

## Oklahoma State Department of Education Student Data Policy

**I. Purpose.** To establish policies and procedures for collection and disclosure of student data collected by the Oklahoma State Department of Education (OSDE) in its student information system in compliance with federal and state laws and regulations, including provisions of the Family Education Rights and Privacy Act of 1974 (FERPA) at 20 U.S.C. § 1232g and accompanying regulations at 34 C.F.R. Part 99, and the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168 and accompanying regulations at OAC 210:1-3-8.1.

### **II. Definitions.**

- A. "Personally Identifiable Information" (PII) shall have the meaning set forth in 34 C.F.R. § 99.3.
- B. "De-identified data" means a student dataset in which parent and student identifying information, including the state-assigned student identifier, has been removed.
- C. "Aggregate data" means data collected and/or reported at the group, cohort, or institutional level.

**III. OSDE Student Data Access Policy.** In accordance with 70 O.S. § 3-168, it is the policy of the OSDE to refuse disclosure of student data in the student information system to unauthorized parties unless the data has been aggregated and de-identified, or the disclosure has been approved by the State Board of Education.

A. **Compliance with other federal requirements.** Nothing in this policy shall be construed to either exempt disclosures of data containing Personally Identifiable Information (PII) from any additional requirements of FERPA, nor shall anything in this policy be construed to require disclosures of data containing PII otherwise permitted, but not required by FERPA.

B. **Recordkeeping of disclosures.**

The OSDE shall maintain a record of each request for access to and each request for access to and disclosure of student data in the student data system made pursuant to V.A of this policy.

### **IV. OSDE Student Information System Access and Disclosure**

A. **Protection of data in the OSDE student information system.** This policy shall govern access and disclosure to information in the OSDE student information system that falls within the definition of as "student data" under the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168.

- 1. **Restrictions on access to student data in the student information system.** The (OSDE) shall restrict access to data collected and/or reported at the individual student level in its student information system that includes parent and student identifying information to the following individuals or entities ("Authorized Parties"):
  - a. The employees of the OSDE authorized to access confidential student data in order to perform their assigned duties;
  - b. Contractors from the Information Services Division of the Office of Management and Enterprise Services assigned to the OSDE;
  - c. School district administrators, teachers, and school personnel who require access to student data in order to perform their assigned duties;
  - d. An "eligible student," which shall mean a student who has either reached eighteen (18) years of age or a student who is attending an institution of postsecondary education, when that student requests inspection and/or review of his or her data collected by the OSDE;

- e. A parent or legal guardian of a student (including a natural parent, a guardian, or an individual legally authorized to act as a parent in the absence of a parent or guardian) when the parent requests inspection and/or review of that student's data collected by the OSDE, unless the OSDE has been provided with evidence that there is a court order, state statute, or other legally binding document relating to such matters as divorce, separation, or custody that specifically revokes the rights of a parent; or
  - f. Staff of Oklahoma state agencies authorized to access student data as required by state or federal law and in accordance with the terms of and interagency data-sharing agreements between the OSDE and the state agency which meets the requirements for written agreements set forth in subsection VI of this policy.,
2. All other individuals or entities must seek pre-approval from the State Board of Education for disclosure of non-aggregated data in the student information system which is reported at the individual student level, even if the data has been de-identified.
- B. Redaction policy for aggregated and de-identified reports.**
1. In accordance with 70 O.S. § 3-168, the OSDE will use only aggregate data in public reports and in response to record requests. To ensure that PII is not disclosed, the OSDE will aggregate data using business rules including suppressing n-size of 10 or less, applying complementary suppression, blurring, or other forms of data suppression when necessary.

## **V. State Board of Education Governance and Approval.**

- A. Procedure for approvals by the State Board of Education of disclosure of confidential student data that has not been aggregated.** . Disclosure of student data which has not been aggregated in accordance with the requirements of 70 O.S. § 3-168 to any individuals or entities not identified in Part IV.A.1 of this policy shall require prior approval by the State Board of Education in accordance with the following provisions:
1. **Requests for disclosure of student data - procedure.** All requests from Unauthorized Parties for disclosure of individual student level data in the student information system which contains information identifying a parent or eligible student, shall be submitted in writing to the OSDE Office of Legal Services on a Student Information System Data Request form developed for that purpose, unless the requests have been otherwise pre-approved pursuant to V.C of this policy.
    - a. Pursuant to the Oklahoma Open Records Act at 51 O.S. § 24A.5, within a reasonable period of time from the date of receipt of the Student Information System Data Request form, the OSDE Office of Legal Services shall review each request and submit a recommendation to the State Board of Education for consideration.
  2. **Board review of requests for disclosure, transfer or sharing of student data – criteria for approval.** Board approval of requests for disclosure, transfer or sharing of non-aggregated, identifiable student data to or with any individual or entity not listed in Part IV.A.1 of this policy shall be made in accordance with the following criteria:
    - a. **Directory Information.** The OSDE shall not be required to release student data limited to "directory information" as defined by FERPA to unauthorized parties unless such data falls within the scope of a request otherwise approved by the State Board of Education in accordance with V.A of this policy.
    - b. **Student data containing personally identifiable information (PII) – written consent.** Unless the disclosure meets one of the exceptions in V.B of this policy, the Board shall not approve disclosure of student data which contains personally

identifiable information (PII) unless written consent from each parent or eligible student identified in the student data has been obtained by the requesting party.

**i. Requirements for written consent.** Written consent to disclosure of student data containing PII must be signed and dated by the parent or eligible student and must:

- (I) Specify the records that may be disclosed;
- (II) State the purpose of the disclosure;
- (III) Identify the party or class of parties to whom the disclosure may be made; and
- (IV) Include a provision which advises the parent or eligible student that if he or she so requests, the OSDE shall provide a copy of the records disclosed to the individual who provides consent.

**B. Exceptions to written consent requirement.** The Board may approve requests for disclosure, transfer or sharing of student data without the written consent required in V.A.2.b of this policy if the disclosure meets one or more of the following criteria:

1. **Financial aid.** The disclosure of a particular student's data is made in connection with disbursement of financial aid for which the student has applied or which the student has received, the disbursement of which is conditioned on the student's attendance at an educational agency or institution, provided that the information is necessary for one or more of the following purposes:
  - (I) To determine eligibility for the student aid;
  - (II) To determine the amount of the student aid;
  - (III) To determine the conditions for the student aid; or
  - (IV) To enforce the terms and conditions for the student aid.
2. **Accrediting organizations.** The disclosure is made to accrediting organizations for the purpose of carrying out their accrediting functions.
3. **Medical and social history report.** The disclosure is made to the Department of Human Services or a child-placing agency for the purpose of compiling a written medical and social history report of a minor to be adopted pursuant 10 O.S. § 7504-1.1, and the Department of Human Services authorizes the release of the student records containing PII.
4. **Voluntary participation in a program.** The disclosure is made to the Department of Health or another Oklahoma state agency in connection with voluntary participation in a program for which such data transfer is a condition/requirement of participation in the program, pursuant to 70 O.S. § 3-168 (C)(3)(d).
5. **Statutory authority to receive data.** The disclosure is made to a public agency seeking records maintained by the OSDE for which the agency has a statutory, legal authority to obtain.

**C. Pre-approved requests for disclosure.** The following requests for disclosure of student data are hereby deemed approved and exempted from the requirements of V.A.1-2 of this policy if the disclosure falls within one or more of the following categories:

1. Disclosure is necessary to comply with a judicial order or lawfully issued subpoena, and the OSDE has made a reasonable effort to notify the parent or eligible student in advance of compliance, unless the order or subpoena specifically prohibits disclosure of the contents of the subpoena/order or the information provided in response to the subpoena/order;
2. Disclosure of data containing PII from an education record to appropriate parties, including parents of an eligible student, if disclosure is made in connection with an

- emergency and the knowledge of the information is necessary to protect the health or safety of the student or other individuals;
3. Disclosure of data containing PII from an education record to appropriate parties, including the state department of human services, family protective services, or a law enforcement agency of any state if disclosure is made in connection with an emergency and knowledge of the information is necessary to protect the health or safety of the student or other individuals;
  4. Disclosure to a court of law or a law enforcement agency of a student's data containing PII that is relevant for the Board or OSDE to proceed to litigate or defend a legal action;
  5. Disclosure of data containing PII is necessary to effect a transfer of disciplinary records with respect to a suspension or expulsion of a student by a local educational agency to any private or public elementary or secondary school in which the student is subsequently enrolled or seeks, intends, or is instructed to enroll in accordance with the requirements of 20 U.S.C. § 7165(b); or
  6. Disclosure is necessary to assist the U.S. Department of Education's Office for Civil Rights (OCR) investigate a complaint filed by a resident of the state of Oklahoma, or a former resident of the state of Oklahoma, if the complaint involves an Oklahoma educational agency or institution, the parent or legal guardian of the student has signed a release authorizing OCR to obtain information, documentation or records necessary to complete the investigation, and the requested information is necessary in order for OCR to conduct and/or complete the investigation.

**D. Exceptions to board approval requirement.** If disclosure of student data deemed confidential under 70 O.S. § 3-168(C)(2)(c)(1) (i.e., data collected and/or reported at the individual student level) otherwise complies with the provisions of FERPA, prior Board approval of the disclosure shall not be required if the disclosure occurs in one or more of the following circumstances:

1. A student transfers to an out-of-state school or an Oklahoma school/school district seeks help from the OSDE with enrolling a student or locating an out-of-state transfer;
2. A student attends an institution of higher education or training program;
3. A student registers for or takes a national or multistate assessment;
4. A student voluntarily participates in a program for which such a data transfer is a condition/requirement of participation as outlined in Part V.B of this policy ;
5. The OSDE enters into a contract that governs databases, assessments, special education or instructional supports with an out-of-state vendor; or
6. A student is classified as "migrant" for federal reporting purposes.

## **VI. Written Data Sharing Agreements, Memorandums of Understanding, and Contracts.**

- A. Data sharing agreements.** The Board may approve requests for disclosure, transfer or sharing of student data containing PII or de-identified student data in the following circumstances pursuant to the terms of a data sharing agreement:
1. **OSDE partner agencies and organizations with legitimate educational interests or their contractors or consultants.** The disclosure is made to OSDE partner agencies or organizations who have been determined by the OSDE to have legitimate educational interests in the student data disclosed. No approval of disclosure of student data containing PII or de-identified under this exception shall be made to any organization in absence of a written agreement between the requester and the Superintendent of Public Instruction which meets all of the conditions listed in Part VI.A.3.
  2. **OSDE Contractors and Consultants.** The disclosure is made to contractors and/or consultants to whom the OSDE has outsourced institutional services or functions for

- which the OSDE would otherwise use employees, provided that the contractor and/or consultant is under the direct control of the OSDE with respect to use and maintenance of student data. No approval of disclosure of student data containing PII or de-identified student data under this exception shall be made to any organization in absence of a written agreement between the requestor and the State Superintendent of Public Instruction which meets all the conditions listed in Part VI.A.3.
3. **Data Sharing Agreements.** Any data sharing agreement developed under this subsection shall include the following conditions:
    - a. The agreement must state that the parties will use reasonable methods to ensure that only data in which the parties have legitimate educational interests is shared;
    - b. The agreement must state that the contractor, consultant or other party is subject to the requirements of FERPA at 34 C.F.R. § 99.33(a) regarding the use and redisclosure of data containing PII from education records; and
    - c. The agreement must meet all of the requirements of VI.E of this policy.
- B. Audits or evaluations of federal- or state-supported education programs.** The disclosure of records is made to an authorized representative of the Comptroller General of the United States, the Attorney General of the United States; the Secretary of the United States Department of Education; or state and local educational authorities; and the disclosure is necessary to either conduct an audit or evaluation of a federal- or State-supported education program, or for the enforcement of or compliance with federal legal requirements related to those programs. No approval of disclosure of student data containing PII or de-identified student data under this exception shall be made to any organization in absence of a written agreement between the requester and the Superintendent of Public Instruction which meets all of the following conditions:
1. The agreement must designate the authorized representative of the official responsible for using reasonable methods to ensure to the greatest extent practicable that use of the data containing PII or de-identified student data complies with the requirements of the agreement and the provisions of FERPA;
  2. The agreement must specify that the purpose of the disclosure is solely for the purpose of conducting an audit or evaluation of education programs supported by federal or State funds, or to enforce or comply with federal program requirements;
  3. The agreement must describe the activity which falls within the audit or evaluation exception;
  4. The agreement must require an authorized representative to destroy all data containing PII or de-identified student data upon completion of the audit or evaluation and specify the time period in which the information must be destroyed;
  5. The agreement establish policies and procedure consistent with all federal, state, and local confidentiality and privacy laws which will protect data containing PII or de-identified student data from further disclosure and unauthorized use; and
  6. The agreement must meet all of the requirements of VI.E of this policy.
- C. Studies for or on behalf of educational agencies or institutions.** The disclosure is made to organizations conducting studies for or on behalf of the OSDE, and the study is for the purpose of development, validation, or administration of assessments; administration of student aid programs; or improvement of instruction. No approval of disclosure of student data containing PII or de-identified student data under this exception shall be made to any organization in absence of a written agreement between the requester and the Superintendent of Public Instruction which meets all of the following conditions:
1. The agreement must describe the information to be disclosed;

2. The agreement must specify the purpose(s), scope, and duration of the proposed study to be conducted;
  3. The agreement must require the organization to use data containing PII or de-identified student data only to meet the purpose(s) of the study as stated in the written agreement;
  4. The agreement must require the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests;
  5. The agreement must state that the contractor, consultant or other party is subject to the requirements of FERPA at 34 C.F.R. § 99.33(a) regarding the use and redisclosure of data containing PII or de-identified student data from education records;
  6. The agreement must require the organization to destroy all data containing PII or de-identified student data when the information is no longer needed for the purposes for which the study was conducted and must specify the time period in which the information must be destroyed; and
  7. The agreement must meet all of the requirements of VI.E of this policy.
- D. **Research requests.** The Board may approve disclosures of student data for purposes of educational research only if the information has been de-identified in accordance with the requirements of state and federal law, and the requesting party enters a written data sharing agreement with OSDE which meets the applicable requirements of V.A.2.b and VI of this policy, and which meet criteria developed by the OSDE through the process established by Part VII of this policy.
- E. **Additional Requirements for written data sharing agreements.** In addition to specific requirements of data sharing agreements described in Part VI.A-D of this policy, all data sharing agreements must require the party requesting the data to:
1. Agree to be bound by the terms of the agreement;
  2. Limit the use of data containing PII or de-identified student data, including any methodological restrictions (e.g., linking to other data sets);
  3. Specify points of contacts for the party and identify data custodians for the party;
  4. Disclaim ownership of any data containing PII or de-identified student data included in the student data;
  5. Agree to penalties imposed upon the requesting party for inappropriate disclosure by the requesting party from the student information system;
  6. Agree to specific terms for data destruction for each specific type of media (e.g., data wiping, degaussing, shredding, etc.);
  7. Disclose any terms of funding related to the proposed data sharing agreement;
  8. Identify any applicable Institutional Review Board review and approval procedures;
  9. Agree that the OSDE maintains a right to audit the requesting party's use of the data;
  10. Agree to comply with all applicable legal requirements, including data security policies;
  11. Describe plans for response to a data breach in accordance with any applicable federal and State laws, including responsibilities and procedures for notification and mitigation of a breach when appropriate or required;
  12. Review and approve any report based upon the student data prior to release of the report;
  13. Agree to terms for conflict resolution;
  14. Agree that the requesting party will be required to review and redact any provisions in the agreement pertaining to data security which may provide information which could assist individuals or entities with obtaining unauthorized access to systems prior to disclosure of the agreement to the public.

**VII. OSDE Data Governance.** The State Board of Education shall approve the creation of a data governance program within the OSDE that provides for an organizational approach to data management.

- A. The data governance program approved by the State Board of Education shall provide for an OSDE agency-wide decision making-structure for data related matters such as availability, usability, integrity and security of data governed by the OSDE. The data governance model shall enable the development of policies and procedures, subject to the approval of the State Superintendent of Public Instruction, on issues including, but not limited to:

**1. Privacy and Confidentiality**

- a. The development of business rules for the suppression and redaction of data in commonly requested data sets defined under section IV.B above;
- b. The publication of aggregate data sets;
- c. Developing procedures and criteria for approving research requests defined under section VI.D above;
- d. Internal policies, procedures and guidance around data access and confidentiality;
- e. Formal training for OSDE staff on accessing data while maintaining student privacy;
- f. Policies supporting the full implementation of the Student Data Accessibility, Transparency and Accountability Act of 2013;
- g. Written guidance for OSDE staff;

**2. Transparency**

- a. Publish data-sharing agreements, MOU's, and contracts on OSDE's public web site;
- b. Publish OSDE data and reports web page which categorizes and includes links to all data and reports currently available on the OSDE's website;
- c. Develop policies and procedures for the review and fulfillment of external data requests and the release of reports on the OSDE's public website.