

## **Data Sharing – Memorandum of Agreement**

Between

Rochester School District

and

Confederated Tribes of the Chehalis Reservation

The Confederated Tribes of the Chehalis Reservation is a federally recognized Indian tribe with inherent sovereign rights, which pre-date the establishment of the United States, and that are secured under the Executive Order and agreements with the United States, and all other rights and benefits to which it is entitled under the laws and Constitution of the United States. The Confederated Tribes of the Chehalis Reservation is the tribe nearest the boundaries of the Rochester School District in Washington State.

This data sharing agreement (the Agreement) refers to the Rochester School District (the District) and the Confederated Tribes of the Chehalis Reservation (Tribe) collectively are “the Parties.” The Chairman of the Tribe and the Rochester School Board President” are each a signatory to this Agreement.

### **I. Background**

The Family Educational Rights and Privacy Act (FERPA) and its implementing regulations govern access to the “student education records” of children attending a school that receives federally administered funds, including public schools. The term “education records” is defined

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### **I. Background**

The Family Educational Rights and Privacy Act (FERPA) and its implementing regulations govern access to the “student education records” of children attending a school that receives federally administered funds, including public schools. The term “education records” is defined

as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. Student education records includes attendance, grades, test scores, and other similar records. *See* 34 CFR § 99.3.

FERPA protects the privacy of students' education records from public release. The general rule under FERPA is that the "personally identifiable information," defined in FERPA at 34 C.F.R. § 99.3, in student educational records cannot be disclosed without written consent from the parent/guardian or eligible student, such as a student 18 years old or older. "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. 34 C.F.R. § 99.33.

FERPA generally provides federal, state, and local education agencies access to student records and other personally identifiable information kept by educational institutions without the advance consent of parents/guardian or students. However, the Parties are concerned that FERPA may not include tribes or tribal education agencies (TEAs) as among the governmental entities eligible to obtain student data without advance parental/guardian consent.

This potential omission of tribes from access to student education records under FERPA has hampered tribal efforts to develop and coordinate education programs, provide support services and technical assistance to schools, collaborate with state and local education agencies, and most importantly, work to close tribal student achievement gaps.

This is a significant loss because tribes and TEAs are in the best position to track and coordinate Native student data, regardless of the education provider and student location. Student data analysis is a central tool in evaluating educational practices, tracking students' academic performance, and developing school improvement plans and support services. Tribes need access to the education records of Native students so that they can monitor and analyze the needs and progress of their students and make data-driven decisions to improve education outcomes for Native students.

Additionally, accurate, comprehensive, and meaningful data on Native students is often lacking because federal education reporting requirements frequently omit Native students due to their small numbers, and the state and local education agencies that do track Native students in public schools are unable to monitor some of the most at need Native students attending schools other than public schools.

FERPA includes an audit or evaluation exception that permits the disclosure of education records, including personally identifiable information, without prior parental/guardian/ eligible student consent in connection with an audit or evaluation of Federal or State supported education programs. *See* 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) and §§99.31(a)(3) and 99.35)

Senate Bill 6263 – Educational Data Sharing Agreements – School Districts and Tribes – Model Policy was signed into law on March 27, 2020. Senate Bill 6263 added a new section to Chapter 28A.604 RCW. The legislation became effective June 11, 2020. The legislation directed the Washington State School Directors' Association in consultation and collaboration with tribes, to

develop a model data sharing agreement between school districts and local tribes that safeguarded students' personally identifiable information consistent with FERPA requirements. In developing the model data sharing agreement, WSSDA consulted with the Office of Superintendent of Public Instruction, the Office of Native Education, the Tribal Leaders Congress on Education and local tribes.

## **II. Purpose and Mission**

The District and the Tribe desire to evaluate and improve the academic progress of Native students attending public school in the District and improve compliance with the Every Student Succeeds Act of 2016 (ESSA). The purpose of this data sharing Agreement is to work to close the opportunity gap, and increase the graduation level for our Native American students in the spirit of the Centennial Accord and Millennium Agreement with the State of Washington and as identified under ESSA. The agreement is entered into in the spirit of building community relationships and cultural understanding to improve the success of tribal students.

This Agreement designates Director of K-12 Education as an authorized representative of the Tribe to receive student data from the District consistent with FERPA so that the Tribe may receive student education records, including personally identifiable information, without written parental/guardian/eligible student consent under 25 C.F.R. § 43.14(g) and 34 C.F.R. §99.31(a)(3) in order to evaluate the academic achievement of Confederated Tribes of the Chehalis students attending school in the District.

**III. Joint Responsibilities**

- A. The District and the Tribe 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.
- B. To confirm there has been no redisclosure and pursuant to this Agreement, the Tribe agrees that the District may monitor the Tribe's use of shared data, request current list of authorized Tribal staff and or job titles authorized to access the data, request copies of policies and procedures designed to maintain security of data transmitted under this Agreement, monitor activity of user accounts in the Native American Student Information System (NASIS), conduct site visits to the Tribe's offices, or seek written assurances from the Tribe.
- C. The Parties will reconsider the scope and necessity of this Agreement on an annual basis.

**IV. Responsibilities of the District**

- A. The District authorizes access to student education records, including personally identifiable information to the above designated individual(s) and/or job titles for the purposes stated in this Agreement.
- B. The District shall share the requested data with the above designated individual(s) and/or job titles. Data sharing might occur by assigning user right access (READ access) to Skyward for purposes of the Tribe evaluating student achievement of its students in PreK-12 in District schools.
- C. Data sharing may occur by other methods in addition to assigning user rights to information systems.

- D. The District shall post a copy of this Agreement on its website for public access.
- E. The District shall provide the designated individual(s) and/or job titles 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, the District shall provide the designated individual(s) and/or job titles access to any statistical training to improve the analysis of academic achievement of students and other indicators (cultural, demographic, teacher background, etc.).
- F. The District shall provide technical assistance and guidance on reports developed by the Tribe.
- G. The District shall handle, consider, and maintain all data received from the Tribe with the same care and confidentiality as the District must provide to educational records.
- H. The District agrees not to disclose any data received under this Agreement in a manner that could identify an individual student to any other individual, institution, organization, government, or entity

**V. Responsibilities of the Tribe**

- A. The Tribe shall use data shared under this Agreement for no purpose other than to evaluate federal and state supported PreK-12 education programs in the District and the achievement of Tribal students.
- B. The Tribe shall not share or re-disclose personally identifiable information received under this Agreement with any other entity, organization, or individual without the prior

written approval of the District. This does not prohibit the Tribe or District from sharing aggregate student data with one another.

- C. Tribal Employees shall follow current protocols and rules for gaining access to any and all student information system / data collection programs used under this agreement.
- D. The Tribe agrees not to disclose any data obtained under this Agreement in a manner that could identify an individual student to any other individual, institution, organization, government, or entity.
- E. The Tribe shall establish policies and procedures to ensure compliance with FERPA, including how personally identifiable information is processed, stored, and destroyed. The Tribe shall provide copies of such policies and procedures to the District, if requested.
- F. The Tribe shall promptly report to the District any incidents of confidentiality breach of personally identifiable information received from the District.
- G. The Tribe agrees to destroy all personally identifiable information obtained under this Agreement within ninety (90) days after it is no longer needed for its evaluation purpose or upon the termination of this Agreement, whichever occurs first.
- H. Unless the data is returned to the District, the Tribe shall maintain records that document the destruction of the data provided by the District under this Agreement.
- I. The Tribe agrees that any proposed publication arising from this data properly disaggregates data consistent with generally accepted statistical principles so that it does not permit identification of students.



J. Under no circumstance shall the Tribe become owners, proprietors, or custodians of any data or personally identifiable information provided by the District under the terms of this Agreement.

## **VI. Scope**

This Agreement incorporates all the understandings between the District and the Tribe concerning this subject matter. No prior agreements, verbal representations, or understandings shall be valid or enforceable unless embodied in writing in this Agreement. Nothing herein shall be deemed to waive the sovereign immunity of the Confederated Tribes of the Chehalis Reservation or its enterprise, agents, or employees.

## **K. Termination of Agreement**

This Agreement may be terminated by the District or the Tribe upon advance written notice of fourteen (14) days. The District or the Tribe may terminate the Agreement immediately upon confirmation of fraud, negligence, redisclosure, or abuse of confidentiality. This Agreement shall terminate automatically on June 30, 2025, unless extended by a written agreement for intervals of no greater than two (2) years.

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.

Rochester School District

Signature: Kimberly M Fry

Printed Name and Title: Kimberly Fry, Superintendent

Date: 6/28/21

Confederated Tribes of the Chehalis Reservation

Signature: Harry Pickernell

Printed Name Title: Harry Pickernell, Sr., Chairman

Date: 9.16.21

[All text below this line is informational for using this form to create an agreement. It is not intended to be part of the agreement and should be deleted before completing an agreement.]

Management Resources: 2020 December Issue

Legal References: Chapter 28A.604 RCW

**Date: 6/2021**