INFORMATION SHEET 10/15/2024 TRUSTEES' MEETING

TO: Board of Trustees Item: 5.8

FROM: Jim Bridges

ISSUE: SJCOE Data Sharing Agreement

Overview

The data sharing agreement is important to ensure the secure and responsible sharing of data between the SJCOE and JESD, including a pledge to share data through a secure FTP to protect the confidentiality and integrity of the data shared.

Rationale

SJCOE would like to be able to use each district's TOMS files to create a countywide dashboard of the state assessments. This dashboard will be used and shared at the community of practice and with all of districts, to establish a baseline and to move forward with collaboration around literacy data and visualization as a county. Attached you will find the data sharing agreement for you to review.

Funding:

There is no cost associated with this data sharing agreement.

Conclusion

This data sharing agreement is necessary to develop a countywide dashboard for progress on early childhood literacy. In addition, this agreement will allow SJCOE to help administrators dig into their data through root cause analysis protocols.

MEMORANDUM OF UNDERSTANDING
for
DATA SHARING BETWEEN THE _____
SCHOOL DISTRICT AND
SAN JOAQUIN COUNTY OFFICE of EDUCATION

This **Memorandum of Understanding ("MOU"**) is entered into this ____ day of _____,_____ by and between the SAN JOAQUIN COUNTY OFFICE of EDUCATION, hereinafter referred to as "SJCOE," and the _____ SCHOOL DISTRICT hereinafter referred to as "LEA" to memorialize the MOU between the parties for participation in the San Joaquin Data Sharing Project.

WHEREAS SJCOE and the LEA are entering into this MOU to facilitate mutual sharing of data and integration between data management systems, as appropriate to improve efficiencies and reduce costs for both agencies; and

WHEREAS the purpose of this MOU is to set forth the rights and responsibilities of SJCOE and LEA with respect to the sharing between the parties of data collected or retained by the LEA and/or by SJCOE.

NOW THEREFORE, in consideration of the terms and conditions hereof, including the recitals, the parties agree as follows:

1. DEFINITIONS

"Student Data" includes any data, whether gathered by SJCOE or its sub-processors, or provided by the Partner Entity or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, documents, student identifiers, photos, voice recordings, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Metadata. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purpose of this MOU, and for the purposes of federal, state, and local laws and regulations. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of SJCOE's services, or that of a SJCOE sub-processor.

"Partner Entity" means another public or private agency or organization that has entered into a Memorandum of Understanding ("MOU") with SJCOE to participate in the San Joaquin Data Sharing Project.

"De-Identified Data" as used in this MOU means data from which all PII has been removed or obscured so that a reasonable person in the community, who does not have personal knowledge of

the relevant circumstances, would not be able to identify any adult individual or student with reasonable certainty.

“Data Warehouse” means the system and infrastructure operated and maintained by SJCOE for the purpose of storing and integrating data from Partner Entities participating in the San Joaquin Data Sharing Project.

“Sub-processor” or “subcontractor” means a party other than the Partner Entity and SJCOE who SJCOE uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to student data.

“Metadata” means information that provides meaning and context to other data being collected; including, but not limited to; date and time records and purpose of creation. Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

“School Official” is a contractor that: (1) Performs an institutional service or function for which the Partner Entity would otherwise use employees; (2) is under the direct control of the Partner Entity with respect to the use and maintenance of Student Data including Education Records; and (3) is subject to 34 CFR § 99.31(a) governing the use and redisclosure of personally identifiable information from Education Records.

2. INFORMED CONSENT

Adult individuals and parents/guardians of students have the right to see a current list of the San Joaquin Data Sharing Project Partner Entities. As part of the informed consent process, adult individuals and parents/guardians of students must be informed that additional agencies may join San Joaquin Data Sharing Project at any time and may have access to their information.

SJCOE will maintain the San Joaquin Data Sharing Project Data Warehouse in such a way as to protect against revealing the identity of adult individuals and parents/guardians of students to unauthorized agencies, individuals, or entities.

3. SECURITY AND CONFIDENTIALITY

The Parties will do the following to ensure the security and confidentiality of data:

The Parties shall each designate a Partner Entity Administrator and authorized user(s) responsible for the compliance with security and confidentiality provisions detailed in this MOU.

The Parties shall protect the confidentiality of PII and take all reasonably necessary measures consistent with industry standards to protect data from any and all unauthorized access and disclosures.

The Parties each represent and warrant that they have designated an individual responsible for training its employees, agents and assigns on reasonable protection measures and the confidentiality of PII consistent with state and federal law.

The Parties shall not disclose PII, except as specified under the terms of this MOU or as required by law.

The Parties shall develop, implement, maintain, and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used data received from or on behalf of Partner Entities, adult individuals or parents/guardians of students.

SJCOE shall access, store, and use data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

SJCOE shall use industry-standards and up-to-date security tools and technologies in providing services.

SJCOE warrants that all data will be stored in the United States.

SJCOE warrants that all confidentiality and security measures identified in this MOU will be extended by contract to any and all subcontractors used by SJCOE. Compliance with this requirement shall not, in itself, absolve SJCOE of any liability in the event of an unauthorized disclosure of PII.

SJCOE shall not use PII to which it has access by way of the Data Sharing MOU for any purpose other than those required or specifically permitted by the Data Sharing MOU.

PII received pursuant to the consent requirements of this MOU shall not be redisclosed without an individual's express written authorization unless permitted by law.

Students shall retain possession and control of Student Generated Content as defined by Education Code section 49073.1, subd. (d)(4). Parent/Guardian or Adult students may contact the LEA to access any Student Generated Contact.

4. SCOPE OF MOU

SJCOE periodically provides no-fee and/or fee-based services designed to assist the LEA with certain requirements and mandates for managing or reporting on data collected by the LEA, potentially including the integration of data between disparate systems. The LEA may periodically require assistance with analyzing, reporting on, or comparing its data to other LEAs in the county or state. LEA additionally may periodically wish to obtain services from SJCOE for other uses or analysis of its own data to facilitate planning, service delivery and support for program evaluation.

Unless expressly agreed in writing between the parties with respect to any class or classes of data, the terms and conditions of this MOU govern all occasions on which data sharing occurs between SJCOE and the LEA during the term of this MOU. If LEA requests any specific fee-based services from SJCOE, such services will be defined in a mutually agreed upon MOU outside the scope of this MOU, which will govern the terms of any specific services provided.

5. SJCOE RESPONSIBILITIES

SJCOE will provide any services it delivers in a timely and professional manner. SJCOE will assist with automation of any processes required for the exchange of data between the agencies to the extent possible. Further, SJCOE will ensure any systems it develops with such data to serve the needs of LEA or other public agencies will have appropriate levels of security to ensure data available can only be viewed or accessed by parties legally allowed to do so, and as agreed upon by LEA.

SJCOE will have contracts with third parties to help SJCOE maintain the SJCOE data system ("SJCOE Contractors"). SJCOE may not distribute student or staff data to any SJCOE Contractors without LEA's written consent or as permitted by this MOU, unless required by law. SJCOE shall ensure that approved subcontractors adhere to this MOU. SJCOE will ensure that any subcontractor or sub-processor that it engages to process, store, or access data, has adequate technical security and organizational measures in place to keep data secure and comply with this MOU. SJCOE will require any vendors and subcontractors to comply with any applicable state and federal laws and regulations regarding educational records and data privacy, including but not limited to: Education Code §§ 49073.1, 49076, and 49076.5; the federal Family Educational Rights and Privacy Act ("FERPA"); the Health Information Portability and Accountability Act ("HIPAA"); and the Student Online Personal Information Protection Act ("SOPIPA"). SJCOE shall ensure that third party contractors do not use any data for any purpose other than what is required or permitted pursuant to this MOU.

6. LEA RESPONSIBILITIES

LEA shall provide system linkages or necessary data extracts from their student information or other systems for SJCOE to provide services on an agreed upon or pre-defined schedule between the parties. Any such schedule agreed upon in writing (including email) between the parties shall be deemed incorporated herein and made a part hereof upon such mutual MOU. The data provided by the LEA shall include data relevant to the purpose of this MOU or specific system requirements.

7. APPLICABLE LAW

The sharing of data under this MOU will from time to time include the collection and maintenance by SJCOE of educational records that contain personally identifiable information ("PII") on students of the LEA. SJCOE is bound by the regulations and laws for access and management of this data and will conform to all legal requirements. SJCOE and the LEA agree that the disclosure of information under this MOU complies with the requirements of Education Code sections 49076 and 49076.5, FERPA, HIPAA, and other state and federal laws and regulations regarding educational or health records, and further agree to adhere to the requirements of such laws and regulations in carrying out their responsibilities under this MOU. The Parties certify that they are familiar with these laws, as well as any other applicable requirements for the storage and transmission of PII and will comply with all such requirements.

SJCOE will provide access to Student Data, including de-identified information, only to its employees and subcontractors who need to access the data to fulfill its obligations under the Data Sharing MOU. SJCOE will ensure that employees and subcontractors who perform work under the Data

Sharing MOU have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this MOU. SJCOE will use the education records only for the purpose of fulfilling its duties under the Data Sharing MOU for Partner Entity's and its pupil's benefit and will not share such data with or disclose it to any third party except as provided for in this MOU, required by law, or authorized in writing by the Partner Entity.

If SJCOE will have access to "education records" for the Partner Entity's students as defined under FERPA, SJCOE acknowledges that, for the purposes of the Data Sharing MOU, it will be designated as a "school official" with "legitimate educational interests" in the Partner Entity's education records, as those terms have been defined under FERPA and its implementing regulations, and SJCOE agrees to abide by the FERPA limitations and requirements imposed on school officials. SJCOE will use the education records only for the purpose of fulfilling its duties under the Data Sharing MOU for District's and its pupil's benefit and will not share such data with or disclose it to any third party except as provided for in this MOU, required by law, or authorized in writing by the Partner Entity.

Both parties understand that certain federal and state programs and laws, including the free and reduced lunch program and laws governing the provision of special education services, have additional legal requirements for data security, and both parties agree to maintain full compliance with such requirements.

Without limitation to the foregoing, SJCOE and LEA additionally agree that aggregated (non-individually identifiable) data may be reported upon or shared as allowable by law.

This MOU is intended to comply with Education Code section 49073.1 and Business and Professions Code section 22584. In addition to any other penalties, if this Data Sharing MOU fails to comply with Education Code section 49073.1 and Business and Professions Code section 22584, the Data Sharing MOU shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect.
Written notice of noncompliance may be provided by any party to the Data Sharing MOU. All parties subject to the Data Sharing MOU voided in accordance with this paragraph and Education Code section 49073.1 or Business and Professions Code section 22584 shall return all Pupil Records and Covered Information in their possession to the Partner Entity.

8. INFORMATION TO BE DISCLOSED

The LEA agrees to provide SJCOE with access to only the specific and limited student education records information needed for each data project. Specifically, the LEA agrees to provide SJCOE with the following data:

Student level data, not limited to:

- Local and State Identification Numbers
- Demographics (Ethnicity, EL Status, SpEd Status, Primary Home Language, Poverty
- Status, Foster/Homeless Status, Parent Ed Level, Gender, DOB)

- School Name
- School attendance/Chronic Absenteeism
- Student Course/Transcript Information
- Teacher Identification Number
- State and Local Assessment Data
- Behavior/Suspension/Expulsion
- Graduation Data

9. OWNERSHIP OF DATA

SJCOE and the LEA agree that the LEA will continue to maintain ownership of its source data. SJCOE agrees that it will not alter LEA's source data and is not responsible for any errors therein. The LEA understands that though SJCOE may notify it of issues it discovers with the source data, the LEA is responsible for any corrections required to its own data. LEA acknowledges that accurate reports rely upon accurate source data being maintained by LEA. Each party owns or controls its data systems and the work product generated by such systems.

SJCOE agrees to notify LEA and obtain explicit permission for sharing of any data requested which falls outside the legal terms of this MOU unless such data is otherwise regularly publicly shared and available.

No information obtained by SJCOE through this MOU shall be used for targeted advertising.

10. ADMINISTRATION OF DATA SYSTEMS

If the LEA desires to contract with SJCOE for certain administrative services with respect to the LEA's data systems, which may include collection, extraction, or backup of data on behalf of the LEA, a list of agreed upon administrative services will be defined in a schedule to be incorporated herein as additional Exhibits to this MOU, which will govern the terms of any specific services provided.

11. DATA SECURITY

Both parties agree to maintain appropriate security protocols in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. SJCOE maintains appropriate network and other data security to protect any data in its possession. Each party agrees to notify the other if it has any reason to believe there has been a breach of data security relevant to the data subject to this MOU, and any data has been lost, tampered with, or otherwise illegally accessed. Any notifications required by law in the event of a breach in data security will be the responsibility of the agency defined as responsible for such

reporting.

12. UNAUTHORIZED DISCLOSURE NOTIFICATIONS

In the event of an unauthorized disclosure of PII the following process will be implemented:

Immediately upon becoming aware of a compromise of PII, or of circumstances that could have resulted in an unauthorized access to or disclosure of PII, LEA and SJCOE agree to notify the other party, fully investigate the incident and fully cooperate with each other's investigation of the incident, implement remedial measures and respond in a timely manner.

Adult Individuals or parent/guardians of students will be notified in a manner consistent with relevant law of:

The nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.).

To the extent known, the specific PII that were used or disclosed without authorization.

Except as otherwise required by law, SJCOE will not provide notice of the incident directly to the adult individual or parent/guardian of students whose PII were involved, regulatory agencies, or other entities, without prior written permission from LEA.

Compliance with this requirement shall not, in itself, absolve SJCOE of any liability in the event of an unauthorized disclosure of PII.

13. OUTSIDE AGENCIES

Both LEA and SJCOE have periodic need to share student data, as legally allowed, with public agencies (including the California Department of Education) needing access to such data to provide services to students. SJCOE and the LEA understand that the sharing of data for use in such systems will greatly streamline the process of getting important services to students.

Additionally, LEA and SJCOE may have the periodic need to share data, as legally allowed, with university researchers for academic purposes to allow university researchers to collaborate with LEA and SJCOE or to perform relevant research studies.

SJCOE agrees that no data will be made accessible to any such agency or university for any purpose other than those limited to the data required and relevant to the program's services, and only under conditions allowed by law, and only with specific prior written approval of LEA.

14. REVIEW OF INFORMATION

A Parent/Guardian or Adult student may correct erroneous information identified upon review of student Records by making a written request to LEA.

15. RECORDS RETENTION

Student records shall not be retained or available to SJCOE upon completion of the terms of this MOU except as permitted by law.

16. RETURN OF RECORDS OR DESTRUCTION

SJCOE warrants that upon the termination of the MOU, SJCOE will securely transmit all LEA data, including PII, to LEA in a mutually agreed upon format, without retaining any copies of LEA data. In the alternative, and subject to a written request from LEA, SJCOE will securely destroy all LEA data, including PII, upon termination of the MOU. SJCOE will then provide verification to LEA that the LEA Data not otherwise returned to LEA was destroyed pursuant to LEA's written request, the date of destruction and the method of destruction. Notwithstanding this provision, SJCOE will comply with all litigation holds and/or court orders to preserve LEA Data. Upon termination of this MOU by either party, SJCOE will ensure that all LEA PII data is purged from all SJCOE-hosted systems, unless otherwise permitted by law, including but not limited to production, development, and archival systems. SJCOE shall retain the right to maintain de-identified aggregate data on LEA for longitudinal research purposes upon termination of this MOU by either party.

17. INDEPENDENT CONTRACTORS

Both parties may engage the services of outside professionals in the course of administration, development or technical support of data systems. Any such professionals will be bound at all times by the same confidentiality and security requirements which are applicable to any data within the parties' systems, and by state and federal law governing such access.

18. TERM OF THE MOU

This MOU may be periodically or annually updated to incorporate changes if required upon mutual MOU of the parties. LEA understands that this MOU is part of an effort to standardize data sharing and management between SJCOE and all districts it serves, and as such, every effort will be made to maintain a common MOU across all agencies.

19. INDEMNIFICATION/LIABILITY

SJCOE and LEA agree to mutually indemnify and hold harmless each other against claims against their respective agencies as a result of any or all actions, claims, damages and losses, including attorney's fees that may arise out of or in any way result from the negligent or intentional acts, errors or omissions of the other party. The parties further agree that each shall not be held liable for any special, consequential, indirect, or incidental damages incurred as a result of this MOU.

If not updated by July 1 of each year, this MOU will continue to remain in force and govern all services for that fiscal year until and unless terminated per Paragraph 20 of this MOU.

20. TERMINATION

Either party may terminate this MOU upon ninety (90) days' written notice. If either Party reasonably determines in good faith that the other Party has materially breached any of its obligations under this MOU, the non-breaching Party shall have the right to provide the breaching

Party with written notice of a 15-day period to cure the breach. If the breaching Party fails to cure a breach within that period of time, the non-breaching Party may terminate this MOU immediately.

IN WITNESS WHEREOF, the parties agree to this Memorandum of Understanding to be executed by their duly authorized officers in the County of San Joaquin, State of California.

AUTHORIZED SJCOE PARTY:

Signature: _____

Name: _____

Title: _____

Date: _____

AUTHORIZED DISTRICT PARTY:

Signature: _____

Name: _____

Title: _____

Date: _____

AUTHORIZED SJCOE PARTY:

Signature: _____

Name: _____

Title: County Superintendent of Schools

Date: _____