

**DATA SHARING AGREEMENT FOR RELEASE OF DATA
UNDER “SCHOOL OFFICIAL” AND “EVALUATION” EXCEPTIONS**

This Data Sharing Agreement (“Agreement”) between Independent School District No. 709, Duluth Public Schools (“District”) and YMCA, is entered into as of July 1, 2013. The District and YMCA are referred to collectively as the “Parties.”

WHEREAS, certain individuals affiliated with YMCA (hereinafter “Requesting Entity”) will provide AFTER SCHOOL PROGRAMMING to the District for the 2013-2014 school year; and

WHEREAS, the services to be provided by individuals affiliated with Requesting Entity are institutional services and functions for which the District would otherwise use its own employees; and

WHEREAS, the District anticipates individuals affiliated with Requesting Entity will be required to access personally identifiable information related to students and educational data in order to effectively provide services to the District; and

WHEREAS, both the Family Educational Rights and Privacy Act (“FERPA”) and the Minnesota Government Data Practices Act (“MGDPA”) allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be protected from disclosure under a “school official” exception; and

WHEREAS, individuals affiliated with Requesting Entity will be providing services in a manner that meets the relevant requirements to qualify as a “school official” under both FERPA and the MGDPA; and

WHEREAS, the Parties wish to enter into this Agreement in order to outline in greater detail the terms and conditions upon which individuals affiliated with Requesting Entity will be granted access to certain protected student data as a “school official”; and

WHEREAS, Requesting Entity receives funding from 21st CENTURY COMMUNITY SCHOOLS GRANT, which is funded by a FEDERAL FUNDING SOURCE; and

WHEREAS, as a condition of receiving grant funding, Requesting Entity must complete certain reports related to the effectiveness of educational programs funded with grant money; and

WHEREAS, the District desires to designate Requesting Entity as its authorized representative for evaluating and reviewing data for the purpose of measuring the effectiveness of educational programs funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT; and

WHEREAS, in order to share personally identifiable information related to students and educational records, for the purpose of evaluating the effectiveness of educational programs funded with the 21st CENTURY COMMUNITY SCHOOLS GRANT, the District and Requesting Entity must enter into a written agreement that meets the requirements outlined in 34 C.F.R. § 99.35.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree to the following:

1. **Services Provided to District.** Requesting Entity is a NON-PROFIT ORGANIZATION whose BRANCH ASSOCIATE EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT will provide AFTER SCHOOL PROGRAMMING AND EVALUATION OF PROGRAMMING AS A PART OF REPORTING REQUIREMENTS OF THE GRANT to the District. The services to be provided to the District are institutional services and functions for which the District would otherwise use its own employees.
2. **Protected Student Data Defined.** "Protected Student Data" means any data defined as "personally identifiable information" contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31, or "educational data" as defined in the MGDPA, Minn. Stat. § 13.32.
3. **Types of Data to be Accessed.** In the course of providing the services described in Paragraph 1, individuals affiliated with Requesting Entity will have a legitimate need to access Protected Student Data in the form of ATTENDANCE, SCHEDULES AND GRADES. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
4. **District's Control over Use and Maintenance of Data.** The following terms and conditions will govern the manner in which individuals affiliated with Requesting Entity will have access to Protected Student Data:
 - a. BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT shall be the only representatives of Requesting Entity granted access to Protected Student Data in accordance with the terms of this Agreement. Protected Student Data shall not be shared with any employee, agent, volunteer, or other affiliate of Requesting Entity who is not within the group of individuals defined in this Paragraph. Prior to being granted access to Protected Student Data, each BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT must review and sign the acknowledgement and consent form attached hereto as Exhibit A.
 - b. Requesting Entity shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT to provide the services referenced in Paragraph 1. Requesting Entity shall not maintain its own files, documents, or any other form of records containing Protected Student Data or attempt to obtain access to Protected Student Data for anyone other than an individual described Paragraph 4(a).
 - c. The use and maintenance of Protected Student Data by BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT shall be at all times subject to the District's direct control.

- d. Individuals providing services as BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT shall be granted access to Protected Student Data through the District's Infinite Campus system in a manner deemed appropriate by the District. **Requesting Entity shall supply the District with a list of the names of the individuals providing services as BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT to the District Administrator or principal of the building in which each individual will be providing services.** Upon receipt of the list of names, the District will determine using its sole discretion the extent to which each individual will be granted access to Protected Student Data through the Infinite Campus system. Under no circumstance will an individual be granted greater access to Protected Student Data than what is legitimately necessary to effectively provide the services listed in Paragraph 1. The District retains the right to alter at any time and in its sole discretion the manner in which individuals providing services as BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT access Protected Student Data. **No individual will be granted access to Protected Student Data unless the person has signed the form attached as Exhibit A and provided a copy to the principal of the building in which the individual will be providing services.**
- f. The individuals providing services of the AFTER SCHOOL PROGRAMMING AND EVALUATING THE AFTER SCHOOL PROGRAMMING shall not copy, duplicate, alter, modify, or otherwise make changes to or reproductions of Protected Student Data unless legitimately necessary to perform the services described in Paragraph 1. If any individual who has been granted access to data in accordance with this agreement has maintained copies or other reproductions of Protected Student Data for legitimate purposes, such copies or other reproductions must be destroyed within 30 days of the expiration of this Agreement.
- g. The District reserves the right to restrict, modify, or discontinue the use and maintenance of Protected Student Data authorized by this agreement for any reason. If the District exercises its sole discretion to restrict or cancel access to data, Requesting Entity and/or its affected representatives shall destroy any copies or reproductions of data which they no longer have access in accordance with the timeframe and requirements of Paragraph 4(f) of this Agreement.

- 5. **Evaluation of Educational Programs Funded with 21st CENTURY COMMUNITY SCHOOLS GRANT Funds.** The Parties acknowledge that the services identified in Paragraph 1 are funded through the FEDERALLY-funded 21st CENTURY COMMUNITY SCHOOLS GRANT. As a condition of receiving funds through the 21st CENTURY COMMUNITY SCHOOLS GRANT, Requesting Entity must compile aggregate data related to the effectiveness of services funded by the grant and report the results to US DEPT. OF EDUCATION. Notwithstanding Paragraph 4, the following terms and conditions apply to the District's release of Protected Student Data to Requesting Entity for the purpose of evaluating the effectiveness of grant-funded services:

- a. **Authorized Representative.** The District designates Requesting Entity as its authorized representative for evaluating the effectiveness of AFTER SCHOOL PROGRAMING.
- b. **Records to be Disclosed.** The District shall disclose ATTENDANCE, SCHEDULES AND GRADES to Requesting Entity for the purpose of evaluating FEDERALLY-funded educational programs funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT. Requesting Entity has designated BRANCH EXXECUTIVE DIRECTOR, TRACIE CLANAUGH; EVALUATION COORDINATOR, SARA HENDRICKSON AND EVALUATION ASSISTANT, RACHEL LOEFFLER-KEMP as the individuals who will conduct the evaluation and review the Protected Student Data disclosed pursuant to this Paragraph. **Prior to being granted access to Protected Student Data, the individuals who will conduct the evaluation must review and sign the acknowledgement form attached to this Agreement as Exhibit B.**
- c. **Scope of Access to Data for Evaluation.** Upon Requesting Entity's request, the District shall provide access to ATTENDANCE, SCHEDULES AND GRADES to the individuals designated by Requesting Entity to evaluate the effectiveness of educational programs funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT. Following Requesting Entity's request for access to the records and information described in this Paragraph, the District will determine using its sole discretion the most appropriate manner in which to grant access to the individuals who will conduct the evaluation. The records and information described in this Paragraph have been determined by the Parties to be necessary to properly conduct an evaluation of the effectiveness of educational programs provided to students attending schools in the District and funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT. In the course of evaluating the effectiveness of educational programs funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT the District shall not provide any records or information other than those specified in this Paragraph.
- d. **Destruction of Data.** Requesting Entity must destroy any Protected Student Data provided by the District pursuant to Paragraphs 5(b) and 5(c) within 30 days of when such records and information are no longer needed for the purpose of conducting an evaluation of educational programs funded through the 21st CENTURY COMMUNITY SCHOOLS GRANT. **Within 10 days of the destruction of Protected Student Data pursuant to this Paragraph, Requesting Entity must provide TAWNYEA LAKE, DIRECTOR OF ASSESSMENT, EVALUATION AND PERFORMANCE with a sworn statement attesting to the fact that all Protected Student Data maintained by Requesting Entity and its representatives have been destroyed.**
- e. **Results of Evaluation.** Requesting Entity shall not disclose any Protected Student Data when reporting the aggregate results of its evaluation to any third-party. Protected Student Data must be removed from all reports.
6. **Policies and Procedures to Protect Data.** In the event the District discloses Protected Student Data to Requesting Entity pursuant to Paragraph 5, the Parties agree to comply with the following policies and procedures to protect the privacy of Protected Student Data:

- a. Requesting Entity shall only use Protected Student Data to the extent reasonably necessary to carry out an evaluation of educational programs funded through 21st CENTURY COMMUNITY SCHOOLS GRANT. Requesting Entity is expressly prohibited from using Protected Student Data for any other purpose.
- b. Requesting Entity shall not disclose Protected Student Data except as specifically authorized by this Agreement. Prior to disclosing the aggregate results of its evaluation to any third party, Requesting Entity must submit the results to the District for its review and approval in order to ensure Requesting Entity will not disclose Protected Student Data to a third party.
- c. Requesting Entity shall develop its own policies, procedures, and systems to implement appropriate safeguards to protect the privacy of Protected Student Data. The District maintains the right to audit and monitor policies, procedures, and systems implemented by Requesting Entity.
- d. Prior to requesting data pursuant to this Agreement, Requesting Entity shall provide appropriate training to its employees, volunteers, and other representatives with respect to FERPA, the MGDPA, and how to protect personally identifiable information contained in education records.
- e. Prior to requesting data pursuant to this Agreement, Requesting Entity shall implement appropriate disciplinary policies for employees, volunteers, and other representatives that violate FERPA and the MGDPA.
- f. Requesting Entity and its employees, volunteers, and other representatives shall at all times comply with Federal and State laws governing data privacy, including but not limited to FERPA and the MGDPA.

7. **Redisclosure of Protected Student Data Prohibited.** In the course of performing the services described in Paragraph 1, the Parties agree that individuals providing services to the district as BRANCH ASSOCIATE EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT shall not redisclose Protected Student Data to any representative of Requesting Entity not within the class of individuals identified in Paragraph 4(a) or any person or party other than a school official with a legitimate need to know the information unless disclosure is specifically permitted or required by law. In the event a parent or eligible student requests disclosure of Protected Student Data to a third party, Requesting Entity and its representatives shall direct the requesting parent or eligible student to the appropriate building principal, who will process each request to disclose Protected Student Data in accordance with applicable District policies and procedures. In the event Requesting Entity receives Protected Student Data for the purpose of conducting an evaluation as provided in Paragraph 5, Requesting Entity shall not disclose Protected Student Data to any third party, including employees or other individuals affiliated with Requesting Entity who are not involved in the evaluation, for any reason, including when reporting the aggregate results of the evaluation to the US DEPT. OF EDUCATION.

8. **Data Related to BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT Evaluations.** The Parties agree that data maintained by the District with respect to individuals who perform services on a voluntary basis for the District is defined as personnel data by the MGDPA, Minn. Stat. § 13.43. In the event Requesting Entity requests information from the District that is not classified as public data pursuant to Minn. Stat. § 13.43, subd. 2, requesting Entity shall obtain a written consent of the subject of the data prior to requesting the data from the District.
9. **Term.** This agreement shall be valid from the date duly approved by both Parties through June 30, 2014. On July 1, 2014, this agreement shall terminate and the District will terminate the ability of the individuals described in Paragraph 4(a) to access Protected Student Data.
10. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or transfer this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party.
11. **Amendment/Modification.** This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.
12. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date first written above.

DATE: June 10, 2013

YMCA
By: Walter Connaugh
Branch Executive Director

DATE: _____

INDEPENDENT SCHOOL DISTRICT NO. 709
By: _____
School Board Chair

**EXHIBIT A
ACKNOWLEDGMENT AND CONSENT FORM**

I, Tracie Clunough, hereby acknowledge that I will be providing AFTER SCHOOL PROGRAMMING to Independent School District No. 709, Duluth Public Schools ("District") as a (circle one) BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT affiliated with YMCA (hereinafter "Requesting Entity"). I have reviewed and understand the data sharing agreement between the District and Requesting Entity, which describes the access I will have to District information in the course of providing services to the District, as well as District Policies 5060 through 5060R, which generally describe the District's maintenance of student records.

I have also reviewed and understand the definitions of "personally identifiable information" and "educational data" as those terms are used in the Family Educational Rights and Privacy Act ("FERPA") and the Minnesota Government Data Practices Act ("MGDPA"). 20 U.S.C. § 1232g, 34 C.F.R. § 99.31, and Minn. Stat. § 13.32. I acknowledge that personally identifiable information and educational data is prohibited from disclosure unless explicitly authorized by law. I understand I will be granted access to personally identifiable information and educational data under the "school official" exception recognized by both FERPA and the MGDPA only to the extent legitimately necessary for me to provide AFTER SCHOOL PROGRAMMING (hereinafter "Covered Services") as a Branch Executive Director, Evaluation Coordinators and Evaluation Assistants.

I hereby agree that I will use personally identifiable information and educational data only to the extent legitimate necessary for me to provide Covered Services as a BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATORS AND EVALUATION ASSISTANTS. I further agree not to redisclose personally identifiable information and educational data to any person who is not a school official with a legitimate need to know the information or to any other third party unless disclosure is explicitly permitted or required by law. In the event a parent, eligible student, or other entity requests disclosure of personally identifiable information or educational data to a third party, I will direct the requesting individual to the appropriate building principal, who will process each request to disclose personally identifiable information and educational data in accordance with applicable District policies and procedures.

I acknowledge that I may not copy, duplicate, alter, modify, or otherwise make changes to or reproductions of personally identifiable information or educational data unless legitimately necessary to perform the Covered Services as a Branch Associate Executive Director, Evaluation Coordinators and Evaluation Assistants. In the event I do legitimately maintain copies or other reproductions of personally identifiable information or educational data, I agree to destroy such copies or reproductions within 30 days of the date I cease providing services to the District as a BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT or within 30 days of the expiration of Requesting Entity's data sharing agreement with the District, whichever occurs first.

Finally, I acknowledge that Requesting Entity may request information related to my performance as a BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT for the purpose of conducting an evaluation of my ability to perform the duties of a BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATORS AND EVALUATION ASSISTANTS. I hereby authorize the District to release all information maintained by the District as a result of my work with the District as a BRANCH EXECUTIVE DIRECTOR, EVALUATION COORDINATOR AND EVALUATION ASSISTANT to Requesting Entity, including information that would be considered private personnel data under Minn. Stat. § 13.43.

Date:

June 10, 2013

Signed:

Tracie Clunough

EXHIBIT B

ACKNOWLEDGEMENT FORM

I, Travis Clonough, am a (circle one) BRANCH EXECUTIVE DIRECTOR EVALUATION COORDINATOR AND EVALUATION ASSISTANT affiliated with YMCA (hereinafter "Requesting Entity"). I hereby acknowledge that Independent School District No. 709, Duluth Public Schools ("District") has designated Requesting Entity as its authorized representative for evaluating the effectiveness of the AFTER SCHOOL PROGRAMMING, which are educational programs made possible with funding from the 21st CENTURY COMMUNITY GRANT. I have reviewed and understand the data sharing agreement between the District and Requesting Entity, which describes the access I will have to District information in the course of providing conducting an evaluation, as well as District Policies 5060 through 5060R, which generally describe the District's maintenance of student records. I further attest to the fact that Requesting Entity has provided me with training related to the requirements of the Family Educational Rights and Privacy Act ("FERPA"), the Minnesota Government Data Practices Act ("MGDPA"), and other relevant data privacy laws.

I have also reviewed and understand the definitions of "personally identifiable information" and "educational data" as those terms are used in FERPA and the MGDPA. 20 U.S.C. § 1232g, 34 C.F.R. § 99.31, and Minn. Stat. § 13.32. I acknowledge that personally identifiable information and educational data is prohibited from disclosure unless explicitly authorized by law. I understand I will be granted access to personally identifiable information and educational data only to the extent legitimately necessary for me to evaluate the effectiveness of the AFTERSCHOOL PROGRAMMING under an exception for conducting an audit or evaluation of federally and state-funded educational programs.

I hereby agree that I will use personally identifiable information and educational data provided by the District only to the extent reasonably necessary to carry out an evaluation of educational programs funded through 21st CENTURY COMMUNITY SCHOOLS GRANT. I acknowledge and understand that any report to the US DEPT. OF EDUCATION related to the results of my evaluation may not contain any personally identifiable information or educational data and must be reviewed and approved by the District prior to disclosure to the US DEPT. OF EDUCATION. I further acknowledge that I may not redisclose personally identifiable information or educational data to any third party, including individuals employed by or affiliated with Requesting Entity who are not involved in the evaluation, for any reason.

I understand and acknowledge that all personally identifiable information and educational data provided by the District for the purpose of completing the evaluation of educational programs funded through 21st CENTURY COMMUNITY SCHOOLS GRANT must be destroyed within 30 days of when such records and information are no longer needed for the purpose of conducting the evaluation. Within 10 days of the destruction of personally identifiable information and educational data, I agree to provide a sworn statement attesting to the fact that the information and data have been destroyed.

Date: June 10, 2013

Signed: Travis Clonough