

CONTRA COSTA COUNTY OFFICE OF EDUCATION

AGREEMENT WITH A PUBLIC SCHOOL DISTRICT
For Integrating Educational and Child Welfare Data
Through the FOSTER FOCUS Data System

This Service Agreement ("Agreement") is between the CONTRA COSTA COUNTY OFFICE OF EDUCATION ("CCCOE") and the public school district ("District") named in the signature block below. The CCCOE and District may be jointly identified as the "Parties." Both parties are local educational agencies ("LEAs").

In accordance with the terms of this Agreement, the CCCOE will assist the District in complying with the responsibilities imposed by the state legislature regarding the proper and timely transfer between schools of pupils in foster care and the related state mandated data reporting requirements by linking the District's student information systems to the Sacramento County Office of Education's FOSTER FOCUS data system and annually maintaining both linkage and accessibility by authorized users.

RECITALS

This Agreement is based on the following facts and understandings of the Parties:

WHEREAS, historically, a high percentage of pupils in foster care are working substantially below grade level, are retained at least one year in the same grade level, earn lower grades and scores on standardized achievement tests than their peers, are less likely to be involved in extracurricular activities than their peers and are more likely to drop out of school before graduation (Educ. Code § 42920);

WHEREAS, historically, foster youth have been an especially vulnerable and under-served group within the pupil population (Educ. Code § 42920);

WHEREAS, frequent residence changes and related school moves are one risk factor threatening the educational outcomes of children in foster care;

WHEREAS, efficient transfer procedures, including the quick transfer of records and information is critical to the swift placement of foster children in new educational settings;

WHEREAS, the California Legislature has recognized that the mobility of children in foster care disrupts their educational experience and the efficient transfer of student records is a critical factor in the swift placement of foster children in educational settings (Cal. Ed. Code § 49069.5);

WHEREAS, The Foster Focus system, enables LEAs to satisfy the legal requirement to compile, and transfer to a new educational placement, the records of foster youth within two business days of receiving a transfer notification;

WHEREAS, the Family Educational Rights and Privacy Act (FERPA) and California Education Code permit local educational agencies (LEAs) to share information with a representative of a state or local child welfare agency that has legal responsibility for the care and protection of a child (20 USC § 1232g(b)(1)(L); Cal. Ed. Code § 49076(a)(1)(N) ;

WHEREAS, LEAs may develop cooperative agreements with county placing agencies to facilitate confidential access to and exchange of pupil information (Cal. Ed. Code §§ 49076(a)(1)(K), 49076(a)(4));

WHEREAS, the Sacramento County Office of Education ("SCOE") has created and owns a program known as FOSTER FOCUS;

WHEREAS, SCOE is the state-wide administrator of the FOSTER FOCUS program and is the website host;

WHEREAS, the FOSTER FOCUS program is intended to be a secure web-based data communication system between authorized users - meaning between (i) LEAs, such as county offices of education, public school districts and other local educational agencies; and (ii) county agencies, such as probation departments and child welfare agencies;

WHEREAS, authorized users may gain access to FOSTER FOCUS via the internet through the authorized user's User ID and Password;

WHEREAS, the underlying purpose of FOSTER FOCUS is to facilitate the efforts of authorized users, including public school districts in meeting their obligations associated with frequent school moves by foster children by giving authorized users the nonexclusive right to obtain access to and use FOSTER FOCUS at www.sacfys.org/index.cfm;

WHEREAS, FOSTER FOCUS houses data from LEA and CWA data systems and the California Longitudinal Pupil Achievement Data System ("CALPADS");

WHEREAS, FOSTER FOCUS is the property of SCOE and the CCCOE has entered into a one year license agreement (contract 2020-21) with SCOE making the CCCOE the local administrator of FOSTER FOCUS data system for Contra Costa County LEAs;

WHEREAS, SCOE/FOSTER FOCUS has agreed to (i) comply with FERPA and related California law; (ii) use its best efforts to protect the confidentiality of pupil data; (iii) protect data from unauthorized changes, physical loss and destruction, including nightly

back up of all input, provide and offsite storage of backup material for a 30-day period; (iii) apply physical, network security measures; (iv) require pertinent SCOE employees to sign confidentiality agreements; (v) designate administrators to regularly consider the system's confidentiality measures and data sharing best practices; and (vi) train its employees on password protection and other confidentiality measures;

WHEREAS, by agreement with the CCCOE, the District may access and use FOSTER FOCUS to the extent permitted and subject to conditions set out by the license agreement between SCOE and the CCCOE;

WHEREAS, the annual license fee the CCCOE pays for FOSTER FOCUS is based on the number of court supervised child welfare cases plus the number of out of home probation cases supervised by Contra Costa County. For the 2020-21 school year that amount is \$4,700.00;

WHEREAS, the CCCOE's license with the SCOE includes the option of linking school district pupil informational systems directly with FOSTER FOCUS, at a cost to the CCCOE of \$5,000.00 per district, in addition to the annual license fee;

WHEREAS, the CCCOE has the personnel, experience and authority to perform the services that will result in the initial linkage of the District's data system to FOSTER FOCUS;

WHEREAS, the CCCOE has the personnel, experience and authority to perform the services necessary to maintain the District's linkage and system user access; and

WHEREAS, this Agreement is intended to be the written agreement between the Parties related to the services and/or products to be provided during the referenced term.

TERMS

1. **Recitals.** Parties stipulate that the Recitals are accurate and true for all purposes and hereby incorporate the Recitals into this Agreement.

2. **Initial Linking - CCCOE Obligations.** CCCOE agrees to exercise reasonable diligence in order to establish a successful link between the District's data system and FOSTER FOCUS.

Once this Agreement is fully executed, CCCOE will immediately begin coordinating between District and SCOE to establish the link and will endeavor to complete the process in a timely manner.

Conditions precedent to the obligation of CCCOE to successfully establish a link are: (i) District must first deliver the required data in the format prescribed by SCOE; (ii) validation testing must be completed; and (iii) SCOE must approve, in writing, the installation of District's data.

3. Initial Linking - District Obligations. District agrees to coordinate with CCCOE and SCOE, as may be necessary, to review the delivered data and resolve any incompatibility problems.

After the initial link has been successfully established, should the District change its information system resulting in the District's data becoming incompatible with the FOSTER FOCUS data specifications, thus terminating the link, District will enter into a new linking agreement with CCCOE and will pay the cost.

Should the District require and request any change to existing reports or views, such may be modified or created by CCCOE and/or FOSTER FOCUS for an additional fee and subject to a separate agreement. Use of custom reports or functions may result in an increase of the annual maintenance fee.

District shall notify CCCOE and SCOE/FOSTER FOCUS if it has not included all the categories of information found in Education Code section 49061 in its definition of Directory Information.

4. Training. CCCOE will either itself provide, or make available FOSTER FOCUS system user training to pertinent District personnel as may be necessary in the judgment of CCCOE. Training may be provided either in person or on-line. Training will be scheduled at a location, date and time that is acceptable to both parties.

5. Annual Hosting, Enhancement and Maintenance. CCCOE agrees to exercise reasonable diligence in order to maintain the linkage with the host, FOSTER FOCUS and authorized users, after the initial link is successfully established, including annually renewing its license with SCOE and assisting in the installation of available enhancements to FOSTER FOCUS. CCCOE agrees to do so for \$500.00 annually at no cost to the district (fiscal year).

Maintenance and installing enhancements may from time to time result in an interruption of service. District agrees to waive any liability and hold both the CCCOE and SCOE/FOSTER FOCUS harmless for any losses or claims that may arise out of a service interruption.

7. SCOE's Data-Structure Specifications. The data to be submitted to FOSTER FOCUS for loading must meet the FOSTER FOCUS data structure specifications. Any data submitted for loading which does not meet the data structure specifications required by FOSTER FOCUS must be corrected by the District.

8. Warranty Regarding SCOE's Data-Structure Specifications. District warrants that its data will meet the FOSTER FOCUS data structure specifications.

9. SCOE's Proprietary Rights in FOSTER FOCUS. Parties agree that FOSTER FOCUS is the property of SCOE and that its value is in part determined by SCOE's ability to limit access to, and use of, FOSTER FOCUS.

District shall not disclose or make available to any third party any of SCOE's proprietary information, trade secrets and intellectual property to which District and its personnel are granted access pursuant to this Agreement including, without limitation, manuals and instructions for the operation of FOSTER FOCUS, knowledge of operating methods, passwords, use ID, and the name and designations of any equipment comprising the system. District agrees to keep all such information strictly confidential and to refrain from discussing this information with anyone else without proper authority.

To further protect SCOE's Propriety Rights in FOSTER FOCUS, District agrees to restrict access to FOSTER FOCUS to only the District's individual authorized users. In addition, District will advise each of its individual authorized users, before he or she receives access to FOSTER FOCUS, of the District's obligations under this Agreement and shall require each individual authorize user to maintain those obligations.

For purposes of this provision of the Agreement, the Parties intend that SCOE/FOSTER FOCUS to be a third party beneficiary.

10. Term and Early Termination for Convenience. The term of the initial linking portion of this Agreement is one (1) calendar year ending June 30, 2021. The initial linking portion of the Agreement may not be terminated early, except that CCCOE may terminate this Agreement if CCCOE is unable to successfully link the District.

The term of the annual maintenance portion of this Agreement is five (5) calendar years. Either party may terminate the annual maintenance portion of this Agreement, for any reason, upon 60 days advance notice given in writing.

Neither party is liable for delays or failures to perform that arise in full or in part from events beyond their reasonable control, such as a flood or other acts of God, war (declared or undeclared), government regulation, terrorism, disaster, strikes, civil disorder, or other similar occurrences that make it impossible, illegal or impracticable for one or both parties to perform its obligations, either in whole or in part. Either party may terminate this Agreement, in such a case, upon written notice to the other party within ten (10) business days of receipt of notice of such an occurrence.

District understands and agrees that termination of the annual maintenance portion of this Agreement will necessarily result in termination of the District's connection to the FOSTER FOCUS program.

11. Early Termination Following Breach. This Agreement may be terminated by the non-defaulting party if:

(a) A party materially fails to perform or comply with any provision of this Agreement. If a party materially fails to comply with this Agreement, the non-defaulting party can terminate this Agreement after first giving written notice that includes an opportunity to cure within fifteen (15) days. If the failure is not cured, the non-defaulting party may then terminate this Agreement effective upon receipt of the written notice.

Termination rights shall be in addition to any other legal remedy a party may have including liquidated damages, specific performance and injunctive relief as may be appropriate.

12. Obligations Upon Termination. Within ten (10) days after termination of this Agreement, District shall cease and desist use of FOSTER FOCUS. Either SCOE/FOSTER FOCUS or CCCOE may enforce this covenant by injunction and/or specific performance cause of action. Either SCOE/FOSTER FOCUS or CCCOE may disable any and all passwords and/or user IDs issued to the District.

Within thirty (30) day of the effective date of termination of this Agreement, upon the District's written request, District data will be returned to the District in ASCII delimited file format or such other format the Parties and SCOE/FOSTER FOCUS may agree to.

Upon termination, District shall provide CCCOE and SCOE/FOSTER FOCUS a list of District pupil records maintained in FOSTER FOCUS that the District desires to delete from the active data base.

13. Confidentiality & Security Obligations. The data which relates to children in foster care is confidential. Parties will preserve the confidentiality of any information relating to pupil records maintained in the FOSTER FOCUS program by complying with FERPA and corresponding California state law in implementing this Agreement and handling student records.

All requests regarding access to pupil records shall be directed to District. All requests from a parent, legal guardian or eligible pupil to review information and correct erroneous information shall be directed to District. District will comply with the procedures contained in Education Code section 49060 for granting requests for pupil records and Section 49070 for challenging erroneous information in student records.

District shall inform each authorized user of the need to protect the confidentiality of pupil information.

Parties will use their best efforts to protect confidential data from unauthorized changes, physical loss or destruction through the operation of its computer system by its personnel.

District shall restrict access to FOSTER FOCUS solely to authorized users. District will require authorized users to sign a confidentiality agreement, acceptable to CCCOE and SCOE/FOSTER FOCUS.

District shall ensure that user IDs and passwords are provided only to individual authorized users.

District shall be solely responsible for the security of the user IDs and passwords issued to District. In the case of lost, stolen or inactive user IDs and passwords, District shall notify CCCOE and cooperate with CCCOE's efforts to disable same.

In the event of an unauthorized disclosure of a pupil record, FOSTER FOCUS has agreed with CCCOE to send notice to the last known address of the parent, legal guardian, eligible student. However, if the breach is caused by District or District related persons (such as through unauthorized use of FOSTER FOCUS), District shall be responsible for notifying the parent, legal guardian, eligible student.

CCCOE's license agreement with SCOE/FOSTER FOCUS expressly allows for the use of de-identified data for the purpose of research and evaluation, but not for targeted advertising. District agrees to this use of de-identified data.

14. No Warranties. Neither CCCOE nor SCOE/FOSTER FOCUS make any representations or warranties of any kind with respect to the services provided by CCCOE or the services of and data made available by FOSTER FOCUS including, but not limited to, the warranties for fitness for a particular purpose or merchantability. Neither CCCOE nor SCOE/FOSTER FOCUS assume any responsibility in connection with the use of any of the services made available by CCCOE or the services of and data made available by SCOE/FOSTER FOCUS. This provision shall survive expiration or early termination of this Agreement.

15. Third Party Beneficiaries. As provided herein, SCOE/FOSTER FOCUS is a third party beneficiary. It is agreed that no others may be third party beneficiaries. Except as provided herein in favor of SCOE/FOSTER FOCUS, it is agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement shall be strictly reserved to CCCOE and District. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of CCCOE and District that any other person or entity receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

16. Miscellaneous Provisions.

A. Entire Agreement. This Agreement constitutes the final, complete and exclusive statement of the terms of agreement between the Parties pertaining to the subject matter of this Agreement. It supersedes all prior and contemporaneous understandings or agreements of the Parties.

No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

B. Amendment. The provisions of this Agreement may be modified only by mutual agreement of the Parties. No modification shall be binding unless it is in writing and signed by the party against whom enforcement of the modification is sought.

C. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Agreement.

D. Assignment. Neither party may assign any rights or benefits or delegate any duties under this Agreement without the written consent of the other party. Any purported assignment without written consent shall be void.

E. Governing Law, Jurisdiction and Venue. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California. Any legal proceeding arising out of or relating to this Agreement shall be brought in Sacramento County, California.

F. Severability. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

G. Notices. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on a party, or on the third business day after mailing if the document is mailed by registered or certified mail, addressed to a party at the address set forth herein, or at the most recent address specified by the party through written notice under this provision.

H. Authority to Enter Into Agreement. Each party to this Agreement represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement.

I. Compliance with Law. In the course of performing this Agreement, both parties shall observe and comply with all applicable federal, state and local laws, regulations and ordinances now in effect or subsequently enacted.

J. Nondiscrimination. Neither party, nor any officer, agent, employee, or subcontractor of a party, shall discriminate in the treatment or employment of any individual or group of individuals on any ground prohibited by law, nor shall any of them harass any person in the course of performing this Agreement based on gender or any other basis prohibited by applicable law.

K. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

M. Confidentiality. Each party shall, at all times, protect the confidentiality of student information as required by California law.

SCHOOL DISTRICT

CONTRA COSTA COUNTY OFFICE OF EDUCATION

By _____
Signatory Name: Dr. Adam Clark
Title: Superintendent
Address: 1936 Carlotta Drive, Concord, CA
94519

By _____
Signatory Name: Bill Clark
Title: Deputy Superintendent
Address: 77 Santa Barbara Road, Pleasant Hill, CA
94523

Date: _____

Date: _____