

Contract No. C22-256

BOARD APPROVED  
DATE 11/18/2021

CALIFORNIA STUDENT DATA PRIVACY  
AGREEMENT Version 2.0 (September 26, 2018)

School District/Local Education Agency:

Pleasanton Unified School District

AND

Provider:

University of Oregon

Date:

September 30, 2021

CSDPA - NO E  
Term: 10/7/2021 -  
10/7/2024

This California Student Data Privacy Agreement ("DPA") is entered into by and between the Pleasanton Unified School District (hereinafter referred to as "LEA") and on the University of Oregon (hereinafter referred to as "Provider") on September 1, 2021. The Parties agree to terms as stated herein.

#### RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated September 1, 2021 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, data transferred from LEAs and created by the Provider's Services are also subject to California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act ("SOPIPA") found at California Business and Professions Code section 22584; and

WHEREAS, for the purposes of this DPA, Provider is a school official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

#### ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.
2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit "A" hereto:

#### SWIS Suite License Agreement

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit "B".

4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit "C". In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

**Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above.

1. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of Services. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
2. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA, if allowed by law. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party, if allowed by law.

## ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing education records under FERPA (4 CFR § 99.31 (a) (1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

## ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and

regulations pertaining to data privacy and security, including FERPA, COPPA, PPRa, SOPIPA, AB 1584 and all other applicable California privacy statutes.

2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purposes other than as stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA, unless authorized by the Service Agreement.
3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **No Disclosure.** De-identified information may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement or as permitted by the Service Agreement.

**Disposition of Data.** Provider shall maintain, dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained as stated under the Service Agreement and applicable records retention policy and law. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition or as authorized under the Service Agreement. Upon request, Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified

5. **Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

## ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with a university providing similar services, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. These measures shall include, but are not limited to:
  - a. **Passwords and Employee Access.**

Provider shall only provide access to Student Data to employees or contractors that are performing the Services or as authorized by the Service Agreement.

- b. Destruction of Data.** Provider shall be maintained, destroy or delete all Student Data obtained under the Service Agreement or as permitted by the Service Agreement and applicable records retention policy and law when it is no longer needed for the purpose for which it was obtained, or transfer said data to LEA or LEA's designee. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.
- c. Security Protocols.** Both parties agree to maintain security protocols that meet best practices for a university providing similar services in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purposes of as stated by the Service Agreement.
- d. Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Upon request, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- e. Security Technology.** When the service is accessed using a supported web browser, Provider shall employ best practices for a university providing similar services to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to best practices for a university providing similar services.
- f. Contact Representative.** Provider shall provide the name and contact information of Provider's customer service representatives for the Student Data received pursuant to the Service Agreement.
- g. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

**2. Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident. Provider shall follow the following process:

- a.** The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional

information may be provided as a supplement to the notice.

- b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
  - i. The name and contact information of the reporting LEA subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
  - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. At LEA's discretion, the security breach notification may also include any of the following:
  - i. Information about what the agency has done to protect individuals whose information has been breached.
  - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. Provider agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. Provider further acknowledges it has a written incident response plan.
- f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA.
- g. In the event of a breach originating from LEA's use of the Service, Provider shall reasonably cooperate with LEA to the extent necessary to expeditiously secure Student Data.

#### ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any personally identifiable information.
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.

3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.
4. **Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is

provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

**a. Designated Representatives**

The designated representative for the LEA for this Agreement is:

**Name:** Janet Wolfinger

**Title:** Coordinator, Purchasing

Contact Information:

[lwolfinger@pleasantonusd.net](mailto:lwolfinger@pleasantonusd.net)

The designated representative for the Provider for this Agreement is:

Name: Innovation Partnership Services

Contact Information:

Email: [techtran@uoregon.edu](mailto:techtran@uoregon.edu)

Phone: 541-346-3176

6. **Entire Agreement.** This DPA and the Service Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.
9. **Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
10. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

*[Signature Page Follows]*



**IN WITNESS WHEREOF**, the parties have executed this California Student Data Privacy Agreement as of the last day noted below.

Provider: University of Oregon

BY: Orca Merwin Date: September 30, 2021

Printed Name: Orca Merwin Title/Position: Associate Director, Innovation Partnership Services

Local Education Agency: Pleasanton Unified School District

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Janet Wolfinger Title/Position: Coordinator, Purchasing

***Note: Electronic signature not permitted.***

## **EXHIBIT "A"**

### **DESCRIPTION OF SERVICES**

**[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]**

School-Wide Information System (SWIS) is a reliable, confidential, web-based information system to collect, summarize, and use student behavior data for school-site based decision making. Research tells us educators can make more effective and efficient decisions when they have the right data in the right form at the right time. SWIS provides school personnel with the information they need to be successful decision makers.

SWIS data can inform frequency of office/behavior referrals by types of behavior, location, time, student and motivation. Using this detailed information can serve to guide action planning for school-based prevention and intervention activities.

School/district administrators, members of a school-wide behavior/discipline committees, or district staff that support school Positive Behavior Intervention and Supports designated to tracking school-wide discipline and behavior can access and utilize the platform to support both appropriate school interventions and the overall school climate and culture.

**EXHIBIT "B"**

**SCHEDULE OF DATA**

<b>Category of Data</b>	<b>Elements</b>	<b>Check if used by your system</b>	<b>Conduct</b>	<b>Conduct or behavioral data</b>	<b>X</b>	
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	<b>X</b>	Demographics	Date of Birth		
	Other application technology meta data- Please specify:			Place of Birth		
				Gender	<b>x</b>	
				Ethnicity or race	<b>X</b>	
				Language information (native, preferred or primary language spoken by student)		
				Other demographic information- Please specify:		
Application Use Statistics	Meta data on user interaction with application	<b>X</b>		Enrollment	Student school enrollment	<b>X</b>
					Student grade level	<b>X</b>
Assessment	Standardized test scores				Homeroom	
	Observation data				Guidance counselor	
	Other assessment data-		Specific curriculum programs			
			Year of graduation			
			Other enrollment information- Please specify:			
Attendance	Student school (daily) attendance data	<b>X</b>				
	Student class attendance data					
Communication	Online communications that are captured (emails, blog entries)		Parent/Guardian Contact Information	Address		
				Email		
				Phone		

Parent/ Guardian ID	Parent ID number (created to link parents to students)	
Parent/ Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status Medical alerts /health data	
	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/ foster care)	
	Other indicator information- Please specify:	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID	X

	number	
	State ID number	
	Provider/App assigned student ID number	X
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/appli- cation performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricula activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc. Other student	

	work data - Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/perfor- mance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time ---  
 \*Provider shall immediately notify LEA if this  
 designation is no longer applicable.

**OTHER:** Use this box, if more space needed.

## EXHIBIT "C"

### DEFINITIONS

**AB 1584, Buchanan:** The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

**De-Identifiable Information (DII):** De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

**Educational Records:** Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

**NIST:** Draft National Institute of Standards and Technology ("NIST") Special Publication Digital Authentication Guideline.

**Operator:** The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in applicable state statutes.

**Personally Identifiable Information (PII):** The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**Provider:** For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

**Pupil Generated Content:** The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

**Pupil Records:** Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

**Service Agreement:** Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

**School Official:** For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

**SOPIPA:** Once passed, the requirements of SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of California and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

**SDPC (The Student Data Privacy Consortium):** Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

**Subscribing LEA:** An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

**Subprocessor:** For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

**Targeted Advertising:** Targeted advertising means presenting an advertisement to a student where the

selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management , and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."