

**MEMORANDUM OF
UNDERSTANDING**
Between the
CALEXICO UNIFIED SCHOOL DISTRICT
and the
IMPERIAL COUNTY
SUPERINTENDENT OF SCHOOLS

Regarding
DATA SHARING SERVICES

This **Memorandum of Understanding ("MOU")** is entered into this **1st of July 2019**, by, and between the **IMPERIAL COUNTY SUPERINTENDENT OF SCHOOLS ("ICSS")**, and the **CALEXICO UNIFIED SCHOOL DISTRICT ("LEA"** and collectively, "Parties").

WHEREAS, ICSS and the LEA are entering into this MOU in order to facilitate and acknowledge the mutual sharing of data and integration between data management systems, as appropriate to improve efficiencies, establish responsibilities and fee structure between Parties; and

WHEREAS, the Parties wish to protect the privacy of pupil records, and to comply with any applicable privacy statutes, including FERPA, AB 1584 and SOPIPA; and

WHEREAS, the purpose of this MOU is to set forth the rights and responsibilities of ICSS and LEA with respect to data collected or retained by the LEA and/or by ICSS.

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

1. Scope of Agreement: ICSS shall provide 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 (collectively, "Data"). LEA may periodically request additional services from ICSS for other uses or analysis of its own data. This MOU shall be supplemented by amendments or other attachments that will reflect specific undertakings or Agreements by the ICSS and the LEA. Any and all Amendments or other attachments to this MOU shall be agreed upon by the parties and in writing.
2. Specific Agreement and Rate: The terms and conditions of this MOU govern all occasions on which data sharing occurs between the ICSS and the LEA during the term of this Agreement. These existing services shall be referred to as "Core Services". If LEA requests any additional services arising from these Core Services from ICSS, the Parties may agree to a fee for the performance of these additional services. If the manner of the agreed upon fee is set as an hourly rate, the hourly rates shall be as set forth as an Exhibit. The Parties may also agree to a service or product not encompassed by the Core Services. (These services may be referred to as "Separate Services".) In such a case the Agreement shall be attached as an Exhibit to this MOU or other reference this MOU by incorporation.

3. ICSS Responsibilities: ICSS will provide any services it delivers in a timely and professional manner. ICSS will assist with the automation of any processes required for the exchange of Data between the agencies to the extent possible. (ICSS will ensure any systems it develops with such Data to serve the needs of LEA or public agencies will have appropriate levels of security, as further detailed in paragraph 11, below.) ICSS shall help ensure Data available can only be viewed or accessed by Parties legally allowed to do so, and as agreed upon by LEA.
4. LEA Responsibilities: LEA shall provide system linkages or necessary data extracts or permission access from the LEA's student information or other systems in order for the ICSS 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 agreement. Data extracts will be provided electronically by the LEA to ICSS, and the LEA will be responsible for integrating LEA's Data into ICSS's data repositories as needed to perform the required tasks for itself or LEA.
 - 4.(i) The LEA shall designate those individuals who can: (a) Transmit data to ICSS; (b) Request Release of data to the LEA or to third parties; or (c) Request extracts or data analysis to the LEA's data. The Data provided by the LEA shall include data relevant to the purpose of this MOU or specific system requirements.
 - 4.(ii) LEA shall be responsible for determining who has access to system. LEA shall also be responsible for determining and communicating to ICSS the roles and responsibilities of each person with said access, including the person who is responsible for maintaining the account.
 - 4.(iii) LEA may request ICSS to perform data extracts to populate a third party data system with student or staff data. In such an event ICSS shall make no warranty as to the compliance of that third party system with any or all federal and state privacy statutes, except as otherwise stated in this MOU or Separate Agreement.
5. Applicable Law: The sharing of Data under this MOU will from time to time include the collection and maintenance by the ICSS of educational records that contain personally identifiable information on students and/or staff of the LEA. ICSS is bound by the same regulations and laws for access and management of this Data, and will conform to all legal requirements. ICSS and the LEA agree that the disclosure of information under this MOU complies with the requirements of Education Code sections 49076 and 49076.5, as amended by AB 733 and A B 1 584 , the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99, as amended), Health Insurance Portability and Accountability Act of 1996 ("HIPPA"), Student Online Personal Information Protection Act ("SOPIPA") (California Business and Professions Code section 22584), and other state and federal laws and regulations regarding educational records.

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, ICSS and the LEA additionally agree that aggregated (non-individually identifiable) data may be reported upon or shared as allowable by law.

6. Ownership of Data: ICSS and the LEA agree that the LEA will continue to maintain ownership of its source data. ICSS agrees that it will not alter the LEA's source data without explicit authorization from the LEA, and is not responsible for any errors therein. ICSS shall not be responsible for the type or quality of the data provided by the LEA, and ICSS makes no warranty as to the Data itself. The LEA understands that though ICSS may notify it of issues it discovers with the source data, the LEA is responsible for any corrections required to its own data or will authorize ICSS to make explicit change(s). The LEA acknowledges that accurate reports rely upon accurate source data being maintained by the LEA. Each party owns or controls its data systems and the work product generated by such systems.
7. Prohibited Use of Data: Except as otherwise permitted by the terms of this Agreement, ICSS shall not use the data supplied to it in an unauthorized manner. Specifically, ICSS shall not sell or release student data, nor enable or permit third parties to engage in targeted advertising to students or to build student profiles unrelated to the purposes contemplated by this Agreement.
8. Administration of Data Systems: If, pursuant to paragraph 2 above, the LEA desires to contract with ICSS 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, in an Exhibit to be attached hereto. Examples of additional services could include annual audit, annual trainings for staff, and assistance in security of the LEA maintained systems. The Exhibit shall also contain any applicable and agreed upon fee.
9. Student and Parent Access to Data: ICSS shall work with the LEA to provide a means by which its employees, when so authorized by the LEA, can search and access Student Data through reasonable procedures such that the LEA can respond to a parent, legal guardian, or eligible student who seeks to review personally identifiable information on the pupil's records to correct erroneous information. The foregoing notwithstanding, ICSS shall cooperate with the LEA to help insure that this record correction will be consistent with District policies regarding record correction.
10. Third Party Vendors: ICSS may have contracts with third parties to help ICSS maintain the ICSS data system ("ICSS Contractors"). ICSS may not distribute Student and/or Staff Data to any ICSS Contractors without the LEA's written consent or as permitted by the Agreement, unless required by law. ICSS shall ensure that approved subcontractors adhere to all of the provisions of this MOU. ICSS will help ensure that any subcontractor or sub-processor that it engages, to process store or access Student Data, has adequate technical security and organizational measure in place to keep Student and/or Staff Data secure and to comply with the terms of this MOU.
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. ICSS shall maintain all data obtained or generated pursuant to the Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of data requests by the LEA. ICSS shall provide annual security training to those of its employees, who operate or have access to the system. ICSS shall provide the LEA with contact information for the person at ICSS who the LEA may contact if the LEA has security concerns or questions. Where applicable, ICSS will require unique account identifiers, user names and passwords that must be entered each time a client or user signs in.

12. Data Breach Notification: Upon becoming aware of any unlawful or unauthorized access to Student and/or Staff Data stored on Equipment used by ICSS or in facilities used by ICSS, ICSS will take the following measures:
 - 12.(i) Promptly notify the LEA of the suspected or actual incident, including the type of data subject to the unauthorized access.
 - 12.(ii) Promptly investigate the incident and provide the LEA with detailed information regarding the incident, including the identity of the affected users, and the estimated date of the breach.
 - 12.(iii) Assist the LEA in notifying either the student or their legal guardian, and take commercially reasonable steps to mitigate the effects and to minimize any damages resulting from the incident,
13. Outside Agencies:
 - 13.(i) ICSS may be required by subpoena or other lawfully issued order to divulge student data to law enforcement or other reviewing agency. When permitted by the requesting agency, ICSS shall provide the LEA with notice of the request and types of information requested. Both ICSS and the LEA have periodic needs 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. ICSS 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. Foster Youth data is an example requiring production of, access to, and sharing of data on behalf of the IMPERIAL County courts and other public agencies to provide intervention services. Education Code sections 49076 and 49076.5, as amended, provide specific legal conditions under which data may be accessed by or shared with public agencies.
 - 13.(ii) ICSS agrees that no data will be made accessible to any such agency 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.
 - 13.(iii) LEA agrees that if it is determined by ICSS that it is required by subpoena or other lawfully issued order to permit access to student data, and if for any reason LEA does not permit the access to data, LEA shall defend, and/or indemnify and hold harmless ICSS for any or all actions, and losses, including attorney's fees that may arise out of LEA's actions.
 - 13.(iv) Additionally, the LEA and ICSS may have the periodic needs to share data, as legally allowed, with university researchers for academic purposes to allow university researchers to collaborate with the LEA and ICSS or to perform relevant research studies. ICSS shall notify the LEA in writing of the following: (1) The identity of the researchers or organizations to whom the data will be transmitted; (2) Provide contracts when requested, which shall include provisions binding the researcher to the terms of this MOU; and (3) the types of data to be transmitted; and (4) the manner in which the data shall be de-identified or aggregated.
14. 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.
15. Indemnification/Liability: ICSS and the LEA agree to mutually indemnify 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 agreement. ICSS shall be

indemnified and held harmless for any claims or lawsuits arising out of the release of information pursuant to a request by the LEA that is in conformity with the procedures set forth in this MOU. The LEA specific assignments pursuant to an Attachment to this MOU may be subject to specific indemnification clauses contained within the attachments to this MOU.

16. **Severability:** If any provision of this MOU is determined by a court to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this Agreement, and the remaining provisions shall remain in effect and enforceable.
17. **Term of the Agreement:** This MOU may be periodically or annually updated to incorporate changes if required upon mutual agreement of the Parties. LEA understands that this agreement is part of an effort to standardize data sharing and management between ICSS and all districts it serves, and as such, every effort will be made to maintain a common agreement across all agencies. Notwithstanding the foregoing, this MOU shall terminate five (5) years after the effective date above.
18. **Termination:** Either Party may terminate this MOU upon ninety (90) days' written notice. ICSS certifies that Student Data shall not be retained or available to ICSS upon expiration of the term of this MOU. ICSS shall work with LEA for the orderly transfer and disposition of Student Data. ICSS shall also destroy or return to the LEA all Student Data obtained, pursuant to this MOU when such Student Data are no longer required for the MOU, or within a reasonable time. ICSS may retain a specific pupil's Data in the event that the pupil chooses to establish or maintain an account with the ICSS for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account.
19. **Dispute Resolution:** In the event of a dispute between any party to this MOU, the parties shall attempt to resolve their disputes informally, in discussions involving the decision-makers for each of the parties. If these discussions are not successful, the parties shall retain a mediator to resolve the dispute with the mediation to be held within 90 days of the date the dispute arises. If mediation is not successful, either party shall have the right to bring the dispute before the Imperial County Superior Court.

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

**IMPERIAL COUNTY
SUPERINTENDENT OF SCHOOLS**

**CALEXICO UNIFIED SCHOOL DISTRICT
901 ANDRADE AVENUE
CALEXICO, CA 92231**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Attachment 1

Imperial County Office of Education

Data Sharing Contact List

(Please complete and return with MOU)

District Name: _____

Executive Contact:

Name: _____

Email Address: _____

Title: _____

Phone Number: _____

Assessment Contact:

Name: _____

Email Address: _____

Title: _____

Phone Number: _____

CALPADS Contact:

Name: _____

Email Address: _____

Title: _____

Phone Number: _____

Student Information System Contact:

Name: _____

Email Address: _____

Title: _____

Phone Number: _____