Eden Area ROP

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INTERAGENCY MEMORANDUM OF UNDERSTANDING FOR SHARING STUDENT RECORD INFORMATION IN FURTHERANCE OF REPORTING PROGRESS AND OUTCOMES OF STUDENTS ENROLLED IN ROP PROGRAMS

Preamble

This Memorandum of Understanding, herein referred to as "MOU," dated April ___, 2016, is entered into by and between Eden Area Regional Occupational Program ("Eden Area ROP" or the "ROP") and Castro Valley Unified School District, Hayward Unified School District, San Leandro Unified School District, and San Lorenzo Unified School District (herein collectively the "Districts") Both the ROP and the Districts are collectively referred to herein as the "Parties.").

Recitals

WHEREAS, The purpose of this MOU is to facilitate the ROP's creation and maintenance of individual-level data sets and a linked Master Data Set and the sharing of subsidiary identifiable, de-identified, or restricted-use data sets for the use of approved staff, for tracking individual student characteristics, program participation, and outcomes. Participation in this MOU on the part of the Districts entails providing personally identifiable information from student records to the ROP for the purpose of:

(a) Collecting and reporting progress and outcomes of students enrolled in ROP programs at the high school sites or the ROP center to the Districts;

(b) Collecting and reporting aggregated de-identified information to the California Department of Education in accordance with the Career Pathways Trust grant and the CTE Incentive Grant; and

(c) Providing aggregated de-identified information to the Districts in support of LCAP objectives.

WHEREAS, the Parties desire to ensure that the terms in the MOU will satisfy the requirements of Education Code section 49076, and will ensure the

confidentiality of pupil records in accordance with the Family Education Rights and Privacy Act (FERPA) 20 USC § 1232g; 34 CFR Part 99 et. seq., and all other applicable Federal and State laws and regulations.

WHEREAS, FERPA 20 USC § 1232g et. seq. and Education Code § 49076(a)(2)(E) permits disclosure to authorized representatives of State educational authorities and organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, 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 representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.

WHEREAS, California Education Code § 49076(a)(1)(C) further permits educational agencies to disclose student educational records to authorized representatives of state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported educational program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

WHEREAS, The Parties who choose to participate in this MOU desire to evaluate and improve their respective educational programs through the analysis of academic performance data concerning students who have or who are now attending the Districts schools.

WHEREAS, The Parties have determined that the Eden Area ROP is an institution that has a legitimate educational interest in receiving the student records in that Eden Area ROP is an accredited educational institution that intends to use the student records from students enrolled in schools operated by the Districts to analyze student progress for the purpose of improving instruction and student outcomes.

WHEREAS, The Eden Area ROP will share aggregated de-identified information of their findings with the Districts annually for the purpose of allowing them to evaluate and analyze their respective educational programs.

NOW, THEREFORE, in consideration of the covenants, conditions, and stipulations hereinafter expressed and in consideration of the mutual benefits derived there from, the Parties hereto agree as follows:

2. Provision of Information

For the purposes of the this agreement, and specifically to assist the ROP in improving the Districts' instructional programs and student outcomes and applying for grants, the Districts agree to provide the ROP with academic data reports composed of information derived from student records concerning their respective students. The Districts agree to provide the ROP with access only to the limited student education records information necessary to further the goals laid out in this agreement and solely for use in a manner and for a purpose consistent with ROP's authority to access information in accordance with applicable federal and state law, including, but not limited to the FERPA, 20 U.S.C. & 1232g et. seq.; 34 C.F.R. Part 99 et. seq., and Education Code 49076 et. seq.

The data shall be provided at least monthly, consistent with the dates established by the representatives of the Parties. Said data shall be provided in the manner and form as specified by the designated representatives from the Parties. This data may include personally identifiable information such as names, date of birth, gender, and ethnicity as well as courses and grades, and any other information required for grant reporting.

Any data received pursuant to this MOU shall be destroyed when it is no longer needed for the purpose of this Agreement and no later than 7 years from the date the data is first received. Additionally, the Parties agree NOT to release data to any other unauthorized person or organization.

3. Conditions for Provision of Information

The ROP agrees to comply with each and every one of the following conditions, which govern the use and disclosure of student education records, or personally identifiable information contained in student education records:

3.1 Strict Confidentiality. The ROP agrees to hold all student education records that it may receive pursuant to this MOU in strict confidence, and further agrees not to re-disclose such records except as authorized by applicable law or regulation or by the parent or guardian's prior written consent. (34 C.F.R. § 99.33 (a), (b).) This agreement not to re-disclose such records applies to any such disclosure other than among the Parties.

3.2 Limitation on Use. The ROP agrees to use each student education record that it may receive pursuant to this MOU solely for a purpose(s) consistent with the ROP's authority to access that information in accordance with this section, as applicable. (34 C.F.R. § 99.33 (a) (2).)

All data shared as part of this MOU shall remain the property of the supplying

District. The Parties represent and warrant further that data covered under this MOU shall not be disclosed, released, revealed, showed, sold, rented, leased, or loaned to any person or organization except as (1) specified herein, or (2) required by law. Access to the data covered by this MOU shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section and to those individuals on a need-to-know basis only. Notwithstanding these exceptions, the ROP understands and agrees that it will not, under any circumstances, disclose personally identifiable information from the records it receives from the Districts to any other party not subject to this MOU.

The ROP understands and agrees that it will not use the information for any purpose other than the purposes for which the disclosure was made specifically, such purpose is: in furtherance of collecting and reporting progress and outcomes of students enrolled in ROP programs at the high school sites or the ROP center to the Districts, collecting and reporting aggregated de-identified information to the California Department of Education in accordance with any state or federal grants such as the Career Pathways Trust grant and the CTE Incentive Grant, and providing aggregated de-identified information to the Districts in support of LCAP objectives.

The Parties, shall adhere to all legal requirements, including but not limited to the Federal Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g) and Education Code section 49076, as well as applicable District Board policies. In addition to FERPA, the ROP shall comply with all federal, State and local laws, rules, regulations and ordinances that are now or may in the future become applicable to the ROP; the services being provided by the ROP; the ROP 's business, equipment and personnel engaged in operations covered by this MOU; and the protection of pupil records and personally identifiable information, including but not limited to Education Code section 49060 et seq., the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). The ROP certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of pupil records and the ROP will comply with all such requirements.

Should the Parties, their agents, or assignees; or the United States Department of Education determine that release of data under this MOU does not satisfy the requirements of 20 USC 1232g or Education Code 49076, any of the parties to this MOU may terminate their agreement to this MOU.

All staff members who have access to the data will be trained regarding compliance with all applicable agreements and regulatory requirements related to data sharing.

3.3 Security Measures. The ROP shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all student education records received from the Districts pursuant to this MOU. The ROP shall provide the Districts with a written summary of its security measures for review upon request. Should the ROP contract with any subcontractors, consultants, agents, or other third parties to perform any services or activities on its behalf pursuant to 34 C.F.R. § 99.31(a)(1)(B) which may require the third party to access student education records, the ROP shall immediately notify the Parties in writing prior to such disclosure and shall extend its security measures to any third parties by contract.

3.4 Reported Violations. The ROP's personnel assigned to maintain the data, including its grant coordinator, data technician, and attendance specialist will issue a report identifying any privacy and security breach on covered data. The report will be completed within three (3) business days from the time the breach was discovered and include corrective measures to prevent any future similar breaches. Failure to comply within this time frame will result in temporary or permanent termination of access to covered data and possibly termination of this MOU. If any individually identifiable student data was included in the data breach, parents will be notified in writing of the data breach within ten days.

3.5 Recordkeeping Requirements. Eden Area ROP agrees to comply with the requirements governing maintenance of records of each request for access to and each disclosure of, student education records set forth under Title 34, Code of Federal Regulations § 99.32 and under Education Code § 49064 as applicable.

3.6 Acknowledgement of Receipt of Notice of FERPA Regulations. By signature of its authorized representative or agent on this MOU, the ROP hereby acknowledges that it has been provided with the notice required under 34 C.F.R.§ 99.33(d) that it is strictly prohibited from re-disclosing student education records, or personally identifiable information contained in student education records, that it receives pursuant to this MOU to any other person or entity except as authorized by applicable law or regulation or by the parent or guardian's prior written consent.

3.7 Return or Destruction of Student Education Records. Upon termination, cancellation, expiration, or other conclusion of this MOU, the ROP shall return all copies of student records that it has received from the Districts pursuant to this MOU and, or an agreement between the ROP and the Districts and which it is not required to maintain by applicable law or regulation, within two (2) weeks or, if return of records is not feasible or desirable as determined

by the Districts, the ROP shall instead promptly destroy any and all copies of the Districts' education records in its possession upon written request from the Districts, and shall further confirm such destruction in writing to the Districts within two (2) weeks of the destruction of the data.

4. Agreement to Keep Information Confidential

4.1 The ROP and the Districts agree that each entity shall comply with applicable federal and state laws relating to the confidentiality of the Districts' provided information.

4.2 The Parties further agree that all information exchanged shall only be used for the intended purposes outlined in this MOU, to limit disclosure of the exchanged information within its own organization to its directors, officers, and employees, who have a need to know, and to not disclose any information to any third party other than the ROP, (whether an individual, corporation, or other entity) without the expressed prior written consent of the other Party. Each Party shall satisfy its obligation, if it takes affirmative measures to ensure compliance with these confidentiality obligations by its employees and others who are permitted access to or use of the Districts' provided information.

5. Indemnification

All Parties agree to indemnify the other Parties and each other's board members, officers, agents, consultants, and employees against, and to hold the same free and harmless from, any and all claims, demands, damages, injuries, losses, costs, expenses, actions, or liabilities caused through their respective omission, or negligence, in connection with the performance of this Agreement.

6. Entire Agreement

This document states the entire agreement between the Parties with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements.

7. Execution

Each of the persons signing this MOU on behalf of a party or entity other than a natural person represents that he or she has authority to sign on behalf and to bind such party.

8. Assignment

None of the signatories to this MOU may assign their rights, duties, or

obligations under this MOU, either in whole or in part, without the prior written consent of the other signatories to this MOU.

9. Severability

The terms of this MOU are contractual and not mere recitals. Should any provision or part of any provision or application thereof be held invalid, the invalidity shall not affect any other provision or application of the MOU which can be given effect without the invalid provision or application, and to this end, the provisions of this MOU are declared to be severable.

10. Waiver

Waiver by any signatory to this MOU of any breach of any provision of this MOU or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this MOU shall not operate as a waiver of such right. All rights and remedies provided for in this MOU are cumulative.

11. Modification and Amendments

This MOU may be amended or modified at any time by written mutual agreement of the authorized representatives of the signatories to this MOU. The Parties further agree to amend this MOU to the extent amendments are required by an applicable law or policy issued by an appropriate regulatory authority if the amendment does not materially affect the provisions of this MOU. However, if new laws, policies, or regulations applicable to the Parties are implemented which materially affect the intent of the provision of this MOU, the authorized representatives of the signatories to this MOU shall meet to discuss modification of this MOU within a reasonable period of time, which time period shall not exceed twenty (20) business days.

12. Termination

If a District reasonably determines in good faith that the ROP has materially breached any of its obligations under this MOU, the District, in its sole discretion, shall have the right to provide the ROP with a fifteen (15) day written notice to cure the breach. If the ROP fails to cure a breach within that period of time, the District may terminate its agreement to the MOU immediately. If, in its sole discretion, the District determines that cure is not possible, the District may provide written notice of immediate termination of its agreement to the MOU.

13. Counterparts and Electronic Signatures

This Agreement may be executed in any number of counterparts, each of

which shall be deemed to be an original and all of which shall constitute together one and the same instrument. A manually signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

14. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the State of California.

15. Headings and Captions

The headings and captions used in this MOU are for convenience of reference only, and shall in no way define, limit, expand, or otherwise affect the meaning or construction of any provision of this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized officers as of the day and year first above written.

Superintendent, Eden Area ROP	Date
Superintendent, Castro Valley Unified School District	Date
Superintendent, Hayward Unified School District	Date
Superintendent, San Leandro Unified School District	Date
Superintendent, San Lorenzo Unified School District	Date