

Data Sharing – Memorandum of Agreement

Between

Port Townsend School District #50

and

The Jamestown S’Klallam Tribe

The Jamestown S’Klallam Tribe is a federally-recognized tribe with inherent sovereign rights, which pre-date the establishment of the United States, and that are secured under Indian treaties and agreements with the United States, and all other rights and benefits to which it is entitled under the laws and Constitution of the United States. Jamestown S’Klallam Tribe is the tribe nearest the boundaries of the Port Townsend School District in Washington State.

This data sharing agreement (the Agreement) refers to the Port Townsend School District #50 (the District) and the Jamestown S’Klallam Tribe (Tribe) collectively as “the Parties.”

The Chairman/CEO of the Tribe and the District Superintendent are each a signatory to this Agreement.

I. Background

The Family Educational Rights and Privacy Act (FERPA) and its implementing regulations govern access to the “student education records” of children attending a school that receives federally administered funds, including public schools. The term “education records” is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. Student education records include attendance, grades, test scores, and other similar records. See 34 CFR § 99.3.

FERPA protects the privacy of students' education records from public release. The general rule under FERPA is that the "personally identifiable information," defined in FERPA at 34 C.F.R. § 99.3, in student educational records cannot be disclosed without written consent from the parent/guardian or eligible student, such as a student 18 years old or older.

"Disclose" or "disclosure" means the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party that provided or created the record. 34 C.F.R. § 99.33.

FERPA generally provides federal, state, and local education agencies access to student records and other personally identifiable information kept by educational institutions without the advance consent of parents/guardian or students. However, FERPA does not include tribes among the governmental entities eligible to obtain student data without advance parental/guardian consent.

This omission of tribes from access to student education records under FERPA has hampered tribal efforts to develop and coordinate education programs, provide support services and technical assistance to schools, collaborate with state and local education agencies, and most importantly, work to close tribal student achievement gaps.

This is a significant loss because tribes are in the best position to track and coordinate Native student data, regardless of the education provider and student location. Student data analysis is a central tool in evaluating educational practices, tracking students' academic performance, and developing school improvement plans and support services. Tribes need access to the education records of Native students so that they can monitor and analyze the needs and progress of their students and make data-driven decisions to improve education outcomes for Native students.

Additionally, accurate, comprehensive, and meaningful data on Native students is often lacking because federal education reporting requirements frequently omit Native students due to their small numbers, and the state and local education agencies that do track Native students in public schools are unable to monitor some of the most at need Native students attending schools other than public schools.

FERPA includes an audit or evaluation exception that permits the disclosure of education records, including personally identifiable information, without prior parental/guardian/eligible student consent in connection with an audit or evaluation of Federal or State supported education programs. See 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) and §§99.31(a)(3) and 99.35)

Senate Bill 6263 – Educational Data Sharing Agreements – School Districts and Tribes – Model Policy was signed into law on March 27, 2020. Senate Bill 6263 added a new section to Chapter 28A.604 RCW. The legislation became effective June 11, 2020. The legislation directed the Washington State School Directors’ Association in consultation and collaboration with tribes, to develop a model data sharing agreement between school districts and local tribes that safeguarded students’ personally identifiable information consistent with FERPA requirements. In developing this model data sharing agreement, WSSDA consulted with the Office of Superintendent of Public Instruction, the Office of Native Education, the Tribal Leaders Congress on Education and local tribes.

II. Purpose and Mission

The District and the Tribe desire to evaluate and improve the academic progress of Native students attending public school in the District and improve compliance with the Every

Student Succeeds Act of 2016 (ESSA). The purpose of this data sharing Agreement is to work to close the opportunity gap, and increase the graduation level for our Native American students in the spirit of the Centennial Accord and Millennium Agreement with the State of Washington and as identified under ESSA. The reason for this Agreement is to allow the Parties to legally share data to conduct program evaluation as outlined in the Parties Memorandum of Understanding for Delivering Title VI and Other Services and Supporting Culturally Relevant Curricula. The agreement is entered into in the spirit of building community relationships and cultural understanding to improve the success of tribal students.

This Agreement designates the Behavioral Health and Family/Youth Services Manager as an authorized representative of the Tribe to receive student data from the District consistent with FERPA so that the Tribe may receive student education records, including personally identifiable information, without written parental/guardian/eligible student consent under 25 C.F.R. § 43.14(g) and 34 C.F.R. §99.31(a)(3) in order to evaluate the academic achievement of all Native students attending school in the District.

The Tribe maintains civil jurisdiction over matters of juvenile truancy for tribal citizens within external boundaries. If the Tribe implements a truancy program in the future the designated truancy officer in the tribe is permitted to use this data to address truancy.

III. Scope

Together the Memorandum of Understanding for Delivering Title VI and Other Services and Supporting Culturally Relevant Curricula and this Agreement incorporates all the understandings between the District and the Tribe concerning this subject matter. No prior agreements, verbal representations, or understandings shall be valid or enforceable unless embodied in writing in this Agreement.

Nothing herein shall be deemed to waive the sovereign immunity of the Jamestown S'Klallam or its enterprise, agents, or employees.

IV. Joint Responsibilities

- A. The District and the Tribe shall comply with the provisions of FERPA and applicable regulations in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose, or share student information in a manner not allowed by federal law.
- B. The District and the Tribe will work collaboratively to ensure there is no redisclosure of data. To ensure data security the Tribe will provide a list of authorized Tribal staff and or job titles authorized to access the data. Upon initiation of this agreement the Tribe will provide copies of policies and procedures designed to maintain security of data transmitted under this Agreement.
- C. The Parties will reconsider the scope and necessity of this Agreement on an annual basis.

V. Responsibilities of the District

- A. The District authorizes access to student education records, including personally identifiable information to the above designated individual(s) and/or job titles for the purposes stated in this Agreement.
- B. The District shall share the requested data with the above designated individual(s) and/or job titles. Data sharing might occur by assigning user right access to Skyward, CEDARS, and other student information system data collection programs for purposes of the Tribe evaluating student achievement of Native students in District schools.
- C. Data sharing might occur by other methods in addition to assigning user rights to information systems.

- D. The District shall post a copy of this Agreement on its website for public access.
- E. The District shall allow the designated individual(s) and/or job titles access to required federal training to become proficient in the use and management of all student information systems. The training will include security awareness protocols, data management policies, and usage of student information systems. Additionally, the District shall allow the designated individual(s) and/or job titles access to any statistical training to improve the analysis of academic achievement of students and other indicators (cultural, demographic, teacher background, etc.).
- F. The District will provide technical assistance and guidance on data reporting systems as requested by the Tribe.
- G. The District will handle all data received from the Tribe with the same care and confidentiality as the District must provide to educational records.
- H. The District agrees not to disclose any data received under this Agreement in a manner that could identify an individual student to any other individual, institution, organization, government, or entity.

VI. Responsibilities of the Tribe

- A. The Tribe shall use data shared under this Agreement for no purpose other than to evaluate federal and state supported preK-12 education programs in the District and the achievement of Tribal students.
- B. The Tribe shall not share or re-disclose personally identifiable information received under this Agreement with any other entity, organization, or individual without the prior written approval of the District. This does not prohibit the Tribe or District from sharing aggregate student data with one another.

- C. Tribal Employees shall follow current protocols and rules for gaining access to any and all student information system / data collection programs used under this agreement.
- D. The Tribe agrees not to disclose any data obtained under this Agreement in a manner that could identify an individual student to any other individual, institution, organization, government, or entity.
- E. The Tribe shall establish policies and procedures to ensure compliance with FERPA, including how personally identifiable information is processed, stored, and destroyed.
- F. The Tribe shall promptly report to the District any incidents of confidentiality breach of personally identifiable information received from the District.
- G. The Tribe agrees to destroy all personally identifiable information obtained under this Agreement within ninety (90) days after it is no longer needed for its evaluation purpose or upon the termination of this Agreement, whichever occurs first. Long term evaluation may require continued use of data.
- H. Unless the data is returned to the District, the Tribe shall maintain records that document the destruction of the data provided by the District under this Agreement.
- I. The Tribe agrees that any proposed publication arising from this data properly disaggregates data consistent with generally accepted statistical principles so that it does not permit identification of students.
- J. The Tribe recognizes that the District is the owner, proprietor, and custodian of any data or personally identifiable information provided by the District under the terms of this Agreement.

VII. Terms of Agreement

This Agreement may be terminated by the District or the Tribe upon advance written notice of fourteen (14) days. The District or the Tribe may terminate the Agreement immediately upon confirmation of fraud, negligence, redisclosure, or abuse of confidentiality. This

Agreement shall retire automatically on March 15, 2026, unless extended by a written agreement for intervals of no greater than two (2) years.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the 15th day of March, 2022, and by means of the signatures below, the Tribe and District hereby agree to abide by this MOA, effective upon the signature of both parties.

For the Jamestown S'Klallam Tribe

For the Port Townsend School District

W. Ron Allen, Tribal Chairman/CEO

Dr. Linda Rosenbury, Superintendent

Or

Loni Greninger, Tribal Vice Chair