

EDUCATION RECORDS & INFORMATION SCREENING

A THREE-STEP GUIDE FOR TRIBAL ATTORNEYS AND SOCIAL WORKERS TO ENHANCE ACCOUNTABILITY IN EDUCATION RECORDS AND INFORMATION SHARING FOR TRIBAL FOSTER YOUTH IN CALIFORNIA ICWA CASES

STEP 1: EDUCATION RECORDS ANALYSIS

1. Did the Child Welfare Agency provide Education Records with the Case Plan?

___ Yes ___ No

Creating a case plan is a requirement for receiving Title IV-E funding and the case plan MUST include the Youth’s health and education records. See 42 U.S.C. § 671(a)(16); WIC § 16501.1; 42 U.S.C. § 675(1). The case plan should be filed with the Court and provided to all Parties, including an Intervening Tribe. See Cal. Court Rule 5.708(f).

2. Does the Tribe have ALL of the Youth’s Education Records? ___ Yes ___ No

ATTENDANCE RECORDS	___ Yes	___ No
ACADEMIC RECORDS E.g., transcript, progress reports, report cards, awards, standardized test results, class schedules	___ Yes	___ No
DISCIPLINE RECORDS E.g., discipline logs, notices of truancy, notices of suspension or expulsion, incident reports, discipline hearing decisions	___ Yes	___ No
CURRENT SPECIAL EDUCATION PLAN RECORDS E.g., the student’s most recent IEP or 504 plan documents.	___ Yes	___ No
SPECIAL EDUCATION RELATED RECORDS E.g., Previous IEP or 504 plans; manifestation determination review documents; evaluation results; service logs; reports prepared by social workers, psychologists, speech and language therapists, resource specialists, or other personnel; referrals for evaluations; third-party reports or writings of any kind; notices of placement; notes from multi-disciplinary team meetings; behavior intervention plans; functional behavior assessments; observation notes	___ Yes	___ No

3. Do Any of the Education Records Need to be Updated? ___ Yes ___ No

At a minimum, the Case Plan and, therefore, health and education records, should be updated in conjunction with each status review hearing and **at least once every 6 months**. See WIC § 16501.1(e). Under education law, current IEP and 504 plans should never be more than one year old. Records may need to be updated more frequently depending on the facts of the case.



CALIFORNIA
TRIBAL FAMILIES
COALITION

STEP 2: EDUCATION INFORMATION ANALYSIS

CALIFORNIA WELFARE & INSTITUTIONS CODE
SECTION 16010 KEY REQUIREMENTS

1. Health & Education Summary: For youth placed in foster care or youth who were temporarily detained prior to disposition, does the case plan include a summary of the health and education records, including mental health information or records, of the youth? ___ Yes ___ No

The format may be maintained in the form of a health and education passport, or a comparable format designed by the child welfare agency.

2. Health & Education Summary Content: If a health and education summary is required, does it include AT LEAST the following required information?
___ Yes ___ No

The youth’s current health, dental, and education providers	___ Yes	___ No
The youth’s grade level performance	___ Yes	___ No
The youth’s school record	___ Yes	___ No
Assurances that the youth’s placement in foster care considers proximity to the school in which the youth is enrolled at the time of placement	___ Yes	___ No
The number of school transfers the youth has already experienced	___ Yes	___ No
The youth’s educational progress, as demonstrated by factors including, but not limited to, academic proficiency scores	___ Yes	___ No
Credits earned toward graduation	___ Yes	___ No
A record of the youth’s immunizations and allergies	___ Yes	___ No
The youth’s known medical problems	___ Yes	___ No
The youth’s current medications, past health problems, and hospitalizations	___ Yes	___ No
A record of the youth’s relevant mental health history	___ Yes	___ No
The youth’s known mental health condition and medications	___ Yes	___ No
The contact information for the youth’s Educational Right Holder	___ Yes	___ No
Any other relevant mental health, dental, health, and education information concerning the youth determined to be appropriate by the Director of Social Services	___ Yes	___ No

3. Updated Health & Education Summary: For at least the following court hearings, does the report or assessment include an UPDATED summary of the health and education information? ___ Yes ___ No

*.26 Selection & Implementation Hearings
Family Reunification Status Review Hearings
Post Permanency Review Hearings Unless a Guardianship or Adoption is Finalized
Any Post-Jurisdiction Hearing Where the Court Closes the Case and Withdraws Supervision*

STEP 3: DISCUSS ISSUES IDENTIFIED WITH TRIBAL ATTORNEY OR TRIBAL SOCIAL WORKER & CONSIDER POTENTIAL NEXT STEPS

Potential Next Steps:

1. Assist the Tribal Social Worker in submitting a written school records request directly to the school
2. Assist the Tribal Social Worker in submitting a written school records request on behalf of the Parent, Educational Right Holder, or an Eligible Minor
3. Inform the Child Welfare Agency of their legal non-compliance and request complete education information and school records from the Child Welfare Agency informally or via formal discovery
4. Inform the Court of the Child Welfare Agency's legal non-compliance and/or object to the Case Plan or Report based on the non-compliance
5. Help facilitate a Memorandum of Understanding Agreement between the Tribe and the School to allow for the sharing of education records

RESOURCES & TEMPLATES

Attachments:

1. CTFC Template for Tribal Social Workers Request for School Records
2. CTFC Template for Parent or Educational Right Holder Request for School Records
3. CTFC Template Release of Information for Parent or Educational Right Holder
4. Bureau of Indian Education Template MOU Agreement also available at <https://bie.edu/document/ferpa-agreement-template>

ATTACHMENT 1: CTFC TEMPLATE FOR TRIBAL SOCIAL WORKERS REQUEST FOR SCHOOL RECORDS

Template Instructions:

- This template provides the legal basis for tribal social workers to access school records at state public or private schools in California under the Uninterrupted Scholars Act (Cal. Ed. Code § 49076(a)(1)(N)(i) and 20 U.S.C. § 1232g(b)(1)(L)).
 - This template cannot be used to request school records at Bureau of Indian Education (BIE) schools. To date, the federal regulations governing BIE schools have not been amended to allow the release of records pursuant to the Uninterrupted Scholars Act. *See* 25 C.F.R. § 43.14.
- Requirements for this Template to Apply:
 - ✓ The school must be in California.
 - ✓ The school CANNOT be a BIE school.
 - ✓ The tribe must meet the definition of section 5304 of title 25.
 - ✓ The tribe must have the right to access the student's case plan.
 - ✓ The tribe must be legally responsible, in accordance with state or tribal law, for the care and protection of the student.
 - ✓ The school records requested must be relevant to the legitimate educational interests of the tribe.
 - ✓ The tribe must comply with re-disclosure requirements.

DATE

RECORDS KEEPER, POSITION TITLE

SCHOOL

ADDRESS

CITY, CA ZIP CODE

Re: STUDENT NAME, DOB: XX/XX/XXXX

Dear School Staff,

My name is NAME and I am a social worker for the TRIBE. Attached, please find a letter requesting a copy of STUDENT's educational records pursuant to the Uninterrupted Scholars Act, which amended FERPA and IDEA in 2013 to allow tribal organizations to access school records to help improve educational and developmental outcomes for foster youth.

I am also requesting that the tribe be included in future notices pertaining to suspensions, expulsions, manifestation determinations, involuntary transfers, and other documents and related information involving STUDENT. Please note that under California Education Code Section 48853.5(d), a foster child's tribal social worker has the same rights as a parent or guardian to receive such notices.

If possible, please provide records and notices electronically to EMAIL ADDRESS. Thank you so much for your assistance! We greatly appreciate it.

Sincerely,

NAME

TITLE

TRIBE

CONTACT INFORMATION

DATE

Name of Student:

Student's DOB:

Name of Tribe:

Name of Tribal Social Worker:

Phone Number:

Email:

Dear NAME,

I am authorized by the TRIBE to request education records of NAME OF STUDENT pursuant to Cal. Ed. Code Sec. 49076(a)(1)(N)(i) and 20 U.S.C. § 1232g(b)(1)(L). By my signature below, I do hereby request a copy of all discipline and education records in the possession of SCHOOL and DISTRICT that pertain to NAME OF STUDENT. Please provide records in electronic format, if possible. This release includes all documents deemed educational records pursuant to IDEA and FERPA, including but not limited to:

- attendance records;
- transcript, progress reports, report cards, awards, standardized test results, class schedules;
- discipline records, including discipline logs, notices of truancy, notices of suspension or expulsion, and any related incident reports, witness statements, photographs or video footage, documentation of medical treatment received by any student or staff in connection with a discipline incident concerning the above named student, discipline hearing decisions;
- all IEPs and any documents related to the IEPs, including manifestation determination review documents, evaluation results, reports prepared by social workers, psychologists, speech and language therapists, resource specialists, and other personnel who have provided services to, evaluated, or otherwise been involved in or responsible for the provision of a free appropriate education, referrals for evaluations, third-party reports or writings of any kind, notices of placement, statements of rights, notes from multi-disciplinary team meetings, Behavior Intervention Plans, Functional Behavior Assessments, notes from observations of the child, videos and audiotapes;
- all Section 504 plans and documents related to Section 504 plans, including requests for Section 504 plans, documents presented or prepared in preparation for Section 504 meetings, notes taken at meetings;
- medical and school health records;
- deficiency notices sent to parents/guardians, correspondence to and from parents/guardians, staff memos, interoffice memos, emails, letters, notes and comments of any kind, including notes of telephone calls

Thank you.

Date:

Signed:

ATTACHMENT 2: CTFC TEMPLATE FOR PARENT OR EDUCATIONAL RIGHT HOLDER REQUEST FOR SCHOOL RECORDS

DATE

RECORDS KEEPER, POSITION TITLE
SCHOOL
ADDRESS
CITY, CA ZIP CODE

Re: STUDENT NAME, DOB

Dear School Staff,

My name is YOUR NAME and I am a social worker for the TRIBE. Attached, please find the INSERT 'PARENT'S' OR 'EDUCATION RIGHT HOLDER'S' letter requesting a copy of STUDENT's educational records, as well as an authorization for release of information. Please provide STUDENT's educational records within five business days, as required by Educ. Code §§ 49069.7, 56504.

I am also requesting that the tribe be included in future notices pertaining to suspensions, expulsions, manifestation determinations, involuntary transfers, and other documents and related information involving STUDENT. Please note that under California Education Code Section 48853.5(d), a foster child's tribal social worker has the same rights as a parent or guardian to receive such notices.

If possible, please provide records and notices electronically to this email address. Thank you so much for your assistance! We greatly appreciate it.

Sincerely,

NAME

TITLE

DATE

Name of Student:

Student's DOB:

Name of Parent or ERH:

Phone Number:

Email:

Dear School Staff,

I am the INSERT 'PARENT' OR 'EDUCATION RIGHT HOLDER' of the above-named child. By my signature below, I do hereby request a copy of all discipline and education records in the possession of SCHOOL and DISTRICT that pertain to the above named child as soon as possible. Please provide records in electronic format to myself and the TRIBE. This release includes all documents deemed educational records pursuant to IDEA and FERPA, including but not limited to:

- attendance records;
- transcript, progress reports, report cards, awards, standardized test results, class schedules;
- discipline records, including discipline logs, notices of truancy, notices of suspension or expulsion, and any related incident reports, witness statements, photographs or video footage, documentation of medical treatment received by any student or staff in connection with a discipline incident concerning the above-named student, discipline hearing decisions;
- all IEPs and any documents related to the IEPs, including manifestation determination review documents, evaluation results, reports prepared by social workers, psychologists, speech and language therapists, resource specialists, and other personnel who have provided services to, evaluated, or otherwise been involved in or responsible for the provision of a free appropriate education, referrals for evaluations, third-party reports or writings of any kind, notices of placement, statements of rights, notes from multi-disciplinary team meetings, Behavior Intervention Plans, Functional Behavior Assessments, notes from observations of the child, videos and audiotapes;
- all Section 504 plans and documents related to Section 504 plans, including requests for Section 504 plans, documents presented or prepared in preparation for Section 504 meetings, notes taken at meetings;
- medical and school health records;
- deficiency notices sent to parents/guardians, correspondence to and from parents/guardians, staff memos, interoffice memos, emails, letters, notes and comments of any kind, including notes of telephone calls

Thank you.

Date:

Signed:

**ATTACHMENT 3: CTFC TEMPLATE RELEASE OF INFORMATION
FOR PARENT OR EDUCATIONAL RIGHT HOLDER**

AUTHORIZATION TO RELEASE INFORMATION

I, **EDUCATIONAL RIGHT HOLDER**, hereby authorize the **TRIBE**, to receive and release records and information concerning **MINOR** (D.O.B. **XX/XX/XXX**). The purpose of this authorization is to allow the **TRIBE** to advocate for Regional Center and/or Special Education eligibility and/or adequate services. This release includes information and documents that may be deemed confidential or protected by Welfare and Institutions Code § 827, the Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), and/or by the Health Insurance Portability and Accountability Act (HIPPA).

The type of information to be received or released are as follows:

_____ Education Information & Records _____ Psychiatric Assessments
_____ Psychological Assessments _____ Medical Diagnoses
_____ Mental Health Information _____ Medical Information & Records
_____ Regional Center Information & Records

Records and information may be received from or released to the following:

_____ Tribe: _____
_____ Regional Center: _____
_____ California Department of Developmental Services
_____ School: _____
_____ School District: _____
_____ California Department of Education
_____ Other: _____
_____ Other: _____
_____ Other: _____

I understand that the above consents are subject to revocation by me at any time, except to the extent that action has been taken in reliance on this consent prior to revocation.

Signature

Date

***This release will be in effect for one year from the date it is signed unless terminated earlier by request.**

ATTACHMENT 4: BUREAU OF INDIAN EDUCATION TEMPLATE MOU AGREEMENT

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) AGREEMENT BETWEEN THE BUREAU OF INDIAN EDUCATION AND THE [TRIBAL NATION]

THIS FERPA AGREEMENT (“Agreement”) is made by and between the Bureau of Indian Education (“BIE”) and the [Tribal Nation full name] (“[Tribal Nation shorter name if applicable]”).

WHEREAS, BIE-operated schools, grant schools, and contract schools operate on the [Name of Tribe/Reservation] pursuant to Title X, Part D of the No Child Left Behind Act of 2001 (P.L. 107-110) at 25 U.S.C. § 2000 et seq. (P.L. 95-561 as amended) and 25 U.S.C. § 2501 et seq. (P.L. 100-297 as Amended), and the Indian Self-Determination and Education Assistance Act at 25 U.S.C. § 450 et seq.; [adjust paragraph as needed to the types of schools covered] and

WHEREAS, the [Tribal Nation] [describe tribal entity with oversight of schools, cite applicable tribal law giving authority to that entity if any]; and

WHEREAS, many BIE-funded schools on the [Tribal Nation/Reservation] have not been successful in meeting the student performance goals [include any facts about performance of the schools]; and

WHEREAS, the [Tribal Nation] is working with the Department of the Interior and the Department of Education on enacting an alternative definition of adequate yearly progress under 25 C.F.R. Part 30 that would better serve the specific needs of [Tribe] students [delete this paragraph if not applicable]; and

WHEREAS, both the BIE and the [Tribal Nation] desire to evaluate and improve academic progress on the [Tribal Nation/Reservation] and improve compliance with the Every Student Succeeds Act of 2016; and

WHEREAS, the FERPA, set forth in title 20 U.S.C. § 1232g, and its regulation at Title 34 C.F.R. § 99.1 et seq. (as amended in 2012) generally prohibits the disclosure of a student’s Personally Identifiable Information without consent subject to certain exceptions; and

WHEREAS, 20 U.S.C. § 1232g(b)(1), 34 C.F.R. §§ 99.31(a)(3), 99.35, and 25 C.F.R. § 43.14(i) allow for distribution of student personally identifiable information to authorized representatives of state and local educational authorities in connection with an audit or evaluation of Federal or State supported education programs; and

WHEREAS, the purpose of this Agreement is for the BIE to designate [insert name of individual or tribal entity who will be authorized to receive data] as an authorized representative able to receive student data consistent with FERPA so that it may conduct an evaluation of academic achievement of [Tribe] students attending BIE-funded schools within the [Tribe]’s reservation and receive Personally Identifiable Information without written consent under 25 C.F.R. § 43.14(g) and 34 C.F.R. § 99.31(a)(3); and

WHEREAS, FERPA requires that such information be shared in a way which does not permit personal identification of parents and students by individuals other than employees, officers, or agents of BIE and the [Tribal Nation] and requires further that the information be destroyed when no longer needed for the purposes for which the evaluation was conducted; and

WHEREAS, the Privacy Act, 5 U.S.C. 552a(b)(3)(5), requires that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be for a routine use as defined in subsection (e)(4)(D) of this section; and to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable. Furthermore, the Privacy Act, 5 U.S.C. 552a(c)(1)(A)(B),(2)(3)(4), each agency, with respect to each system of records under its control, shall:

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of-- (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and (B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

WHEREAS, FERPA provides that if any party allowed access to Personally Identifiable Information does not destroy that information when no longer needed for the purposes for which the evaluation was conducted, then that party will be prohibited from access to Personally Identifiable Information from educational records for at least five (5) years.

NOW, THEREFORE, IT IS AGREED as follows:

I. TERM OF AGREEMENT

This Agreement shall be effective upon signature by the authorized representatives of the BIE and the [Tribal Nation], and shall remain in effect until [insert date at the end of the school year four years from today], or until termination by BIE or the [Tribal Nation] pursuant to Paragraph V herein, whichever occurs first. Upon termination of this Agreement, the [Tribal Nation] shall provide written assurance to the BIE that all data obtained under this Agreement has been promptly destroyed or returned in accordance with the requirements of 34 C.F.R. § 99.35(b).

II. DEFINITIONS AND ABBREVIATIONS

- a) “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. Further

disclosure of any information released to the Navajo Nation by the BIE is prohibited by this Agreement in that it constitutes a redisclosure of information. 34 C.F.R. § 99.33.

- b) “FERPA” refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means Title 20 U.S.C. § 1232g, as well as all requirements of Part 99 of Title 34 of the C.F.R. (2012), “Family Educational Rights and Privacy.” Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student information in a manner not allowed by Federal law.
- c) “Personally Identifiable Information” has the meaning set forth at 34 C.F.R. § 99.3.

III. REQUIRED TASKS UNDER THE AGREEMENT

a) Joint Responsibilities

1. BIE and the [Tribal Nation] 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.
2. BIE may seek to review or seek written assurances and the [Tribal Nation] agrees to permit the BIE to review its written assurances regarding the use of data transmitted under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the Personally Identifiable Information and that personally identifiable information has not been redisclosed or released.
3. The parties will reconsider the scope and necessity of this agreement on an annual basis.

b) Responsibilities of BIE

1. BIE shall share the requested data with [insert authorized individual or tribal entity] by assigning user right access (READ access) to the Native American Student Information System (NASIS) district edition, Native Star, Northwest Evaluation Association (NWEA), and other student information system data collection programs for purposes of the [Tribal Nation] conducting a study and evaluation of student achievement of [Tribe] Students in grades K-12 in BIE and tribally controlled schools.
2. BIE shall designate, and through execution of this agreement, hereby does designate, [name of individual or tribal entity] as an authorized representative for purposes of having access to Personally Identifiable Information of students as detailed in this Agreement and in accordance with 34 C.F.R. § 99.35 and 25 C.F.R. § 43.14(i). [Individual or entity] is an authorized representative for the purpose of 1) conducting an evaluation of the academic performance of [Tribe] students in BIE-funded schools on the [Tribe] reservation in compliance with No Child Left Behind Act of 2011, 2) development of an alternative definition of adequate yearly progress for the [Tribal Nation] under 25 C.F.R. Part 30, and 3) [state any other purposes of study or evaluation—Note: use of data is limited to stated purposes].
3. BIE shall post for public access a copy of this Agreement on the BIE website.
4. BIE shall allow [individual or entity staff] 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, BIE shall allow access to [individual or entity] any

statistical training to improve the analysis of academic achievement of students and other indicators (cultural, demographic, teacher background, etc.).

5. BIE shall provide technical assistance and guidance on reports developed by the [Tribal Nation].
6. In order to confirm there has been no redisclosure, BIE shall monitor the [Tribal Nation's] use of shared data, including requesting copies of lists of current [tribal entity if applicable] staff authorized to access the data, copies of policies and procedures designed to maintain the security of the data as long as this Agreement is in effect, monitoring activity of user accounts in the NASIS system, and conducting site visits to offices of the [individual or tribal entity].

c) Responsibilities of the [Tribal Nation]

1. The [Tribal Nation] shall use data shared under this Agreement for no purpose other than to conduct an evaluation of federal and state supported education programs in BIE and tribally controlled schools on the [Tribe] reservation including student achievement of [Tribe] Students in grades K-12.
2. The [Tribal Nation] 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 from BIE. This does not prohibit the [Tribal Nation] or BIE from sharing aggregate student data with one another.
3. The [Tribal Nation] shall maintain all data obtained pursuant to this Agreement separate from all other data files that it possesses and not copy, reproduce, or transmit data obtained pursuant to this Agreement, except as necessary to fulfill the purpose of this Agreement, or the [Tribal Nation] evaluation described in this agreement. Transmission of all FERPA-protected data must be by SECURE electronic systems and/or networks. All copies of data of any type including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data.
4. Employees within the [Tribal entity if applicable or name individuals] shall follow current protocols for gaining access to the NASIS system, including completion of Federal Information System Security Awareness Plus Privacy and Records Management Training and completion NASIS Account Access forms and associated Rules of Behavior.
5. [Tribal entity if applicable—delete this paragraph if naming individuals] shall provide to BIE a list of its employees authorized to access NASIS prior to any sharing of Personally Identifiable Information and shall immediately notify the BIE when any of its listed employees leaves employment or is otherwise removed from the list of authorized NASIS users.
6. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from or be assigned to any other individual, institution, organization, government, or entity.
7. The [Tribal Nation] agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student or parent to any other individual, institution, organization, government, or entity.
8. The [Tribal Nation] shall establish procedures and systems to ensure that all Personally Identifiable Data is processed, stored, and transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure, including the interception, diversion, duplication or other unauthorized access to said data. The [Tribal Nation] shall provide copies of such procedures and systems to BIE upon request.
9. The [Tribal Nation] shall establish procedures and systems to ensure all Personally Identifiable Information obtained is kept in secured facilities and media and that access to such records is restricted to the [Tribal Nation personnel or named individuals] authorized to

have access to said data for the purposes of conducting the aforementioned evaluation. The [Tribal Nation] shall provide copies of such procedures and systems and lists of authorized personnel to the BIE upon request [delete “and lists of authorized personnel” if naming individuals].

10. The [Tribal Nation] shall within one (1) hour of being made aware, report in detail to BIE any incidents of any personally identifiable information received from BIE where confidentiality was breached or is believed to have been breached.
11. The [Tribal Nation] agrees to destroy all Personally Identifiable Information obtained under this Agreement within 30 days of when it is no longer needed for the evaluations described by this Agreement or the termination of this Agreement, whichever occurs first. Nothing in this Agreement authorizes the [Tribal Nation] to maintain data received from the BIE beyond the time period reasonably needed to complete the evaluation, and in no case beyond the termination date of this Agreement. Any destruction of the referenced data must be witnessed by one other person who can later attest that a complete destruction of the data occurred. The [Tribal Nation] agrees to submit a letter to BIE within 30 days of the termination of this Agreement, attesting to the destruction of any referenced Personally Identifiable Information received from BIE and describing the method of destruction. No new Agreement will be agreed to by the BIE until the data is returned or destroyed as set forth herein.
12. Unless the data is returned to the BIE, the [Tribal Nation] shall maintain records that document and verify the destruction of the data provided by BIE under this Agreement.
13. The [Tribal Nation] agrees to adhere to any Department of Interior, Indian Affairs, or BIE protocols or directives prohibiting disclosure of data, which would permit public identification of students because of the small cell sizes (i.e., subgroups of 10 or fewer students) of the data. If data is so identified by the BIE or the data elements, it may only be used in a disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students.
14. The [Tribal Nation] shall use data to perform descriptive statistical analyses with a variety of predictor variables. Specifically, they will identify students [describe evaluation to be conducted].
15. Subject to the agreed-upon and limited use of requested data provided and only for the purposes asserted in this Agreement, there shall be no further disclosure by the [Tribal Nation] of any of the information provided by the BIE in that this would constitute a redisclosure of information. Under the applicable federal FERPA regulations, that is 34 C.F.R. § 99.33 and 25 C.F.R. 43.19(a), redisclosure is only permitted upon obtaining prior consent of the parent or eligible student of the Personally Identifiable Information. The [Tribal Nation] shall submit any proposed publication arising from this work to the BIE prior to publication in order to allow the BIE to verify that disclosure of student and parent identities has properly been avoided.
16. Under no circumstance shall the [Tribal Nation] become owners, proprietors, or custodians of any data or Personally Identifiable Information provided by the BIE under the terms of this Agreement.

IV. SCOPE OF AGREEMENT

This Agreement incorporates all the understandings between BIE and the [Tribal Nation] concerning this subject matter. No prior agreements, verbal representations, or understandings shall be valid or enforceable unless embodied in writing in this Agreement.

V. TERMINATION OF AGREEMENT

This Agreement may be terminated by the BIE or the [Tribal Nation], upon advance written notice of 14 (fourteen) days. The BIE may terminate the Agreement immediately upon confirmation of fraud, negligence, redisclosure, or abuse of confidentiality. This Agreement shall terminate automatically on [insert date at end of school year four years from today], unless extended by a written agreement for intervals of no greater than two 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.

BUREAU OF INDIAN EDUCATION

BY: _____ Date: _____

Dr. Ann Marie Bledsoe Downes
Acting Director of Bureau of Indian Education

[TRIBAL NATION]

BY: _____ Date: _____

[Name of Tribal Leader or Signing Official]
[Title of Tribal Leader or Official]