

**SECOND AMENDMENT TO DATA PRIVACY AGREEMENT
BETWEEN IRVINE UNIFIED SCHOOL DISTRICT AND ACT, INC.**

This SECOND AMENDMENT TO DATA PRIVACY AGREEMENT (“Amendment”) by and between ACT, Inc. (“ACT”, “Consultant”, or “Provider”) and IRVINE UNIFIED SCHOOL DISTRICT on behalf of itself and its affiliated schools (“Customer” or “IUSD”), is effective as of the date of the last signature hereon.

RECITALS

- a. Provider and IUSD entered into the Data Privacy Agreement related to IUSD’s purchase of PreACT on February 5, 2020 with a term date ending June 30, 2020; and
- b. Provider and IUSD entered into an Amendment the extend the term of the Agreement to June 30, 2021. Said Amendment was entered into on April 15, 2020; and
- c. Provider and IUSD hereby mutually agree to again amend the Agreement as set forth in this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, warranties, and conditions set forth herein, Provider and IUSD hereby agree as follows:

1. Initial capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Section 10 of the Agreement is hereby amended to include the 2021-2022 school year.
3. The term for the original Agreement was July 1, 2019 – June 30, 2020.
4. The Amendment extended the term through June 30, 2021, with the option to extend for three (3) additional one (1) year terms.
5. This Amendment extends the term through June 30, 2022, with the option to extend for two (2) additional one (1) year terms.
6. Except as otherwise expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect. To the extent there is a conflict between this Amendment and the Agreement, this Amendment shall control.
7. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and, together shall constitute one document.

IN WITNESS WHEREOF, Provider and IUSD have executed this Amendment to Data Privacy Agreement Between Irvine Unified School District and ACT, Inc. as of the Effective Date.

SIGNATURES ARE INCLUDED ON THE NEXT PAGE

ACT, Inc.

DocuSigned by:
Blake Curwen
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By: C. Blake Curwen

Title: Vice President

Date: 3/8/2021

Irvine Unified School District

By: John Fogarty

Title: Asst Supt Business Services

Date: April 14, 2021

IUSD Board Approved: April 13, 2021

**AMENDMENT TO DATA PRIVACY AGREEMENT
BETWEEN IRVINE UNIFIED SCHOOL DISTRICT AND ACT, INC.**

This AMENDMENT TO DATA PRIVACY AGREEMENT BETWEEN IRVINE UNIFIED SCHOOL DISTRICT AND ACT, INC. ("Amendment") by and between ACT, Inc. ("ACT", "Consultant", or "Provider") and IRVINE UNIFIED SCHOOL DISTRICT on behalf of itself and its affiliated schools ("Customer" or "IUSD"), is entered into on July 1, 2020 (the "Effective Date"), with reference to the facts set forth below. Provider and IUSD agree to amend the terms and conditions of the Data Privacy Agreement Between Irvine Unified School District And Act, Inc. ("Agreement"), upon and subject to the terms and conditions of this Amendment, notwithstanding anything to the contrary in the Agreement. Initial capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

RECITALS

- a. Provider and IUSD entered into the Agreement on July 1, 2019 with a term date ending June 30, 2020; and
- b. Provider and IUSD have mutually agreed to amend the Agreement as set forth in this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, warranties, and conditions set forth herein, Provider and IUSD hereby agree as follows:

1. Section 10 of the Agreement is hereby amended to include the 2020-2021 school year.
2. The term for the original Agreement shall be affixed as July 1, 2019 – June 30, 2020.
3. The term of this Agreement shall be extended through June 30, 2021, with the option to extend for three (3) additional one (1) year terms.
4. Except as otherwise expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect. To the extent there is a conflict between this Amendment and the Agreement, this Amendment shall control.
5. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and, together shall constitute one document.

IN WITNESS WHEREOF, Provider and IUSD have executed this Amendment to Data Privacy Agreement Between Irvine Unified School District And Act, Inc. as of the Effective Date.

ACT, Inc.

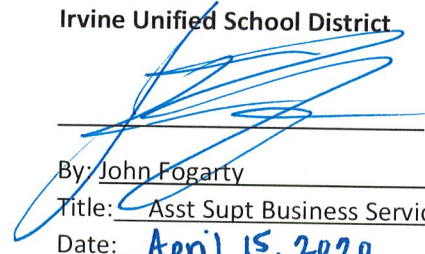


By: Charlie Astorino

Title: Vice President

Date: 3/11/2020

Irvine Unified School District


By: John Fogarty

Title: Asst Supt Business Services

Date: April 15, 2020

IUSD Board Approved: April 14, 2020

**DATA PRIVACY AGREEMENT
BETWEEN THE IRVINE UNIFIED SCHOOL DISTRICT
AND
ACT, Inc.**

WHEREAS, the Irvine Unified School District (“District”) requested PreACT test and test administration (the “Service(s)”) from ACT, Inc. (“Provider”).

WHEREAS, in order to provide the Service(s) described above, Provider may have access to student personally identifiable information (such information generally limited to):

- Student First and Last Name
- Student ID Number
- Student Date of Birth
- Student Gender
- Student Race/Ethnicity Background
- Student Mailing Address
- Student Past, Present and Future Courses for High School

defined as student records under FERPA and California Education Code § 49073.1, among other statutes, which are therefore subject to statutory protection; and

WHEREAS, the parties wish to execute this Data Privacy Agreement (“DPA”) in full compliance with California Education Code § 49073.1.

NOW THEREFORE, for good and valuable consideration, the Parties agrees as follows:

PURPOSE

1. The purpose of this DPA is to bind the parties to uphold their responsibilities under all applicable privacy statutes, including the Family Education Rights Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Children’s Online Privacy Protection Act (COPPA), and AB 1584 (found in Education Code including Section 49073.1). Specific duties are set forth below.

DATA OWNERSHIP AND AUTHORIZED ACCESS

2. Data Property of District: All information, data, and other content transmitted by the District to the Provider, or entered or uploaded under District’s user accounts, remain the sole property of the District. The District retains exclusive control over its student and staff data it provides to ACT. A parent, legal guardian or eligible student may review personally identifiable information on the pupil’s records, correct erroneous information, and request the transfer of pupil-generated content to a personal account.

3. Data Access: Provider may access District data solely to fulfill its obligations under the Agreement.

4. Third Party Access: Provider may not distribute District data or content to a third party without District's express written consent, unless required by law. Use of subcontractors and subcontractor access to data, other than by Authorized Disclosees, must be approved in writing by the District. Provider will ensure that approved subcontractors adhere to all provisions of this DPA. The terms of this paragraph does not prohibit Provider from sharing District data with its subsidiaries and vendors that provide services to Provider for the delivery of the contracted Services.

5. Third Party Request: Should a third party contact Provider with a request for District data, including law enforcement and government entities, the Provider shall redirect the third party to request the data directly from the District. Provider shall notify the District in advance of a compelled disclosure to a third party unless legally prohibited.

6. Applicability of COPPA: Provider warrants to District that all data collected directly from children and/or data resulting from tracking children's use of the Service is subject to parental consent and will occur in strict conformity to the requirements of the Children's Online Privacy Protection Act (COPPA). Provider may not sell or market student data, or use student data for sale or marketing purposes, including but not limited to targeted advertising.

DUTIES

7. District: The District will perform the following duties:

(a) Provide Data: Provide data for the purposes of utilizing the Service in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232 g.

(b) Precautions: Take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Service and hosted data.

(c) Notification: Notify Provider as promptly as possible of any known or suspected unauthorized access.

8. Provider: Provider will perform the following duties:

(a) Privacy Compliance: Comply with all applicable state and federal laws including: FERPA, COPPA, PPRA and AB 1584 (Education Code section 49073.1). These duties shall include the following:

(b) Authorized Use: The data shared under the Agreement and this DPA shall be used for no purpose other than providing the Service pursuant to the Agreement and or otherwise authorized under the statutes referred to in subsection (a), above.

(c) Employees Bound: Require all employees of Provider and Authorized Disclosees to comply with all applicable provisions of FERPA laws with respect to the data shared under this DPA.

(d) Secure Environment: Maintain all data obtained pursuant to this DPA in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this DPA except as necessary to provide the Service pursuant to the Agreement. Provider has security measures in place to help protect against loss, misuse and alteration of the data under Provider's control. When the Service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology protects information, using both server authentication and data

encryption to help ensure that data are safe, secure and available to only authorized users. Provider shall host the Service in a secure server environment that uses a firewall and other advance technology in an effort to prevent interference or access from outside intruders. The Service will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.

(e) No Disclosure: Not disclose any data obtained under this Agreement in a manner that could identify an individual student to any other entity in published results of studies. Deidentified information may be used by Provider for the purposes of development and improvement of educational sites, services or applications.

(f) Disposition of Data: Destroy all personally identifiable data obtained under the Agreement and/or this DPA when it is no longer needed for the purpose for which it was obtained, no later than 60 days following the expiration or termination of the Services provided under the Agreement, unless a reasonable written request is submitted by the District. Nothing in the Agreement or this DPA authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

(g) Data Breach Notification: Upon becoming aware of any unlawful or unauthorized access to District data stored on equipment used by Provider or in facilities used by Provider, Provider will: notify the District as promptly as possible of the suspected or actual incident; investigate the incident as promptly as possible and provide District with detailed information regarding the incident, including the identity of affected users; assist the District in notifying affected users by taking commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident in accordance with Provider's Data Security Policy.

DATA REQUEST

9. Data Requested:

Student data is received from individual students on bubbled answer documents. See list of data included in this DPA.

10. School Year: The license to the Service provided under the Agreement is for the following school year(s): **2019-2020**.

AUDIT

11. The District reserves the right to audit and inspect the Provider's compliance with this DPA and applicable law upon reasonable prior written notice to Provider's principal place of business, during normal business hours, and no more than once per year, at its own cost.

AGREEMENT

12. Priority of Agreements: The Agreement and this DPA shall govern the treatment of student records in order to comply with the applicable privacy protections, including those found in FERPA and California Education Code § 49073.1. In the event there is conflict between the terms of this DPA and the Agreement or any other bid/RFP, license agreement, or contract document(s) in existence, the terms of this DPA shall apply solely with respect to the personally identifiable data provided under the terms of the Agreement.

13. Other Provisions Unaffected: Except as described in paragraph 12 above, all other provisions of the Agreement shall remain unaffected.

14. Modification of Agreement: No modification or waiver of any term of this DPA is effective unless mutually agreed to in writing by both parties.

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

IRVINE UNIFIED SCHOOL DISTRICT

By: 

Date: February 5, 2020

Printed Name: John Fogarty

Title/Position: Asst. Supt. Business Services

IUSD Board Approved 2/4/2020

ACT, Inc.

By: 

Date: January 22, 2020

Printed Name: Charlie Astorino

Title/Position: Vice President, Client Relations

Note: Electronic signature not permitted.