

Memorandum of Understanding

THE INSTITUTE OF EDUCATION SCIENCES, U.S. DEPARTMENT OF
EDUCATION

and

THE _____

SUBJECT: Access by the _____
to individually identifiable information acquired by the Institute of Education
Sciences, protected under Section 183 of the Education Sciences Reform Act
of 2002; Title V, subtitle A of the E-Government Act of 2002; and the Privacy
Act of 1974.

The Institute of Education Sciences (IES) of the United States Department of
Education has collected individually identifiable information, the confidentiality
of which is protected by the Privacy Act of 1974 (5 U.S.C. 552a); Section 183
of the Education Sciences Reform Act of 2002 (PL 107-279); and Title V,
subtitle A of the E-Government Act of 2002 (PL 107-347), and wishes to
make the data available for statistical research and analysis purposes, but
only if the data are used and protected in accordance with the terms and
conditions stated in this Memorandum of Understanding.

The _____ and the Institute of
Education Sciences are agreed that:

I. INFORMATION SUBJECT TO THIS UNDERSTANDING

- A. All data containing individually identifiable information collected by or on the behalf of IES under Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279) and Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347) that are provided to the _____ and all information derived from those data, and all data resulting from merges, matches, or other uses of the data provided by IES with other data are subject to this agreement and are referred to in this Memorandum of Understanding as “subject data.”
- B. Subject data under this Memorandum of Understanding may be in the form of computer tapes, diskettes, CD-ROMs, hard copy, etc., the _____ may only use the subject data in a manner and for a purpose consistent with:
1. the statistical purpose for which the data were supplied.

description of the planned research and analysis as described is attached and made a part of this Memorandum of Understanding (Attachment No. 1),
 2. the limitations imposed under the provisions of this Memorandum of Understanding, and
 3. Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279); Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347); and the Privacy Act of 1974 (5 U.S.C. 552a), which are attached to and made a part of this Memorandum of Understanding (Attachment No. 2.)

II. INDIVIDUALS WHO MAY HAVE ACCESS TO SUBJECT DATA

A. There are three categories of individuals that the _____ may authorize to have access to subject data. The three categories of individuals are as follows:

1. The Principal Project Officer (PPO) is the most senior statistical officer in charge of the day-to-day operations involving the use of subject data and is responsible for liaison with IES.
2. Professional/Technical Staff (P/TS) who conduct the research for which this Memorandum of Understanding is issued.
3. Support staff, which includes secretaries, typists, computer technicians, messengers, etc. The _____ may disclose subject data to support staff who come in contact with the subject data in the course of their duties only to the extent necessary to support the research under this Memorandum of Understanding.

B. The _____ may disclose subject data to only seven (7) P/TS unless IES provides written authorization for a larger number of P/TS.

III. LIMITATIONS ON DISCLOSURE

A. The _____ shall not use or disclose subject data for any administrative purposes nor may they be applied in any manner to change the status, condition, or public perception of any individual regarding whom subject data is maintained.

B. The _____ shall not disclose subject data or other information containing, or derived from, subject

data at fine levels of geography, such as school district, institution, or school, to anyone other than IES employees working in the course of their employment or individuals for whom access is authorized under this Memorandum of Understanding. The

_____ shall not make disclosures of subject data to individuals other than those specified in this paragraph unless those individuals have executed an Affidavit of Nondisclosure and the _____ has obtained advance written approval from IES.

- C. The _____ shall not make any publication or other release of subject data listing information regarding individuals even if the individual identifiers have been removed.
- D. The _____ may publish the results, analysis, or other information developed as a result of any research based on subject data made available under this Memorandum of Understanding only in summary or statistical form so that the identify of individuals contained in the subject data is not revealed.

IV. ADMINISTRATIVE REQUIREMENTS

- A. The research conducted under this Memorandum of Understanding and the disclosure of subject data needed for that research must be consistent with the statistical purpose for which the data were supplied.
- B. Execution of Affidavits of Nondisclosure.
 - 1. The _____ shall provide a copy of this Memorandum of Understanding to each employee of the _____ who will have access to subject data and shall require each of those employees

to execute an Affidavit of Nondisclosure.

2. The _____ must ensure that each individual who executes an Affidavit of Nondisclosure reads and understands the materials provided to her or him before executing the Affidavit.
3. The _____ shall ensure that each Affidavit of Nondisclosure is notarized upon execution.
4. The _____ may not permit any individual specified in paragraph II.A. to have access to subject data until the procedures in paragraphs IV.B.1. through 3. of this Memorandum of Understanding are fulfilled for that individual.
5. The _____ shall promptly, after the execution of each affidavit, send the original affidavit to IES for inclusion in the System of Records as published in the *Federal Register*.

C. Notification regarding authorized individuals to IES.

1. The _____ shall promptly notify IES when an employee who has been authorized to have access to subject data is no longer authorized access to those data.

D. Publications made available to IES.

1. The _____ shall provide IES a copy of each publication containing information based on subject data or other data product based on subject data prior to making it available to individuals who have not executed an Affidavit of Nondisclosure.

2. When publication or other release of research results could raise reasonable questions regarding disclosure of individually identifiable information contained in subject data, copies of the proposed publication or release must be provided to IES before that disclosure is made so that IES may advise whether the disclosure is authorized under this Memorandum of Understanding and the provisions of Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279); Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347); and the Privacy Act of 1974 (5 U.S.C. 552a). The _____ agrees not to publish or otherwise release research results provided to IES if IES advises that such disclosure is not authorized.

E. The _____ shall notify IES immediately upon receipt of any legal, investigatory, or other demand for disclosure of subject data.

F. The _____ shall notify IES immediately upon discovering any breach or suspected breach of security or any disclosure of subject data to unauthorized parties or agencies.

G. The _____ agrees that representatives of IES have the right to make unannounced and unscheduled inspections of the facilities of the _____ including any associated computer center, to evaluate compliance with the terms of this Memorandum of Understanding and the requirements of Section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279); Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347); and the Privacy Act of 1974 (5 U.S.C. 552a).

V. SECURITY REQUIREMENTS

A. Maintenance of, and access to, subject data.

1. The _____ shall retain the original version of the subject data at a single location and may make no copy or extract of the subject data available to anyone except a P/TS as necessary for the purpose of the statistical research for which the subject data were made available to the _____.
2. The _____ shall keep subject data (whether maintained on a personal computer or on printed or other material) in a space where access is limited to only authorized personnel.
3. The _____ shall ensure that access to subject data maintained in computer memory is controlled by password protection. The _____ shall maintain all printouts, diskettes, personal computers with subject data on hard disks, or other physical products containing individually identifiable information derived from subject data in locked cabinets, file drawers, or other secure locations when not in use.
4. The _____ shall ensure that all printouts, tabulations, and reports are edited for any possible disclosures of subject data.
5. The _____ shall establish security procedures to ensure that subject data cannot be used or taken by unauthorized individuals.
6. The _____ shall not permit removal of any subject data from the limited access space

protected under the provisions of this Memorandum of Understanding without first notifying and obtaining written approval from IES.

B. Retention of subject data.

The _____ shall return to the IES data security office all subject data, or destroy those data under IES supervision or by approved IES procedures, when the statistical research that is the subject of this Memorandum of Understanding has been completed or this Memorandum of Understanding terminates, whichever occurs first.

C. Compliance with established security procedures.

The _____ shall comply with the Security Procedures in this Memorandum of Understanding.

VI. PENALTIES

A. Any violation of the terms and conditions of this Memorandum of Understanding may subject the

_____ to immediate abrogation by IES, and the return of all subject data materials.

1. The IES official responsible for liaison with the

_____ shall initiate abrogation of this Memorandum of Understanding by written notice to the _____ indicating the factual basis and grounds for abrogation.

2. Upon receipt of the notice specified in paragraph VI.A.1. of this Memorandum of Understanding, the

_____ has thirty (30) days

to submit written argument and evidence to the Director of IES indicating why the Memorandum of Understanding should not be abrogated.

3. The Director shall decide whether to abrogate the Memorandum of Understanding based solely on the information contained in the notice to the _____ and the rebuttal provided by the _____ . The Director shall provide written notice of the decision to the _____ within forty-five (45) days after receipt of the response of the _____ . The Director may extend this time period for good cause.

- B. Any violation of this Memorandum of Understanding may also be a violation of Federal criminal law under the Privacy Act of 1974 (5 U.S.C. 552a); Title V, subtitle A of the E-Government Act of 2002 (P.L. 107-347); and/or section 183 of the Education Sciences Reform Act of 2002 (P.L. 107-279). Alleged violations under the 183 of the Education Sciences Reform Act of 2002 and Title V, subtitle A of the E-Government Act of 2002 are subject to prosecution by the United States Attorney. The penalty for violation of section 183 of the Education Sciences Reform Act of 2002 and Title V, subtitle A of the E-Government Act of 2002 is a fine of not more than \$250,000 and imprisonment for a period of not more than five (5) years.

VII. PROCESSING OF THIS MEMORANDUM OF UNDERSTANDING

- A. This Memorandum of Understanding shall be for a period of five (5) years. If before the expiration of this MOU, the Director establishes

regulatory standards for the issuance and content of Memorandum of Understanding, the recipient agrees to comply with the regulatory standards.

B. This Memorandum of Understanding may be amended, extended or terminated by mutual written agreement between the _____ and the Director, IES. Any amendment must be signed by the _____ and by the Director and is effective on the date that all required parties have signed the Memorandum of Understanding.

C. The _____ shall sign this Memorandum of Understanding. The _____ certifies, by his/her signature, that:

1. The organization has the authority to undertake the commitments in this Memorandum of Understanding;
2. The _____ has the authority to bind the organization to the provisions of this Memorandum of Understanding; and
3. The Principal Project Officer (PPO) designated by the _____ is a senior statistical officer for the _____, who has the authority to manage the day-to-day statistical operations of the research, P/TS, and support staff.

Signature of the _____,

Date _____ Telephone: (____) _____

D. The individual described in paragraph II.A.1. and VII.C.3. as the PPO shall sign below.

Signature of the Principal Project Officer

Title: _____ Telephone: (____) _____

Date: _____

E. The Director of the Institute of Education Sciences concurs in this Memorandum of Understanding and authorizes the access of the _____ to the subject data.

This is effective as of the date of the Director's signature below.

Director, Institute of Education Sciences

Date _____

MOU Control Number: _____ (Assigned by IES)
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