

**DATA ACCESS AND SECURITY AGREEMENT BY AND BETWEEN THE OHIO
DEPARTMENT OF HIGHER EDUCATION
AND SCHOOL DISTRICT
PURSUANT TO THE FAFSA COMPLETION INITIATIVE**

This agreement (“Agreement”) is made by and between the Ohio Department of Higher Education (“ODHE”) with its principle place of business at 25 S. Front Street, Columbus, OH 43215 and School District (“District”).

WHEREAS, completing the Free Application for Federal Student Aid (“FAFSA”) form is a critical factor in helping students access higher education; and

WHEREAS, key studies indicate that FAFSA completion correlates strongly with college enrollment, particularly among low-income students; and

WHEREAS, ODHE has entered into an agreement with the U.S. Department of Education to receive FAFSA data to administer student financial aid programs; and

WHEREAS, ODHE under that agreement may share certain prescribed FAFSA filing status data (limited ISIR information) to Local Educational Agencies to facilitate and improve the number of Ohio students who complete the FAFSA; and

WHEREAS, receipt of such FAFSA filing status data will enable the District to encourage students to complete such financial aid forms; and

NOW, THEREFORE, ODHE and the District, individually a “party” or collectively “the parties” hereby agree as follows:

1. Scope of Services

- a. ODHE agrees to provide access to certain student financial aid information to the District as set forth in Exhibit A (“Data Access”) in accordance with the terms and conditions of this Agreement.
- b. In exchange for the Data Access provided by ODHE to the District, the District shall use its best efforts to encourage its students to complete the FAFSA form.

2. Compensation

- a. The parties agree to provide the services described in Section 1 (Scope of Services) at no cost or with no reimbursement of expenses to the other party.

3. Term of Agreement

- a. This Agreement shall be deemed effective on the date it is executed by the District on the FAFSA Complete web page. An authorized representative of the District must sign this Agreement. This agreement shall continue in full force and effect until either party terminates the agreement.

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4. Termination

- a. Either party may terminate this Agreement, or any part of this Agreement, at any time upon 30 days prior written notice to the other party.
- b. Either party may immediately terminate this Agreement or any part of this Agreement if it reasonably determines that the other party has committed misconduct, fraud or malfeasance.
- c. If either party terminates the Agreement, the parties agree to take commercially reasonable efforts to reconcile any outstanding transactions within 60 days of the effective date of termination.

5. Protection and Non-Disclosure of Confidential Information

- a. Confidential Information: All information received or accessed by the District, either directly or indirectly, in writing, electronically or by any other means related to the FAFSA filing data, shall be deemed confidential information.
- b. Use of Confidential Information: The District represents and certifies that it shall not use Confidential Information for any purpose not specifically identified in this Agreement. Any use of Confidential Information not specifically contemplated in this Agreement shall be considered a material breach of this Agreement. Specifically, the District agrees to the following:
 - i. That ODHE may request documentation to ensure compliance with the receipt, security and use of the data provided under this agreement.
 - ii. That the District assures that the FAFSA Filing Status Information will be used by the District only for the purposes consistent with section 483(a)(3)(E) of the Higher Education Act of 1965 as amended.
 - iii. That the District assures it will comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g and its regulations codified at 34 CFR part 99) in disclosing any personally identifiable information from students' education records.
 - iv. That the District assures that the disclosures will only be made to Authorized Personnel as described in paragraph e of this section and for authorized purposes described in this agreement.
 - v. That the District assures it will not re-disclose or share the FAFSA Filing Status information obtained under this agreement in personally identifiable form other than to the FAFSA applicant and to the FAFSA applicant's parents if the applicant is under age 18, to the applicant if the applicant is age 18 or older or enrolled in a post-secondary institution, or to any other party with the consent of the FAFSA applicant or the consent of the FAFSA applicant's parent if the FAFSA applicant is under the age of 18, or if required to do so by law and if such use is consistent with all applicable privacy laws, including the privacy provisions of section 483(a)(3)(E) of the HEA, 20 U.S.C 1090 (a)(3)(E) and FERPA.

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- c. Maintenance of Confidential Information: The District shall take all reasonable measures to protect the privacy of and avoid unauthorized disclosure, access or use of Confidential Information. In doing so, the District shall use at least the same standard of care in the protection of Confidential Information as it uses to protect its own confidential information, but in any event, such Confidential Information shall be protected in at least a commercially reasonable manner.
- d. Security Incidents: The District shall immediately report to ODHE all known or suspected Security Incidents. A “Security Incident” shall mean any unauthorized action by a known or unknown person which, if successfully completed, should reasonably be considered one of the following: (1) an attack, penetration, denial of service, unauthorized disclosure or use of Confidential Information or other sensitive information, misuse of system access, unauthorized access or intrusion (hacking), virus intrusion, scan of systems or networks, or any other activity that could affect either of the party’s systems or data, or the security, confidentiality or integrity of the data received, stored, processed or maintained. “Security incident” shall also include any contact by a law enforcement agency regarding any data. For purposes hereof, “the District” shall include any of its employees, volunteers, agents, contractors or third parties including, without limitation, any vendors used by it that have access (either authorized or unauthorized) to the data. The District shall be liable for the costs associated with a breach of information under this law if caused by the District’s negligent or willful acts or omissions, or the negligent or willful act(s) or omission(s) of its employees, officers, volunteers, agents, contractors or third parties.
- e. Accessing and Storing Confidential Information
 - i. ODHE shall provide the District with access to certain Confidential Information through a website hosted by the Management Council of the Ohio Educational Computer Network (the Ohio K12 Help Portal).
 - ii. The District shall designate in writing an employee who shall be responsible for identifying and authorizing access to ODHE data for the District’s authorized personnel responsible for providing the scope of services under this Agreement. Authorized personnel includes employees, volunteers, and authorized agents, such a contractors or other parties to whom the District has outsourced any of its services or functions and who are under the District’s direct control and supervision with respect to the use and maintenance of the Confidential Information.

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- iii. The employee noted in Section 5. e. ii. above and authorized personnel will be assigned a User ID and password. Such User ID and password shall be kept confidential.
- iv. The District shall limit access to Confidential Information to only those authorized personnel who need to have access to such information for the purpose of performing their duties under this Agreement. The District warrants and represents that Confidential Information will only be used for purposes consistent with this Agreement.
- v. The District shall inform all authorized personnel with access to the Confidential Information of his or her responsibilities with respect to Confidential Information and criminal sanctions for noncompliance under applicable Federal, State and Local law.
- vi. In the event an authorized individual no longer requires access to ODHE data pursuant to the terms of this agreement, the District shall inform ODHE of the change in status.
- vii. On an annual basis the District shall recertify that current authorized personnel still require access as provided;
- viii. The District shall not reverse engineer or otherwise exploit any software or other tangible objects which embody Confidential Information in performing the services under this Agreement.
- ix. The District shall keep any physical copies (paper or other physical representations) of Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. The District shall not leave Confidential Information unsecured.
- x. The District shall encrypt any Confidential Information stored on electronic media such as CDs, DVDs, tape, flash drives, etc. Further such electronic medial shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. The District shall not leave Confidential Information in any electronic format unsecured.
- xi. The District shall password protect any laptop or computer or mobile device that contains Confidential Information. Additionally, any laptop, computer, or mobile device that contains Confidential Information shall have its full hard drive encrypted. The District shall not leave any laptop, computer or mobile device unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. The District shall ensure that no password or other information sufficient to access a laptop, computer or mobile device containing Confidential Information is attached or located near the laptop, computer or mobile device at any time.
- xii. All Confidential Information shared pursuant to this Agreement must be stored securely so that only authorized personnel have access to it. This means that precautions are taken to ensure that access through modems, networks, and the Internet is carefully monitored and limited to authorized personnel; and that data tapes, paper files and other storage media are kept in a secure location and access is limited to authorized personnel.

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- f. **Dissemination of Information:** The District shall not disseminate any Confidential Information to a third party, without the prior written consent of ODHE. If the District is presented with a request for documents pursuant to a subpoena, court order or public records request regarding any Confidential Information which may be in the District's possession, the District shall immediately give notice to ODHE with the understanding that ODHE shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party.
- g. **Return or Destruction of Confidential Information:** All Confidential Information received or accessed by the District remains the property of ODHE and shall be promptly returned or destroyed upon written request.
- h. **Survival:** The provisions of this Section (Protection and Non-disclosure of Confidential Information shall survive this Agreement.

6. Compliance with Laws: The District agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. The District acknowledges that its employees are not employees of ODHE with regard to the application of the Fair Labor Standards Act minimum wages and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, state workers' compensation laws and state unemployment insurance laws. The District accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the District in the performance of the work authorized by this Agreement.

7. Drug and Alcohol Free Workplace: The District shall comply with all applicable federal, state, and local laws regarding smoke free and drug free work places and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed hereunder do not, in the workplace, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

8. Limitation of Liability: Each party agrees to be responsible for the acts or omissions, willful or negligent, as determined by a court of competent jurisdiction or as the parties otherwise mutually agree. Neither party shall be liable to the other, nor any of their respective agents, representatives, nor employees, for any lost profits or any other indirect, special, incidental or consequential loss or damages.

9. Amendments or Modification: Unless otherwise noted, no amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

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10. Entire Agreement: This Agreement constitutes the entire agreement of the parties hereto and supersedes any prior understandings or written or oral communications between the parties respecting the subject matter hereof.

11. Waiver: The waiver or failures of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

12. Severability: If any provision of this agreement is found invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this agreement to fail of its essential purpose.

13. Notice: Any notice required hereunder shall be made in writing and shall be accomplished by personal delivery, facsimile, or by United States certified mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below or such other address as said party shall hereafter designate in writing to the other party.

1. District – as provided by the District on the web page designated for the FAFSA Completion Initiative

2. Chancellor

Ohio Department of Higher Education
25 S. Front Street
Columbus, OH 43266-0417
Facsimile: (614) 466-5866

14. Governing Law: This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

15. Headings: The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Agreement.

EXHIBIT A

Data Access:

ODHE will provide to the District (via a web page set up by the Management Council of the Ohio Education Computer Network) access to data files containing student information, as follows:

- i. The student's last name;
- ii. the student's first name and middle initial;
- iii. the student's date of birth;
- iv. the student's zip code (not full address);
- v. the date the FAFSA form was submitted to the US Department of Education; and
- vi. the district name and IRN and the school IRN.