CONFIDENTIALITY AND EXCHANGE OF DATA AGREEMENT

THIS CONFIDENTIALITY AND EXCHANGE OF DATA AGREEMENT is entered into on the 1st day of July 2010, between South Dakota Department of Education (SDDOE), with a principal place of business and post office address at 800 Governors Drive, Pierre SD 57501 and the South Dakota Board of Regents (SDBOR), with a principal place of business and post office address at 306 East Capitol Avenue, Suite 200, Pierre, South Dakota, 57501-2545.

BACKGROUND

SDDOE and SDBOR are state education authorities within the meaning of the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. § 1232g; 34 CFR Part 99), each having responsibilities under state law for the supervision and evaluation of education services provided under the authority of the State of South Dakota.

SDDOE has an extensive database on students attending the public and private school districts within South Dakota, which includes student academic performance and curriculum.

SDBOR has an extensive database on students attending the six South Dakota four year public institutions, which includes college major, grade point average, and credit hours earned.

SDDOE and SDBOR desire to exchange information in their databases so as to allow each party to advance research in the fields of developing, validating, or administering predictive tests and improving instruction.

SDDOE and SDBOR desire to exchange information in their databases to allow each party to meet federal reporting requirements and assurances under Phase II of State Fiscal Stabilization Fund, which is part of the American Recovery and Reinvestment Act of 2009.

The sharing of information is detailed in Exhibit A, "Statement of Work".

Subject to the terms and conditions set forth in this Agreement, the parties agree to exchange confidential data for the purpose of advancing their respective research goals.

AGREEMENT

In order to permit each party to obtain information for the analyses detailed in Exhibit A, each party agrees to disclose to the other party confidential information on the following terms and conditions and subject to the following limitations and requirements.

Any information or analysis protected by copyright, trademark, or legal privileges will not lose its confidential legal status by means of this agreement, and the parties agree to take reasonable steps to ensure that such confidentiality is maintained.

1. The term "Confidential Information" shall mean any data file and the contents thereof provided by one party ("Disclosing Party") to the other ("Recipient"), which includes

some or all of the information detailed in Exhibit A. Confidential Information shall not include information independently in Recipient's possession (even if such information is the same as information supplied by Disclosing Party to Recipient).

2. The Disclosing Party agrees to disclose to Recipient certain Confidential Information for certain limited purpose(s) (the "Business Purpose"), as set forth in Exhibit A.

3. The parties shall each have responsibilities with respect to the exchange of Confidential Information. The obligations of each party are set forth herein and in Exhibit A.

4. With respect to the Confidential Information, Recipient agrees to the following, provided, however, that the following shall not be construed to restrict the disclosure of research studies or reports that are generated from the Confidential Information that lack personally identifiable information (as defined in 34 C.F.R. 99.3) or institutionally identifiable information:

   (a) use the Confidential Information only for the specific Business Purpose(s) set forth herein, or as supplemented in successor research agreements;

   (b) restrict disclosure of the Confidential Information solely to those employees or representatives of Recipient with a "need to know;";

   For purposes of this Agreement only, a "need to know" means that the employee or representative requires the Confidential Information in order to perform his or her responsibilities in connection with the Business Purpose.

   (c) advise those employees or representatives who gain access to Confidential Information of their obligations with respect to the Confidential Information;

   (d) not disclose the Confidential Information to any other person or entity without the prior written consent of the Disclosing Party;

   (e) not share copies of machine readable records or printed material of any of the Confidential Information for any reason whatsoever except with the prior written consent of the Disclosing Party. Any copies of Confidential Information will be the sole property of the Disclosing Party and will be returned to the Disclosing Party, destroyed and/or deleted from any hardware or other equipment upon the first of the following to occur: (i) completion of the use of the same for the Business Purpose(s) described herein; (ii) within ten (10) days of the termination of this Agreement, or (iii) at the written request of either party in accordance with Paragraph 7;

   (f) protect the Confidential Information using the same standard of care Disclosing Party uses to protect its own confidential and proprietary information, but in any event not less than a reasonable degree of care; and

(g) immediately notify the Disclosing Party in writing in the event of any unauthorized use or disclosure of the Confidential Information and assist in remedying such unauthorized use or disclosure, as requested by the Disclosing Party (which shall not limit other remedies as provided herein and by applicable law).

(h) maintain the data under the conditions set out herin for the duration of the State Supervisory and Evaluative Research Purposes.

5. Some of the data exchanged may constitute "educational records" as such term is defined in the Family Educational Rights and Privacy Act (FERPA 20 U.S.C. 1232g; 34 CFR Part 99). Such records are being disclosed pursuant to 20 U.S.C. § 1232g (b)(1)(F) and (b)(3).

Accordingly, both parties agree that (i) the State Supervisory and Evaluative Research Purposes set forth herein falls within the purposes authorized under 20 U.S.C. § 1232g (b)(1)(F) and (b)(3); (ii)_the study contemplated in the State Supervisory and Evaluative Research Purposes will not permit the personal identification of students and their parents to persons other than its employees or representatives, and (iii) it will destroy such information when no longer needed for the State Supervisory and Evaluative Research Purposes.

6. In the event that any Confidential Information is required to be disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States or any political subdivisions thereof, that Recipient shall first (i) notify the Disclosing Party of the order and provide a complete copy of such order to the Disclosing Party and (ii) permit the Disclosing Party to seek an appropriate protective order. Recipient shall fully cooperate with the Disclosing Party if the Disclosing Party wishes to apply to such court for a protective order. Recipient shall only disclose the Confidential Information to the extent necessary and for the purposes of the court or other governmental order.

7. Recipient and the Disclosing Party may mutually agree to expand the Business Purpose to add additional research projects. Such agreement shall be in writing signed by both parties, and shall require such documentation as the parties may require from time to time

8. All Confidential Information provided by Disclosing Party, including all permitted copies, shall be deemed and shall remain the property of the Disclosing Party. Recipient will protect the confidentiality of both students and institutions in reports prepared for review by any third party.

9. Recipient agrees that an impending or existing violation of any provision of this Agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that the Disclosing Party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

10. Recipient will be solely and entirely responsible for its acts and the acts of its employees and representatives during the performance of this Agreement.

11. This Agreement shall be effective as of the date first written above and shall continue until terminated by either party upon thirty (30) days prior written notice. Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 16 of this Agreement shall survive any termination of this Agreement in perpetuity, if so allowed by law.

12. This Agreement may not be assigned by either party without the prior written consent of the other. No permitted assignment shall relieve a party hereto of its obligations prior to the assignment. Any assignment in violation of this Paragraph shall be void. This Agreement shall be binding upon the parties and their respective permitted successors and assigns.

13. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

14. Notices under this Agreement shall be duly made when in writing and will be deemed given to the other party upon delivery to the address set forth below if delivered personally (including by courier) or mailed by registered or certified mail, postage prepaid, or upon confirmation if transmitted by telex, telecopy, or other means of facsimile:

If to SDDOE: Tamara Darnall
Director of Finance and Management
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

If to SDBOR to: Paul D. Turman
Director of Academic Assessment
South Dakota Board of Regents
306 East Capital Avenue, Suite 200
Pierre, SD 57501

15. Each party represents and warrants (a) that it has the authority to enter into this Agreement and (b) that the individual(s) signing this Agreement on behalf of such party is (are) authorized to do so.

16. This Agreement (including Exhibits A and B) represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings related thereto. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by the authorized representatives of both parties. No written waiver will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach. This

Agreement shall be governed in all respects by the laws of the State of South Dakota without reference to its conflict or choice of law, rules or principles.

17. The exchange of data between SDBOR and SDDOE is a limited initiative. Results of analysis undertaken on South Dakota students as a part of this Agreement by SDDOE shall be identified as joint research initiatives undertaken by SDBOR and SDDOE. Analysis and/or publications undertaken by any of the parties using the other party's Confidential Information which discloses any personally identifiable information shall be approved/disapproved by a designated sub-committee from SDBOR and SDDOE staff prior to analysis and/or publication. The subcommittee will approve/disapprove all analysis and/or publications that identify South Dakota students or institutions and utilize the Confidential Information of the other party. Publication means reproduction in printed (hardcopy) format, provided via on-line web-based access, placed into a slide show presentation, or any other means of releasing information. The preview process shall take place on a timely basis to allow for timely report production. In no case will any publication or results of research analysis on South Dakota students disclose any personally identifiable information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above written.

South Dakota Board of Regents:	South Dakota Department of Education
By: JACK WARNER	By:
Name:	Name: Tami Darnall
Title: EXEC. DIRECTOR	Title: Director of Finance & Mgmt
Date: 8/31/10	Date: 9/2/10

Exhibit A

Statement of Work

A. STATE SUPERVISORY AND EVALUATIVE RESEARCH PURPOSES :

The South Dakota Department of Education and the South Dakota Board of Regents will use the Confidential Information to:

1. Track the college success experience of South Dakota first-time freshmen who enroll in post-secondary institutions operated by SDBOR or regulated by SDDOE.
2. Expand research on the relationships among pre-college factors and college-level factors.
3. Identify those pre-college experiences that have implications for college readiness and eventual success in postsecondary programs.
4. Compare the characteristics of students who persist through the first year across all six South Dakota four-year public institutions.
5. Expand understanding of and identify the types of information that are of value to institutions as they develop strategies and procedures for working with students from a variety of educational and cultural backgrounds.
6. Facilitate institutional ability to develop curriculum and provide academic counseling that would aid students in their progression through postsecondary education.

B. THE DATA FILES

Because data from SDBOR and SDDOE will be combined to form the research file, careful attention will be made to insure the confidentiality of both student and institution records. This section outlines the process to ensure confidentiality.

SDDOE will develop a South Dakota High School graduate file (outlined in Exhibit B) based on student name and date of birth. SDBOR will match these files against student data to retrieve students first year performance and progression into post-secondary education. Matched working data files will be promptly moved to a secure environment and maintained securely by the Recipient in the college outcomes database.

C. FEES

- The exchange of data between SDDOE and SDBOR will be done at no cost.
- Summaries of research will be provided to SDDOE at no cost to SDDOE.

E. REPRESENTATIVES

The following designated individual will be the contact from SDDOE for the technical direction of this Agreement:

For SDDOE: Tamara Darnall
Director of Finance and Management

South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501
Phone: 605-773-3248
Email: Tamara.Darnall@state.sd.us

The following designated individual will be the contact from SDBOR for the administration and technical direction of this Agreement:

For SDBOR: Paul D. Turman
Associate Vice President for Academic Affairs
South Dakota Board of Regents
306 East Capital Avenue, Suite 200
Pierre, SD 57501
Phone: 605-773-3455
Email: pault@sdbor.edu

Exhibit B

DATA EXCHANGE PROCEDURES AND FORMATS

1. SDDOE staff will develop files that contain student first, middle, and last name as well as date of birth across two graduating classes. The files will be delivered to the appropriate SDBOR staff person who will arrange to match these files by student name and date of birth against the SDBOR records.

   The SDDOE file will include the following data elements by term:

   a. First Name
   b. Middle Initial
   c. Last Name
   d. Date of Birth
   e. Gender
   f. Ethnicity
   g. District Number
   h. District Name
   i. High School Graduation Date
   j. ACT Composite Score
   k. ACT Subscores
   l. SD DStep Raw scores
   m. SD DStep Cut scores

   Data elements requested include basic institution information, student identifiers, and academic performance information.

   SDDOE intent is to provide a generic data exchange format that will expedite the transfer and analysis of SDBOR data. If data files in this specific format are not feasible, we hope the data elements identified and their descriptions will assist you in compiling a similar file.