

Memorandum of Understanding

This document is a Memorandum of Understanding for the Early Warning and Response System between Asheville City Board of Education, Buncombe County Board of Education, and United Way of Asheville & Buncombe County and Community-based Organizations.

This Memorandum of Understanding (MOU) is entered into between United Way of Asheville and Buncombe County (UWABC) and Buncombe County Schools Board of Education, a body corporate, and the legal entity for Buncombe County Schools, (hereinafter referred to as “BCS” or “BCS Board”) and Asheville City Board of Education, a body corporate, and the legal entity for the Asheville City Schools, (hereinafter referred to as “ACS” or “ACS Board”) and community based organizations (CBOs) including primary out-of-school time service providers. Each entity serves as a member of United for Youth (U4Y) and as a key collaborator in the development and implementation of an Early Warning and Response System (EWRS).

WHEREAS, United for Youth is a multigenerational, cross-sector, cradle to career partnership built on the foundational principle that “Equity and Educational Excellence are Inseparable.” The U4Y vision is that ALL children and youth learn, grow and thrive in a vibrant, healthy and connected community. The U4Y mission is to actively identify and remove barriers to opportunity and co-create solutions that support student success. And our shared goal is that by 2035, ALL Asheville City and Buncombe County students graduate from high school ready and fully prepared to pursue their goals and dreams.

WHEREAS, EWRS is a coordinated system designed to identify and respond to students at risk of later dropping out of school before they disengage from school. The early warning component involves a data system that monitors off-track benchmarks in three critical areas: attendance (missing 10% or more of in-class time), behavior (two or more behavior referrals) and course grades (failure in English and/or Math). The response component is a coordinated and proactive approach to ensure identified students are linked to the appropriate in-school and out-of-school time programs, supports, and interventions in a timely manner.

WHEREAS, EWRS involves system level, targeted and intensive supports and interventions generated by both school and out-of-school time partners. Supports and interventions are tracked and reviewed for evaluation and quality improvement on a regular and on-going basis. Quality improvement plans for interventions are created and implemented with the goal of student success.

NOW THEREFORE, together the Parties enter into this MOU to mutually assist in supporting the Early Warning and Response System in ACS, BCS, United Way ABC and Community-based Organizations. Accordingly, ACS, BCS, CBOs and UWABC operating under this MOU agree as follows:

TERM & TERMINATION of MEMORANDUM of UNDERSTANDING

The term of this MOU will become effective when the MOU is signed by ACS, BCS, UWABC and then for each CBO upon signature. The MOU will expire 5 years from initial execution from ACS, BCS and UWABC. The MOU may be amended at any point upon mutual agreement. Any agency may terminate their participation in the MOU with a 90 day written notice to all participating agencies. Failure to abide by the terms of this agreement may result in suspension or termination from the MOU.

FAMILY EDUCATION RIGHTS AND PRIVACY ACT (FERPA) COMPLIANCE

Each entity will, in all respects comply with all provisions of FERPA 34 CFR 99. Nothing in this agreement may be construed to allow U4Y partners to maintain, use, disclose or share student record information in a manner not allowed under Federal law or regulation.

While it is acknowledged that CBO's are not normally bound by FERPA laws, by entering into this agreement all U4Y partners shall require all employees, contractors, and agents of any kind to comply with this Agreement and all applicable provisions of FERPA, HIPAA, and other federal and state laws and local procedures with respect to the data and information shared under the Agreement.

UWABC will require and maintain a confidentiality agreement from each employee, contractor, or agency who will have access to the data pursuant to the Agreement. All CBO partner employees or contractors who will have access to student-level data will be required to complete a sanctioned course on FERPA prior to accessing student-level data. Nothing in this section authorizes the U4Y partners to share data and information provided under the Agreement with any other individual or entity for any purpose other than *completing the work* as authorized in this agreement.

UWABC and all CBOs acknowledge the Board is subject to the Family Education Rights and Privacy Act (FERPA) (20 U.S.C. § 1323G; 34 C.F.R. 99). To the extent UWABC and all CBOs generate or maintain education records that are subject to FERPA, will comply with applicable FERPA requirements. UWABC and all CBOs will not access or make any disclosures of student education records to third parties without prior notice to and consent from the Board or as otherwise provided by the law or the MOU.

UWABC and all CBOs are expressly prohibited from selling or trading any education records or personally identifiable information acquired under the MOU. Furthermore, UWABC and all CBOs agrees not to attempt to re-identify students from aggregated data. Further, UWABC and all CBOs will not use any personally identifiable information or education records to advertise or market to students of the Board or their parents. Any personally identifiable information and education records held by UWABC and all CBOs pursuant to the MOU will be made available to the Board upon request.

UWABC and all CBOs hereby agree to abide by all Board of Education policies and procedures governing the confidentiality of student records and the responsible use of technology and internet safety that have been provided to UWABC and all CBOs

SCOPE

Upon written parental release of information, the following data may be shared between the LEA and the CBO(s) in which the student is currently enrolled:

- Student ID
- Directory Information (mailing information, contact information)
- Grade level
- School attending
- Demographics (NCLB categories)
- Homeroom teacher
- Number of days enrolled, absent, and tardy
- Behavior (minor and major incidents/consequences)

- Course grades
- SEL assessments, academic assessment scores, and End of Grade testing scores
- Current school and community-based supports and interventions (per confidentiality settings)

Parental Consent

CBO's shall obtain parental consent via a signed document (paper or electronic) approved by UWABC and the LEA. The document will be shared with the LEA via an agreed upon platform, at which point student-level data will be shared via a digital dashboard that will upload from Powerschool and other agreed-upon data sources.

Duration of CBO Access to Student Level Data

CBOs will have access to enrolled student-level data with parental consent from the date of enrollment in the CBO program to the date of discharge from the program or the beginning of the following school year, whichever is sooner. CBOs are responsible for reporting enrollment and discharge dates to the LEA. CBOs must report changes in staff immediately to UWABC so access can be removed for staff who are no longer authorized to access student data.

New CBO Partners

Additional community partners can be added to this agreement with the written approval (via email or otherwise) of designated representatives of school district(s) for which the partner will be accessing data.

Role/responsibilities of the LEAs

- Ensure access to agreed upon data (listed in "scope" section).
- Designate key district staff to:
 - Represent district on EWRS Leadership Team and EWRS Workgroup
 - Champion the implementation of the EWRS strategy
 - Align EWRS practices with other district practices
- Train and support school faculty and staff on EWRS software and practices

Role/responsibilities of UWABC

- Provide FERPA training to CBO staff and volunteers. Store signed confidentiality agreements for each FERPA training participant.
- Work closely with district staff to ensure data is flowing properly from PowerSchool and other school sources into EWRS platform.
- Work closely with staff of platform vendor to share feedback and collaboratively address bugs and implement enhancements to the platform and to training materials.
- Provide training, technical assistance and support to CBO partners and school faculty/staff as

requested

- Champion the EWRS strategy within schools and across the community
- Facilitate regular meetings of the EWRS Leadership Team and EWRS Workgroup to enhance partnerships and quality of EWRS implementation.
- Facilitate community-centered processes for ensuring EWRS is having strong, positive impact for students and updating the strategy, as needed.

Role/Responsibilities of CBOs

- Integrate usage of EWRS into existing student support practices
- Dedicate time for training staff and relevant volunteers in how to most effectively utilize the EWRS including the Learning Circle dashboard
- Ensure each staff or volunteer that will access student-level data complete the required FERPA training with UWABC and sign a confidentiality form.
- Load all students names into approved platform; seek consent from all students' families to access school data (via approved form described in "parental consent" section); and load consents into approved platform. (United Way can provide volunteer support as needed).
- Designate a staff or volunteer to attend monthly EWRS workgroup meetings (as capacity allows)
- Immediately report to UWABC when any FERPA-trained staff or volunteers leave the organization or switch to another role that does not need data access.

Maintenance and Security of Data

Maintain all data obtained pursuant to this agreement in a secure computing environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original agreement. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from members of the United for Youth to any other institution, entity, or unauthorized individual or agent.

Nondisclosure

Members shall not disclose data contained under the Agreement in any manner that can identify any individual student to any entity. Persons participating in the approved project shall neither disclose nor release data and reports relating to an individual student nor disclose information relating to a group or category of students without ensuring the confidentiality of individual students in that group. Publications and reports of this data and information related to it, including preliminary project descriptions and draft reports, shall involve only aggregate data and not personally identifiable information or other information that could lead to the identification of any student.

Data Disposition

All student-level data will be destroyed in accordance with FERPA standards at the earliest possible date according to each CBO's legal obligations including but not limited to board policies, accrediting entities, and federal regulations.

Jessica Lunsford Act

Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. UWABC and CBOs agree to conduct an annual check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all of its employees whose job involves direct interaction with students as part of the job. The Board prohibits any personnel listed on such registries from being on any property owned or operated by the Board and from having any direct interaction with students. As a term of the MOU, said checks must be performed by UWABC and CBOs and reported to the Board's Superintendent or designee, if UWABC or CBO employees will be working directly with students. Under provisions set forth in the Jessica Lunsford Act under North Carolina law, the signature below certifies that neither UWABC nor any employee or agent of UWABC or CBOs is listed as a sex offender on the NC Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program, and/or the National Sex Offender Registry.

INTEGRATION

The Agreement is fully integrated and represents the entire understanding between the Parties. The Agreement may be modified or amended only by written instruments signed by both Parties. Unless explicitly stated in the Agreement, nothing contained in the Agreement is intended to benefit any third party. The Agreement shall be deemed to have been drafted by both Parties and any ambiguities in the construction of the Agreement shall not be construed solely against the Board.

ENFORCEABILITY

Should any one or more of the provisions contained in the contract be Invalid, illegal, or unenforceable in any respect under any applicable statute or rule of law, then such provisions shall be deemed inoperative to the extent that it is invalid, illegal, or unenforceable, and the remainder of the contract shall continue in full force and effect. Invalid, illegal, or unenforceable provisions shall be reformed and modified so that it expresses the original intent of the Parties as closely as practicable without being invalid, illegal or unenforceable.

ANTI-TRUST

The MOU has been entered into in compliance with state and federal antitrust laws. UWABC certifies by entering into the MOU:

- a. That UWABC and/or any of its Principals is not presently debarred, per the State's website (<https://ncadmin.nc.gov/documents/nc-debarred-vendors>) as may be update from time to time; and Federal Excluded Parties List (www.sam.gov/portal/public/SAM); or suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into the MOU by any federal agency or by any department, agency or political subdivision of the State.
- b. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- c. UWABC shall provide immediate written notice to the Board if, at any time, UWABC learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d. The certification in this section is a material representation of fact upon which reliance is placed by Board in making the MOU. If it is later determined that UWABC knowingly rendered an

erroneous certification, in addition to other remedies available to Board, then Board may terminate the MOU for default.

AFFILIATION

Except as explicitly granted in this MOU, UWABC shall not represent itself as affiliated with or endorsed by the Board without the prior written consent of the Board. UWABC shall not use any of the Board's logos, images, trademarks, or copyrights without the prior written consent of the Board. The MOU shall not be used for advertising by UWABC without prior approval of the Board.

COMPLIANCE WITH LAW & BOARD POLICY

UWABC agrees to comply with all federal and State laws, rules, regulations, administrative requirements, and the following Board of Education Policies and Procedures applicable to its provision of the services described hereunder during the term of the MOU, including: 4700 and 4700-P – Student Records; 7300 – Staff Responsibilities; 3225/4312/7320 Technology Responsible Use, 3225-P Responsible Use of Technology and Internet Safety. UWABC declares that it has complied with all federal, state, and local laws and regulations regarding business permits, certificates, and licenses that may be required to carry out the work to be performed under the MOU.

CERTIFICATION

UWABC certifies that they have conducted a criminal history check for each employee or agent assigned to provide any services under this MOU. If the criminal history check reveals convictions that indicate that the individual poses a threat to the safety of students or personnel or has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position, UWABC shall notify the Board's Superintendent, or designee, prior to any such employee or agent commencing work on any of the Board's property pursuant to this MOU.

ATTORNEY'S FEES

In the event of a dispute between the Parties regarding the enforceability of the MOU, each party shall be responsible for its own attorney's fees.

CHOICE OF LAW

The Parties agree that the MOU was entered into in the State of North Carolina and that the laws of North Carolina shall govern the MOU, as to interpretation and performance. It is further agreed that the place of the MOU, its situs and forum, will be in the county in North Carolina where the Board's Central Office is located.

VENUE

The Parties agree that the proper venue for any claims brought hereunder is in the county in North Carolina where the Board's Central Office is located.

INTEGRATION & AMENDMENT

The MOU is fully integrated and represents the entire understanding between the Parties. The MOU may be modified or amended only by written instruments signed by all Parties. Unless explicitly stated in the MOU, nothing contained in the MOU is intended to benefit any third party. The MOU shall be deemed to have been drafted by all Parties and any ambiguities in the construction of the MOU shall not be construed solely against the Board.

SEVERABILITY

The MOU is severable and if any provisions of the MOU are deemed invalid or illegal by a court of competent jurisdiction, the other remaining provisions of the MOU shall remain valid and enforceable.

EXECUTION

The MOU may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

AUTHORIZATION

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agree to the terms and conditions of this MOU as set forth therein.

SOVEREIGN IMMUNITY

Notwithstanding any other term or provision in the MOU, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to the Board under applicable law.

ACKNOWLEDGEMENT

The undersigned represents and acknowledges that they have carefully read the entire MOU, understand the MOU and its consequences, and knowingly and voluntarily enter into the MOU.

FOREIGN INVESTMENT

By acceptance of the MOU, UWABC affirms that it is not listed by the North Carolina State Treasurer pursuant to either Chapter 147, Article 6E (Iran Divestment Act) or Article 6G (Divestment from Companies Boycotting Israel).

NOTICE

Any notice required or desired to be given under the MOU shall be deemed given if in writing and sent by certified mail to the principal office of the ACS Board of Education at "Attention: Tracey Jenkins, Administrative Assistant for Curriculum and Instruction, 85 Mountain Street, Asheville, NC 28801.

COVID-19 SAFETY PROTOCOL

Your signature below acknowledges that you, on behalf of your group or organization, agree to abide by and enforce ACS' and BCS' current COVID-19 protocols during the term of this MOU. Your signature also acknowledges that the school district maintains the right to terminate this MOU for failure of employees, agents, or volunteers from your group or organization to follow the school district's current COVID-19 protocols. Some or all of the school district's COVID-19 protocols are subject to change during the school year by the Asheville City Board of Education, Buncombe County Board of Education, state, or federal law. ACS and BCS will notify each party's representative if COVID-19 policy changes are modified during the term of this MOU.

INDEPENDENT CONTRACTORS

The relationship of the Parties under this MOU will be that of independent contractors. No one party is an agent, joint venture, partner, or employee of the other party. Except as expressly set forth in this MOU, the Parties shall control the hiring and firing of its own employees and shall cover all taxes, insurance coverage, and other changes incident to its own employees. The MOU is not intended and shall not be construed to create the relationship of principal-agent, master-servant, employer-employee, partnership, joint venture, joint enterprise, or association between the parties or any of their owners, officers, directors, members, managers, partners, representatives, employees or agents. UWABC agrees to perform and discharge all obligations of an independent contractor under any and all laws, whether existing or in the future in any way pertaining to the tasks hereunder, including but not limited to Social Security laws, Workers' Compensation Insurance, income taxes, and State Employment Insurance taxes or contributions; and UWABC will hold Board harmless against all such laws. Neither federal nor state local income tax, nor payroll tax of any kind shall be withheld or paid by Board on behalf of the UWABC or the employees of UWABC. No Worker's Compensation Insurance shall be obtained by Board concerning UWABC or UWABC's employees.

NORTH CAROLINA PUBLIC RECORDS LAW

UWABC and all CBOs acknowledge that the Board is subject to the requirements of North Carolina's Public Records Law ("NCPRL"), N.C.G.S. § 132-1, et. seq. The MOU and any related documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received by the Board in connection with the transaction of the MOU may be considered a "public record," subject to disclosure under the NCPRL. The Board is under no obligation to notify UWABC and CBOs prior to its compliance of its duties under NCPRL.

Signatures

Asheville City Schools

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

Asheville City Schools Foundation (In Real Life)

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

Big Brothers Big Sisters of Western North Carolina

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

Buncombe County Schools

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

Children First/Communities In Schools

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title: _____

Delta House Life Development, Inc.

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

Girl Scouts Peaks to Piedmont NC

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

Girls on the Run

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

Journeyman

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

LINKS

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

My Daddy Taught Me That

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

OpenDoors of Asheville

Authorized Official Signature: _____

Print Name: _____ Date: _____

Title: _____

Read to Succeed

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

United Way of Asheville and Buncombe County

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

YMCA of Western North Carolina

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____

Youth Transformed for Life

Authorized Official Signature:_____

Print Name: _____ Date: _____

Title:_____