

DATA SHARING AGREEMENT BETWEEN UNIFIED SCHOOL DISTRICT 229 AND THE LEGISLATIVE DIVISION OF POST AUDIT

This Data Sharing Agreement (“the Agreement”) is entered into on this 3rd day of April, 2025 by and between USD 229 (“the district”) and the Legislative Division of Post Audit (“Post Audit”).

I. PARTIES. USD 229 is a local educational agency, authorized to collect and maintain student educational records and to receive information consistent with applicable state and federal laws and subject to the Kansas Student Data Privacy Act (SDPA), as authorized by K.S.A. 72-6314 and the federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. §1232g(b) and 34 CFR Part 99. The district is also the local agency that operates United States Department of Agriculture (“USDA”) programs such as the School Nutrition Program, the School Breakfast Program, and the Child and Adult Care Food Program whereby it receives data pertaining to the eligibility of students to receive free or reduced-priced lunches.

The Legislative Division of Post Audit is a state agency authorized to provide auditing services to the Kansas Legislature at the direction of the Legislative Post Audit Committee. The Legislative Division of Post Audit evaluates whether state government agencies and programs are being run effectively. The Legislative Division of Post Audit shall have access to all books, accounts, records, files, documents and correspondence, confidential or otherwise, of any person or state agency, as authorized by K.S.A. 46-1106(g). The Legislative Division of Post Audit assists in the administration and enforcement of the State’s participation in USDA programs

II. PURPOSE. The purpose of this Agreement is to document the terms under which the district is authorized to release to Post Audit student data for auditing federal and/or state supported education programs, and to designate Post Audit as the authorized representative of the district consistent with applicable state and federal laws concerning access to and confidentiality of student data and record information, including the SDPA and FERPA. As described herein, Post Audit, as the district’s authorized representative, may have temporary access to student data in the custody of the district for use in the tasks identified in this Agreement, and under the terms and conditions described in this Agreement and any addenda to it.

III. AUTHORITY. Consistent with the SDPA, the district may disclose, without obtaining prior written consent from the student or the student’s parent, student data submitted to and maintained in the statewide longitudinal student data system to the authorized personnel of any state agency, or to a service provider of a state agency, educational agency or school who is engaged to perform a function of instruction, assessment or longitudinal reporting. The district is required, pursuant to K.S.A. 46-1106(g), to make available to Post Audit all books, accounts, records, files, documents and correspondence, confidential or otherwise.

Consistent with FERPA, the district may disclose, without obtaining prior written consent from the student or the student's parent, personally identifiable information from students' education records to its authorized representative for use in studies initiated or approved by the district in connection with an audit or evaluation of federal or state supported education programs, or enforcement of, or compliance with, federal legal requirements relating to such programs. 34 CFR § 99.31(a)(3), 20 U.S.C. § 1232g(b)(3). The district may also disclose, without obtaining prior written consent from the student or the student's parent, personally identifiable information to its authorized representative for the purpose of conducting studies for or on behalf of the schools, school districts or post secondary institutions in order to develop, validate or administer predictive tests, administer student aid programs, or improve instruction. 34 CFR § 99.31(a)(6) and §§ 99.35; 20 U.S.C. § 1232g(b)(1)(F). The district may also disclose student eligibility data to any evaluators, auditors, and others with whom federal or state agencies and program operators contract with to assist in the administration or enforcement of their program on their behalf. 7 CFR 245.6(f).

The district designates Post Audit as its authorized representative for the purposes herein described, and allowing the district to disclose student data and information, including personally identifiable information, for use in assessments and evaluation as described in this Section III.

All activities referred to above shall be more fully described in addenda to this Agreement, which shall include project information including, but not limited to, the purpose and scope of the project, the student data that will be disclosed to Post Audit, the temporary custodian appointed by Post Audit, applicable timelines, additional terms and conditions specific to each project, and requirements for communication and reporting to the district.

IV. TERMS AND CONDITIONS. To affect the transfer of student data and information that is subject to state and federal confidentiality laws and to ensure that the required confidentiality of student data and personally identifiable information shall always be maintained, Post Audit agrees to:

1. In all respects comply with the provisions of the SDPA. For the purposes of this Agreement and any specific project conducted pursuant to this Agreement and described in an addendum to this Agreement, the SDPA includes any amendments thereto and any other relevant provisions of state law. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student data and student record information in a manner not allowed by state law or rules and regulations.
2. In all respects comply with the provisions of FERPA. For the purposes of this Agreement and any specific project conducted pursuant to this Agreement and described in an addendum to this Agreement, FERPA includes any amendments thereto and any other relevant provisions of federal law, as well as all requirements of 34 CFR Part 99 and 20 U.S.C. § 1232g. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student data and student record information in a manner not allowed under federal law or regulation.

3. Name a temporary custodian of the district's student data for the project described in Attachment 1. The custodian shall be able to request and receive student data pursuant to this Agreement and any applicable addenda and to ensure Post Audit's compliance with the terms of the Agreement and applicable laws. The district shall release student data only to the named temporary custodian, who shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to the Agreement and any applicable addenda, including confirmation of the completion of the project and the destruction of data as required by this Agreement. The district or its agents may upon request review the records required to be kept by Post Audit pursuant to this section.
4. Use data shared under this Agreement for no purpose other than the education program audit described in Attachment 1 and any applicable addenda, and as authorized pursuant to the SDPA, FERPA under 34 CFR §§ 99.31(a)(6) and 99.35 (or 34 CFR § 99.31(a)(3)), and 7 CFR 245.6(f). Nothing in this Agreement shall be construed to authorize Post Audit to have access to additional data from the district that is not included in the scope of this Agreement or under the terms of any project described in any applicable addenda, or to govern access to the data by entities other than the Parties. Post Audit further agrees not to share data received under this Agreement with any other entity, contractors and agents of any kind without prior written approval from the district. Post Audit understands that this Agreement does not convey ownership of data to Post Audit.
5. Require all employees, entities, contractors and agents of any kind to comply with this Agreement, and all applicable provisions of the SDPA, FERPA and other federal and state laws with respect to the data and information shared under this Agreement. Post Audit agrees to require of and obtain and maintain an appropriate confidentiality agreement from each employee, contractor, or agent with access to data pursuant to this Agreement and any applicable addenda. Nothing in this section authorizes Post Audit to share data and information provided under this Agreement and any applicable addenda with any other individual or entity for any purpose other than completing Post Audit's work as authorized by the district consistent with this Agreement and any applicable addenda. The district or its agents may upon request review the records required to be kept by Post Audit pursuant to this section.
6. Submit to the district a list in writing of the Post Audit employees who are authorized to have access to data provided by the district pursuant to this Agreement. This list shall include the name(s), mailing address, telephone number, fax number and e-mail address of each such employee. Along with the list, Post Audit must submit proof that each individual has completed a SDPA/FERPA training within the last calendar year, and a copy of an affidavit of nondisclosure or other documentation indicating their individual agreement to comply with this Agreement, and applicable state and federal laws. These names may be changed as conditions change as long as the described documentation is provided to the district prior to Post Audit granting access to the individual.
7. Provide the district with periodic status reports during the project term as described in Attachment 1 and any applicable addenda to this Agreement. Status reports shall

include but not be limited to progress of the project relative to established deadlines. Post Audit shall provide the district with immediate written notice of any changes to project protocols except as consistent with this Agreement and any applicable addenda.

8. Maintain all data received pursuant to this Agreement separate from all other data files and not copy, reproduce or transmit data obtained pursuant to this Agreement except to its own agents acting for or on behalf of the district and as necessary to fulfill the purpose of the project described in Attachment 1 and any applicable addenda. Transmission of data must be by secure electronic systems and/or networks. Post Audit agrees to provide to the district information about the technical storage solution if requested. Post Audit agrees to never place data on an unencrypted flash drive, compact disc, laptop, mobile device or other similar device unless the district first provides prior written permission. All copies of data of any type derived from or otherwise related to data provided under this Agreement, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement and any applicable addenda in the same manner as the original data disclosed by the district to Post Audit. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from Post Audit to any other individual, institution or entity.
9. Not disclose data obtained under the Agreement or any applicable addenda in any manner that could identify any individual student, except as authorized by the SDPA and FERPA, to any entity other than the district, or authorized employees, contractors and agents of Post Audit working as the district's authorized representative on the project approved by the district consistent with this Agreement and described in Attachment 1 and any applicable addenda. Persons participating in approved projects on behalf of the Parties under this Agreement shall neither disclose or otherwise release data and reports relating to an individual student, nor disclose information relating to a group or category of students without ensuring the confidentiality of students in that group. Publications and reports of this data and information related to it, including preliminary project descriptions and draft reports, shall involve only aggregate data and no personally identifiable information or other information that could lead to the identification of any student. No report of these data containing a group of students less than the minimum of ten (10) shall be released to anyone other than the district. In addition to utilization of this minimum group size reporting rule, Post Audit shall utilize other statistical methods to protect student identity. Such methods may include, but are not limited to, the methods described in the Statewide Longitudinal Data Systems (SLDS) Technical Brief 3 published by the National Center for Education Statistics. Post Audit shall require that all employees, contractors and agents working on this project abide by that statistical cell size as well as other statistical methods to protect student identity.
10. Destroy all data obtained under this Agreement and any applicable addenda when no longer needed for the purpose of this Agreement or upon expiration of this Agreement, whichever occurs first. Nothing in this Agreement authorizes Post Audit to maintain data beyond the time period reasonably needed to complete the project described in Attachment 1 and any applicable addenda to this Agreement.

Destruction of all data shall comply with the National Institute of Standards and Technology Special Publication (NISTSP) 800-88 standards of data destruction, in compliance with the provisions of the SDPA. FERPA also requires that Post Audit destroy all data obtained under this Agreement and any applicable addenda in compliance with 34 CFR §§ 99.31(a)(6)(iii)(b) and 99.35(b)(2). Post Audit agrees to require all employees, contractors, or agents of any kind to comply with this provision. Post Audit agrees to submit a letter to the district within 15 days of the termination of this Agreement attesting to the destruction of any data obtained under this Agreement. Neither Post Audit nor any other entity is authorized to continue research using the data obtained pursuant to this Agreement upon the termination of the Agreement and the project described in Attachment 1 and any applicable addenda.

11. Cooperate with any district and/or independent on-site inspections and audits to ensure that the safeguards described above are maintained by Post Audit. The district reserves the right to conduct audits of Post Audit's policies, procedures and systems that are involved in processing and/or safeguarding the data obtained under this Agreement.
12. Report to the district any incident or suspected incident in which confidential data obtained pursuant to this Agreement has been or is believed to have been disclosed either by a breach of security or by disclosure without authorization. Any such report shall be made within one hour after Post Audit becomes aware of such incident or suspected incident. This initial notification must be by a phone call to the district's representative identified in Attachment 2 with a detailed follow up via letter within two days to the district's representative. Post Audit will cooperate with the district in all follow-up activities of the district, including, but not limited to, responding to questions, interview of the parties involved, notification of each affected student, if an adult, or the parent or legal guardian of the student, if a minor, of the breach or unauthorized disclosure. Post Audit will cooperate with the district's investigation into the causes and consequences of the breach or unauthorized disclosure.
13. Provide the district with one electronic and at least one paper copy of the final versions of all approved, released reports and other documents associated with this project. The district reserves the right to distribute and otherwise use the final approved, released report and associated documents as it wishes, in sum or in part.

V. RELATED PARTIES. Post Audit represents that it is authorized to bind to the terms of the Agreement, including confidentiality, maintenance, publication, and destruction or return of data, all related or associated institutions, individuals, employees or contractors who may have access to the data or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or use in any way.

VI. PUBLICATION OF AGREEMENT. The district will, in light of the December 2011 guidance from the U.S. Department of Education, post for public access, a copy of this Agreement.

VII. TERM. This Agreement takes effect upon signature by the authorized representative of each Party and shall remain in effect until September 1, 2025, or until canceled by either Party upon 30 days written notice, whichever occurs first. The Agreement is renewable for one year upon written approval by the authorized representative of each Party. The obligations and requirements to protect data privacy shall not expire.

VIII. NONDEBARMENT. Post Audit certifies by its representative's signature hereon that neither it nor its principals have been or are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any agreement similar to this Agreement by any state or federal department or agency.

VIX. ATTACHMENTS. The provisions contained in the Scope and Purpose Attachment, Security Representative Attachment, and the Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), attached hereto and marked Attachments 1, 2 and 3, are hereby incorporated by reference and made a part of this Agreement as though fully set forth at length herein.

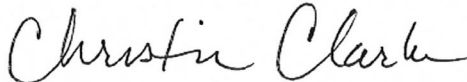
X. SCOPE OF AGREEMENT. This Agreement expresses the entire agreement of the parties and shall not be modified or altered except in writing executed by the authorized representatives of the district and Post Audit and in a manner consistent with applicable state and federal laws.

For Unified School District 229

X 

Dr. Tonya Merriqan
Superintendent

For the Division of Post Audit



Chris Clarke
Legislative Post Auditor
April 3, 2025

Attachment(s):

Attachment 1 – Purpose and Scope
Attachment 2 – Security Representative
Attachment 3 – Contractual Provisions
Attachment 4 – Training Verification

Attachment 1 – Purpose and Scope

The district will disclose the NSLP Program applications and any follow up information requested by Post Audit in furtherance of an audit entitled Reviewing Free-Lunch Student Counts Used as the Basis for At-Risk Funding.

Post audit is a state agency engaged to perform an audit assessing the accuracy of the at-risk funding count.

Post Audit will use the information to verify the student's eligibility for the free lunch program. Individual students will not be identified or be identifiable in any report released by Post Audit.

The temporary custodian appointed by Post Audit is Heidi Zimmerman, Principal Auditor, Legislative Division of Post Audit, 785-431-0120, Heidi.Zimmerman@lpa.ks.gov.

The district will provide the National School Lunch application for the requested students for the 2023-24 school year.

Attachment 2 – District Representative

Dr. Tonya Merrigan
Superintendent
(913) 239-4000
tmerrigan@bluevalleyk12.org

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 3rd day of April 2025.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions

in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Attachment 4

Training Verification Attachment

The following LPA staff completed FERPA and Student Data Privacy Act training:

- Holly Alker (completed on January 29, 2025)
- Sarah Middendorf (completed on January 29, 2025)
- Sam Dadds (completed on January 27, 2025)
- Cade Graber (completed on February 21, 2025)
- Maeghan Bishop (completed on August 19, 2024)
- Heidi Zimmerman (completed on August 27, 2024)
- Matt Etzel (completed on August 20, 2024)
- Chris Clarke (completed on January 24, 2025)

Additional documentation can be provided upon request.