

Comments from David Fisher, President of the Sacramento City Teachers Association to the Sacramento City Unified School District, April 8, 2021.

Agenda Item #10.1 Revised Board Policy 3315

Tonight, you as a school board are being presented with seems to be an innocuous change to SCUSD school board policy #3315.

In reality, the proposed change is hardly innocuous. SCUSD has been plagued with the conflict-of-interest issues since Jorge Aguilar became of the Superintendent in July 2017.

At the time he was hired, the District entered in a data sharing agreement with UC Merced where the District agreed to pay \$1.5 million to UC Merced. The agreement was signed by board member Darrel Woo, who has not an authorized signatory for the District, and it was not disclosed that Superintendent Aguilar continued to work for both UC Merced and SCUSD. See more information here - <https://sacteachers.org/state-supt-ony-thurmond-asked-to-investigate-sac-city/>

In addition, board members have voted on service contracts in which a spouse served as the executive director of the vendor. The board has also approved contracts where the District's outside counsel from Lozano Smith sat on the board of a vendor doing business with the District. Other contracts have been awarded to the neighbors of board members and the chief executive officers of organizations that have endorsed and donated to the campaigns of board members. None of the conflicts of interest were disclosed before the board was asked to vote on the contracts.

The revision to the policy states that "No district employee or Governing Board member shall participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest." That is a strong sentence.

But the next two revisions delete "Governing Board" member from consideration. "Such a conflict of interest would arise when a district employee ~~or Governing board member~~ has a financial or other interest or a tangible personal benefit for a firm considered for a contract." Why shouldn't this apply to Governing Board members too?

It also exempts Governing Board members from disciplinary action.

In addition, for District staff, it makes the superintendent responsible to disciplinary action that he or she "deems appropriate." What if the Superintendent is the one who violated the policy? And given the controversy surrounding Superintendent Aguilar related to conflict of interests, shouldn't the board have the final say whether an action taken to address this issue is appropriate?

Accordingly, we ask that the policy be revised to address our concerns,

AGREEMENT GOVERNING THE RELEASE OF PERSONALLY IDENTIFIABLE STUDENT
INFORMATION BY THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT TO THE
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PREAMBLE

This Memorandum of Understanding ("MOU"), dated June 1, 2017 ("Effective Date"), states the terms under which the Sacramento City Unified School District (hereinafter referred to as "SCUSD" or "District") will exchange personally identifiable student information described below ("Data") with the University of California, Merced, Center for Educational Partnerships (hereinafter referred to as "UCM CEP"), for the purpose of conducting studies, academic interventions, and program evaluation in a manner consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) and the Privacy of Pupil Records provisions of the California Education Code (§ 49073 et seq.). SCUSD and UCM CEP are collectively referred to as the "Parties" and each of them individually as a "Party."

RECITALS

1. Purpose and Scope of MOU

SCUSD desires to work collaboratively with UCM CEP to improve the alignment of educational systems and the coordination of resources to result in the increase of, among other things, student academic achievement, college preparation, matriculation and transition, university transfers, and the rate of bachelor's degree completion. This effort is intended to develop mechanisms for SCUSD and UCM CEP to conduct "real-time" student data exchanges to guide continuous improvements to postsecondary education preparation at the District as well as improve targeted student support activities, resources, and services.

2. Summary of Applicable Legal Authority

This MOU to allow the release of personally identifiable student information is authorized under FERPA (20 U.S.C. § 1232g; 34 CFR Part 99), a Federal law that protects the privacy of student education records, as well as the parallel provisions of California Education Code § 49076. FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA permits the release of personally identifiable student data without prior written parental or student consent if the release is to "organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted." (20 USC 1232g (b)(1)(F); See, accord, California Education Code § 49076(a)(2)(E).)

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The FERPA implementing regulation at 34 CFR § 99.31(a)(6) allows schools to disclose student records, without parental or student consent, to the following:

- o Organizations conducting certain studies for or on behalf of the school (the “studies exception”).

FERPA further permits the release of personally identifiable student data without prior written parental or student consent if the release is to authorized representatives of State and local educational authorities for the purpose of auditing or evaluating a Federal or State supported educational program. (20 USC 1232g (b)(1)(C), (b)(3) and (b)(5); see accord, California Education Code § 49076(a)(1)(C).)

The FERPA implementing regulation 34 CFR § 99.31(a)(3) allows schools to disclose student records, subject to the requirements of 34 CFR § 99.35, without parental or student consent to:

Authorized representatives of State and local educational authorities (the “audit or evaluation exception”).

TERMS

NOW, THEREFORE, the Parties agree as follows:

1. Personally Identifiable Information from Education Records to be Disclosed

Under the FERPA “studies exception” (34 CFR § 99.31(a)(6)) for the purpose of improving instruction, as well as the FERPA “audit or evaluation exception” (34 CFR § 99.31(a)(3)) for the purpose of facilitating evaluation of SCUSD’s above-described higher education preparation and targeted student support programs, respectively, the Parties agree to the following disclosures, subject to the terms of the MOU.

SCUSD will disclose some or all of the following, including but not limited to, Data to UCM CEP:

- o Student Birthdate
- o Student Contact (Phone, Email and Home Address)
- o Student Parent Contact Information
- o Home Language
- o Date First Enrolled
- o Country of Origin
- o Drop Out Code
- o Drop Out Date
- o Ethnicity
- o Student State Identification Number (SSID)
- o Parent Education Level
- o Family Income

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- First Generation Student
- Student Course Grade History / Transcript (e.g. Course Name, Academic Grade Received, Academic Grade Point Average, Cumulative Grade Point Average)
 - Current Student Course Enrollment Data
 - Student School Enrollment History
 - Student Status: Foster Youth Status, Homeless Status, GATE, Migrant, AVID, Special Education Status
- Student A-G Progress Status: A-G Total Units, A-G Units by Subject Area, A-G Ontrack Status
- Student Engagement Data (e.g. Arts, Activities, Athletics): Activity Participation, Event Participation.
- English Learner Progress Status: Proficiency Level, EL Progress Status, EL Status, Expected Redesignation Year, Redesignation Date
- Internal Assessment / Benchmark Result
- College Exams Registration and Results: PSAT, SAT, ACT, AP
- Statewide Assessments Results: Smarter Balance Assessments, etc.
- Formative/Benchmark Assessments
- Student Attendance Records
- Student/Parent/Staff Survey Data
- Financial Aid (FAFSA) Data
- Student Suspension Data
- Student Graduation Data: Number of Credits, Graduation Progress Status
- Student Application to Institutions of Higher Learning Data
- Student Admission and Enrollment to Institutions of Higher Education Data

The above Data may be revised during the course of the MOU to carry out the purpose and scope as set forth in section 1 of the Recitals.

2. **Roles and Responsibilities of the Parties**

A. **UCM CEP and SCUSD**

1. The Parties shall use a secure, mutually agreed upon means and schedule for identifying the appropriate data fields and for transferring confidential information.
2. The Parties acknowledge that the Data provided pursuant to the MOU is confidential and agree to use commercially reasonable efforts to protect the Data from unauthorized disclosures to any third parties and to comply in all material respects with all applicable District, local, state and federal confidentiality laws and regulations including but not limited to FERPA.
3. The Parties shall use the Data only for the purposes described in the MOU. SCUSD and UCM CEP shall not use the Data for personal gain or profit of any

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individual or organization, it being understood and acknowledged that the successful conclusion of the research contemplated by the MOU should be beneficial to all Parties and their constituents.

4. The Parties shall keep all Data in a location physically and electronically secure from unauthorized access. Data shall be stored and processed in a way that unauthorized persons cannot retrieve nor alter the information by means of a computer, remote terminal, or other means.
5. The Parties shall employ qualified personnel that are proficient and experienced in managing secure, confidential Data ("Qualified Personnel"). The Parties agree to restrict distribution of personally identifiable matched Data to Qualified Personnel, with the understanding that personally identifiable information will be released only for the purposes established in the MOU.
6. The Parties acknowledge and agree that any Data disclosed under the MOU remains the property of the disclosing Party. As such, the Parties further agree that Data files shall be destroyed or returned to the Party disclosing the Data when no longer needed for the purpose for which it was obtained, in compliance with 34 CFR §99.31(6)(iii)(B); §99.35 (b)(2), or upon expiration or termination of the MOU as set forth below. In accordance with the requirements of 34 CFR § 99.31(b)(6)(iii)(C)(4) and § 99.35(a)(3)(iv), the Parties agree that upon the occurrence of an event which triggers a duty to destroy or return Data as set forth above, the Data shall be destroyed or returned to the disclosing Party within thirty (30) days of the occurrence.
7. The Parties shall not re-disclose any Data with or without identifying information to any other requesting individuals, agencies, or organizations that are not a Party to the MOU.
8. The Parties will require all employees, contractors, and agents of any kind to comply with all applicable state and federal laws with respect to the Data shared under the MOU, including but not limited to, the Federal Family Educational Rights and Privacy Act (20 USC 1232g), federal and California information security and confidentiality laws, including the Comprehensive Computer Data Access and Fraud Act (California Penal Code Section 502), Federal Privacy Act, Gramm-Leach-Bliley Act with subsequent "Privacy" and "Safeguards" rulings, and the Information Practices Act of 1977, as amended. The Parties agree to require and maintain an appropriate confidentiality agreement from each employee, contractor, or agent with access to Data pursuant to the MOU. The Parties further agree that should any of them use a contractor, consultant or other agent to perform any "outsourced services" under 34 CFR § 99.31(a)(1)(B) which require the third party to access Data disclosed by any other Party under the MOU, the

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Party shall extend all of its Data confidentiality and security policies and procedures to the third party by contract. Any and all unauthorized access is prohibited.

9. The Parties will use Data collected and shared under the MOU for no purposes other than those set forth in the MOU, as authorized under §99.31 of Title 34, Code of Federal Regulations. Nothing in the MOU may be construed to allow the maintenance, use, disclosure, or sharing of student information in a manner not allowed by federal law or regulation. In particular, the Parties will not disclose any Data provided under the MOU in a manner that could identify any individual student or the student's parent(s)/guardian(s), per 34 CFR §99.31(6)(ii)(A).
10. The Parties each designate one another as an "authorized representative" for purposes of disclosing Data under the "audit or evaluation exception" in accordance with 34 CFR § 99.31(a)(3) and § 99.35(a)(3)(i).
11. By the signature of its authorized representative below, each Party acknowledges that it has been provided with the notice required under 34 CFR § 99.33(d) that it is strictly prohibited from re-disclosing student education records, or personally identifiable information contained in student education records, that it receives pursuant to the MOU to any other third party except as authorized by applicable law or regulation.
12. The Parties agree to comply with the requirements governing maintenance of records of each request for access to, and each disclosure of, student education records set forth under 34 CFR § 99.32, as applicable.

B. SCUSD Rights and Responsibilities

1. SCUSD will release Data pursuant to the MOU with the understanding that:
 - a. No individual student Data shall be identifiable in any reports not created specifically for SCUSD.
2. SCUSD reserves the right to withhold personally identifiable student Data from UCM CEP at any time.

C. Fees Paid to UCM CEP

For the 2017-2018 school year, SCUSD shall pay a fee to the Regents of the University of California, Merced, not to exceed a maximum of \$250,000, either monthly or a lump sum payment as determined by SCUSD, subject to any credits or offsets from grants, or other subventions, and subject to any pro rations or offsets pursuant to section 4 (Term and Termination) of this MOU. For subsequent school years, SCUSD shall pay a fee to the Regents of the University of California, Merced, not to exceed

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a maximum of \$500,000, either monthly or a lump sum payment as determined by SCUSD, subject to any credits or offsets from grants, or other subventions, and subject to any pro rations or offsets pursuant to section 4 (Term and Termination) of this MOU. The specific annual fee, and related provisions regarding payment will require the Parties to enter into a fee for service agreement that shall not be inconsistent with the provisions of the MOU.

3. **Confidentiality**

- A. **Confidentiality.** The Parties to the MOU shall maintain the confidentiality of any and all Data exchanged by the Parties pursuant to the terms of the MOU. The confidentiality requirements under this paragraph shall survive the termination or expiration of the MOU or any subsequent MOU intended to supersede the MOU.
- B. **Unauthorized disclosure.** The Parties agree to promptly notify the other Party of any actual or suspected unauthorized disclosure of the confidential and other non-public information shared under the MOU. Any such notification shall be provided within seventy-two (72) hours of discovery of the actual or suspected breach, and shall include, at a minimum:
 - i. The nature of the unauthorized use or disclosure (e.g., security breach, unauthorized re-disclosure);
 - ii. The specific Data that was used or disclosed without authorization;
 - iii. Who made the unauthorized use or received the unauthorized disclosure;
 - iv. What the Party has done or will do to mitigate any effects of the unauthorized use or disclosure; and,
 - v. What corrective action the Party has taken or will take to prevent future occurrences.

4. **Term and Termination**

- A. **Term.** The MOU shall be enforceable as of the Effective Date, shall continue for a term of four years, commencing with the 2017-2018 school year, and may be renewed by amendment.
- B. **Termination.** Notwithstanding section A, either Party may terminate the MOU at any time upon thirty (30) days with prior written notice to the other Party.

5. **General Provisions**

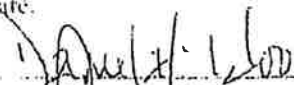
- A. **Entire MOU.** The MOU contains the entire agreement between the Parties and supersedes any prior discussions, memoranda, understanding, communications or agreements.

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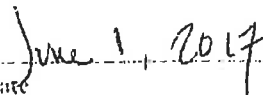
- B. **Amendment.** The MOU may be amended only by written agreement approved by the Parties. Non-substantive revisions may be made to the MOU upon approval by the Superintendent and UCM CEP
- C. **Waiver.** Any waiver by any Party of the violation of any provision of the MOU shall not bar any action for subsequent violations of the MOU.
- D. **Severability.** If any provision of the MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the MOU such provision shall be fully severable. All remaining provisions shall remain in full force and effect.
- E. **Execution.** Each of the persons signing the MOU on behalf of a Party represents that he or she has authority to sign on behalf of and to bind such Party.
- F. **Counterparts; Copies.** The MOU may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same document. Copies of signatures shall have the same force and effect as original signatures.
- G. **Notices.** Any and all notices or other communications required or permitted to be given under any of the provisions of the MOU shall be in writing and shall be deemed to have been duly given when personally delivered or mailed by first class registered mail, return receipt requested, or via overnight delivery, with proof of delivery, addressed to the Parties at agreed upon addresses. Nothing herein shall affect any method of mode of secure transmission of the Data described herein.
- H. **Indemnity.** The Parties shall be responsible for their own errors or omissions giving rise to claims in the performance of the MOU. Accordingly, the Parties shall indemnify, defend and hold each other harmless, including attorneys fees and costs, for any errors or omissions caused by a Party in the event the other Party is included in such claim but was not responsible for the error or omission giving rise to the claim. The term Party shall include its officers, employees, successors and assigns.

WHEREFORE, the Parties hereto, by their signatures below, enter into the MOU as of the Effective

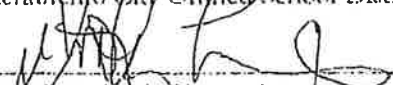
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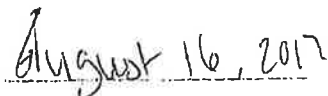
Darrel Woe, Board 2nd Vice President
Sacramento City Unified School District



Date



Dorothy Leland, Chancellor
University of California, Merced



Date

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