this Agreement, the ability to access, maintain, or utilize data obtained from SDBOR pursuant to this Agreement will not under any circumstances transfer from the LEA or be assigned by the LEA to any other individual, institution, organization, government, or entity. The LEA may not provide access to the data, or copies thereof, to any third party or contractor, without that third party or contractor first being required to enter into a data sharing Agreement with SDBOR.

6. Data Destruction.

- a. The LEA agrees to completely and permanently destroy PII, education records, data and/or confidential information (in any medium) obtained by printing copies pursuant to this Agreement, within 180 days following the completion of the task for which such copies were created or obtained, or immediately upon termination of this Agreement.
- b. The LEA will promptly inform the SDBOR Financial Aid and Student Systems Analyst or their designee in writing each time such copies, records, data, and/or information are destroyed pursuant to this Agreement. Such notification shall describe the data and information destroyed, the date of the destruction, the method of destruction utilized by the LEA and whether, prior to destruction, such PII, education records, data and/or information were in the possession of the LEA or one of its agents or contractors.
- c. SDBOR reserves the right under this Agreement to inspect the LEA at any time to determine whether this section has been complied with.

7. Segregation of Data.

The LEA agrees to segregate from all other data any SDBOR provided data obtained pursuant to this Agreement and agrees that such data shall never be commingled with other data except as necessary to complete the FAFSA filing status determination purpose otherwise described in this Agreement. If any exception to this provision becomes necessary, prior to any commingling of data the LEA shall obtain written permission from SDBOR. Further, the LEA agrees to maintain confidentiality of any such commingled data and ensure that all applicable FERPA requirements are followed for any such commingled data.

8. Limitation on Disclosure of SDBOR-Provided Data/FERPA Training/Individuals Bound to Agreement.

The LEA will take reasonable precautions to protect the confidentiality of PII derived from SDBOR-provided PII or education record data or information described in this Agreement. The LEA will limit disclosure of PII and education records and data obtained pursuant to this Agreement to only those authorized individual(s) who have a legitimate need to access the data in order to fulfill the purposes of this Agreement and who are engaged in tasks directly related to the purposes of this Agreement. The LEA affirms and agrees that each of its employees or agents who will have access to such data obtained pursuant to this Agreement has been properly trained regarding what they must do to comply with the FERPA.

9. Monitoring Compliance.

SDBOR shall be allowed to conduct audits, access records, interview the LEA's employees, and otherwise monitor the LEA's activities to affirm that appropriate FERPA-compliant policies, procedures, and practices are in place and have been followed in connection with ensuring the confidentiality of all PII education record data or information obtained from SDBOR.

10. Breach of Confidentiality Incident Reporting.

In the event that the LEA or any person, employee, agent, or other third party working with or for the LEA, directly or indirectly discloses PII or education records or data obtained from SDBOR or becomes aware of any actual or possible breach of confidentiality of any PII or education records or data obtained from SDBOR in any manner other than that described in this agreement, the LEA shall immediately make every reasonable effort to recover the data and rectify the situation, and shall take all other actions required under the FERPA.

No later than twenty-four (24) hours after learning of an actual or possible breach of confidentiality, the LEA shall report to SDBOR such actual or possible breach or any unauthorized disclosure of FERPA protected records or data provided to it pursuant to this Agreement. This initial notification must be given through a phone call to the SDBOR Financial Aid and Student Systems Analyst or their designee. The LEA shall provide a detailed written follow up report of such matters to SDBOR within no more than two (2) business days following that phone call.

As requested by SDBOR, the LEA shall continue to provide information and reports on any actual or possible breach of confidentiality until such time as SDBOR determines that all matters surrounding such breach have been satisfactorily resolved. If a breach of confidentiality has occurred or may have occurred, SDBOR may immediately terminate or suspend any data sharing agreement(s) between it and the LEA in effect at the time of the prohibited disclosure and may henceforth bar the LEA from future data access agreements for a period of five (5) years. The LEA agrees to fully cooperate with SDBOR in taking any and all actions deemed necessary or required in order to address, and if possible rectify, any breach of confidentiality.

11. Reports.

Neither the LEA, nor any of its authorized individuals shall publish or distribute any document or report containing the analysis or results of the FAFSA data matching project described in this Agreement in a manner that in any way discloses the identity of any individual or from which the identity of any individual could be reasonably ascertained.

G. OTHER PROVISIONS:

1. Contacts.

The persons directly responsible for managing the data covered by this Agreement, and who shall serve as contacts are:

For SDBOR:

Janice Minder, Academic Vice President of Policy and Planning

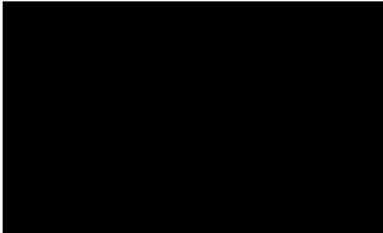
306 E Capital Ave, Suite 200

Pierre, SD 57501

605-773-3455

Janice.Minder@sdbor.edu

For the LEA:



2. Ongoing Provisions.

All terms, obligations and conditions of this Agreement that relate to the FERPA and confidentiality of data and information disclosed to the LEA pursuant to this Agreement shall continue and be in force until such time as all such terms, obligations and conditions have been satisfactorily met, performed, or completed. In addition, the terms concerning destruction of data, non-disclosure and confidentiality requirements of this Agreement shall survive the termination of this Agreement and remain in effect as long as the LEA or any person or entity who is or has been under the LEA's direction or control retains or possesses any record(s), information or data subject to this Agreement.

3. Term.

This Agreement shall remain in full force and effect for three (3) years, commencing from the date all parties have fully executed this Agreement. After the initial three (3) year term, the Agreement will automatically renew annually unless either party terminates the agreement under the conditions of Section G.4. of this Agreement.

4. Termination.

Either party may terminate this Agreement without cause by notifying the other in writing of its desire to terminate at least sixty (60) days prior to the annual anniversary of the date of commencement, with the termination effective on the applicable annual anniversary of the date of commencement. The required prior notification of early termination shall not apply to termination by SDBOR as a result of any breach or possible breach of the non-disclosure or confidentiality requirements of this Agreement, in which case termination will be effective upon written notification of the same.

5. Amendment.

This Agreement may only be modified or amended upon the mutual written and signed agreement of the parties. If either party wishes to amend any portion of this Agreement, the

initiating party must notify the other in writing of the desire to renegotiate one or more provisions of the Agreement, shall identify the provision for which amendment is sought, and shall provide suggested amendatory language.

6. Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

7. Assignment.

This Agreement may not be assigned without the express prior written consent of the SDBOR.

- 8.** This Agreement supersedes all prior understandings or oral agreements about the subject matter contained in this Agreement.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE DULY EXECUTED THIS FAFSA DATA ACCESS AGREEMENT:

DocuSigned by:

Nathan Lukkes

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3/25/2024

South Dakota Board of Regents
Nathan D. Lukkes, Executive Director
306 E Capitol Ave, Suite 200
Pierre, SD 57501

Date

Local Education Authority:

