

**INTERGOVERNMENTAL AGREEMENT BETWEEN
TUCSON UNIFIED SCHOOL DISTRICT OF PIMA COUNTY
AND PASCUA YAQUI TRIBE**

This Intergovernmental Agreement (“Agreement”) is entered into this day between Tucson Unified School District of Pima County (“TUSD”) and the Pascua Yaqui Tribe (“PYT”).

RECITALS

Whereas, TUSD is a public school district of the State of Arizona and is authorized to enter into this Agreement pursuant to A.R.S. § 11-951, *et seq.* and A.R.S. §15-342; and

Whereas, PYT is a Federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934, is a sovereign government, and has the power to enter into such agreements, pursuant to the Pascua Yaqui Constitution, Act VI, Section 1 (a); and

Whereas, TUSD enrolls students for purposes of providing education and related services to children of the Pascua Yaqui Tribe in grades Pre-Kindergarten through Twelve; and

Whereas, PYT provides educational supports to the children of the Pascua Yaqui Tribe to promote, enhance and assist in the education opportunities of the Pascua Yaqui people; and

Whereas, TUSD and PYT, through formal partnership, can more effectively address the educational issues of Pascua Yaqui children, including, but not limited to, attendance, academic achievement, all benchmark testing, all State testing scores, parent involvement, and drop -out prevention; and

Whereas, TUSD and PYT believe that the exchange of educational records pertaining to children of the Pascua Yaqui Tribe will serve to facilitate and further their common interests and goals relating to the education of Pascua Yaqui children; and

Whereas, TUSD desires and intends that any exchange of education records and information will comply with applicable law, including without limitation, 20 U.S.C. §1232g *et seq.* and 34 C.F.R. §99 *et seq.* (“FERPA”), 20 U.S.C. §1412 *et seq.* and 34 C.F.R. §300.560-576 (“EHA”), and A.R.S. §15-141; and

Whereas, PYT desires and intends that any exchange of education records and information will comply with applicable federal law, including without limitation, 20 U.S.C. §1232g *et seq.* and 34 C.F.R. §99 *et seq.* (“FERPA”), and 20 U.S.C. §1412 *et seq.* and 34 C.F.R. §300.560-576 (“EHA”).

NOW, THEREFORE, in consideration of the mutual representations and covenants set forth herein, the parties hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to formalize the partnership between TUSD and PYT to improve the educational opportunities and improve academic achievement of Pascua Yaqui students by developing coordinated plans addressing issues of truancy, drop-out prevention, and academic achievement. Such partnership includes the exchange by and between TUSD and PYT, of education records pertaining to Pascua Yaqui students, in compliance with applicable confidentiality laws and regulations, to protect and enhance the educational opportunities of and services to Pascua Yaqui students. It is expressly intended that any release pursuant to this Agreement shall comply with TUSD Governing Board Policy JR or its successor and its Administrative Regulations, in addition to applicable law, as each may be amended.

II. DURATION AND EFFECTIVE DATE

This Agreement shall be in effect for a term of five (5) years unless terminated earlier, as provided herein. This agreement will be effective June 1, 2014 through May 31, 2019.

III. REPRESENTATIONS AND WARRANTIES

A. PYT represents and warrants the following:

1. The Pascua Yaqui Tribe Education Department (“PYTED”) was established and organized under the authority of the Pascua Yaqui Tribal government.
2. PYTED maintains a federal contract with the Department of the Interior, Bureau of Indian Affairs, Johnson O’Malley Program, pursuant to P.L. 93-638, under the Yaqui Education Services, K-12 Program (YES K-12). YES K-12 services include home/school liaison, financial assistance for education related costs, student activities, tutoring, career counseling, and post-secondary advisement.
3. Educational services provided to Pascua Yaqui students often require education records of one or more of the following from Pascua Yaqui parents, whose children attend one or more of TUSD schools: names, grades, attendance, all benchmark testing, all State testing scores, disciplinary actions or proceedings regarding the students, and any Individual Education Plans (“IEP”) or 504 Plans and information on their respective Due Process Hearing Procedures.
4. Throughout the term of this Agreement and thereafter, PYT will abide by and comply with all applicable confidentiality laws, including without limitation those referenced in this Agreement, with respect to any educational records exchanged pursuant to this Agreement.

B. TUSD represents and warrants the following:

1. TUSD provides public education for grades Pre-Kindergarten through Twelve.

2. TUSD receives funds from Title I and Title VII, Johnson O'Malley, Impact Aid and Desegregation Funds, First Things First, and Perkins Federal Grants for Vocational Technology, to provide additional educational assistance to minority students, and specifically Native American students, to improve academic success.
3. TUSD provides services to Native American students through the Native American Student Services (NASS).
4. TUSD's Native American Student Services provides academic support to Native American Students and families in Pre-K-12 in the areas of math, reading and writing. In addition, the program provides professional development for teachers, school administrators, and community regarding intercultural proficiency, and strategies and best practices in understanding issues Native students face in the educational setting. NASS also provides support for parents in advocacy, IEP Meetings and Hearings, and Parent Teacher Conferences. As funds are available, NASS is able to provide payment for weekend academy, summer school, and sports fees.
5. Throughout the term of this Agreement and thereafter, TUSD will abide by and comply with all confidentiality laws, including without limitation, those referenced in this Agreement, with respect to any educational records exchanged pursuant to this Agreement.

IV. OBLIGATIONS OF TUSD AND PYT

A. Articulation Committee

1. An Articulation Committee shall be established with representatives from PYTED and TUSD.
 - a. The Articulation Committee shall include, at the discretion of the Superintendent, Principals from all TUSD Schools including, but not limited to Johnson Primary, Lawrence Elementary, Pistor Middle School, Valencia Middle School, Cholla High Magnet School, and Richey Preschool, and the Director of NASS. Schools, such as Tucson High Magnet School, Pueblo High Magnet School, Mission View Elementary, and Safford Magnet Middle School may be invited. When necessary, principals and the Director of NASS may send a designee. In addition, representatives of TUSD programs which provide services to students, such as counselors, Title I, Truancy and Dropout Prevention, may be invited. The Articulation Committee shall also include Pascua Yaqui Tribal Departments and Programs as deemed appropriate.
 - b. The Articulation Committee shall also include the PYTED Director, YES K-12 Program Coordinator, Parent Advocate, student advisor, community liaison, and others at the discretion of the PYTED Director.

2. The initial meeting of the Articulation Committee shall take place 30 days from the effective date of this Agreement.
3. Each year the Articulation Committee shall develop a written plan for the academic year to address educational issues including, but not limited to, attendance, academic achievement, all appropriate testing scores, parent involvement, truancy, student infractions, and drop-out prevention. The Articulation Committee shall also identify measures to address these issues in a collaborative way.
4. The Articulation Committee shall meet on at least a quarterly basis, or as deemed necessary by the Committee, to implement the plan and to address educational or community issues as they arise.
5. At the end of each year, the Articulation Committee shall provide a written annual report and a presentation to the communities of New and Old Pascua, Tribal Council and the NASS Parent Committee. A copy of the annual report shall be provided to the TUSD Superintendent.

B. Reporting

1. Each quarter, TUSD shall provide a report to the PYTED Director and YES K-12 Coordinator listing those students demonstrating attendance issues and who have a Release of Information (“ROI”) Form on file. This quarterly reporting requirement does not preclude TUSD from making additional interim reports to PYTED and YES K-12 regarding those students who are demonstrating truancy in order to address the problem at an earlier stage.
2. TUSD shall provide to PYTED Director and YES K-12 Coordinator a report of students who have a ROI Form on file and who are at risk of not meeting State standards as measured by State approved standard tests, requiring additional educational assistance from TUSD and/or PYT.
3. Each quarter, TUSD shall provide a comprehensive report on all Pascua Yaqui students for whom an ROI has been signed. The report shall include the following data by school: all District benchmark and state mandated testing scores, attendance rates, drop-out rates, and a report on whether or not the students meet their academic requirements for Pre-K-12.
4. Each school year, TUSD shall provide a report to the PYTED Director of the yearly allocations of Impact Aid Funding and a budgetary summary of expenditures for the prior academic school year.

C. Notification to Parents and Students

1. At any appropriate time, PYTED shall provide ROI forms, allowing TUSD to release educational records to PYT, to parents, or students over the age of 18. PYTED shall send copies of these signed ROI forms to TUSD. (Exhibit A)
2. In the event that a student and/or parent do not wish to sign or have information shared between PYTED and TUSD, their request will be respected under all applicable confidentiality laws.

D. Procedure for Release of Education Records to PYT by TUSD

1. PYT may submit a written request for a PYT student's educational records through the Native American Student Services department by fax or e-mail.
2. Upon request by PYT, TUSD will provide educational records regarding a student of PYT if:
 - a. An ROI is on file.
 - b. Release of educational records to PYT law enforcement, pursuant to A.R.S. §15-141(E): For the purpose of supporting the education of PYT students TUSD will release pupil attendance, disciplinary and other educational records to PYT law enforcement to provide appropriate programs and services to intervene with juveniles currently involved in the juvenile justice system, to provide appropriate programs and services designed to deter at-risk juveniles from dropping out of school or other delinquent behaviors or to increase the safety and security of the community and its children by reducing juvenile crime.
3. PYT staff shall comply with applicable federal confidentiality laws, including without limitation, 20 U.S.C. §1232(g) *et seq.* and 34 C.F.R. §99 *et seq.* ("FERPA"), and 20 U.S.C. §1412 *et seq.* and 34 C.F.R. §300.560-576("EHA") All PYTED YES K-12 staff and other staff who request and receive student educational records shall sign a confidentiality form (Exhibit B).
4. All education records received from TUSD shall be secured in a locked file cabinet accessible only to those staff members providing or managing services to students. Such staff shall be trained and shall sign a form developed through the PYTED acknowledging that they are aware of the confidentiality requirements under FERPA.
 - a. All education records shall be used for education and student support purposes only. Any unauthorized use of information provided under this Agreement shall be cause for termination of this Agreement.

- b. Within 24 (twenty four) hours of receipt of such a request the information requested shall be sent to PYT.

F. Release of Education Records and PYTED Records When There is No Signed ROI Form

1. TUSD Records. Where no ROI form is available, this Agreement and TUSD Policy and Regulations JR shall govern and authorize the release of educational records between TUSD and PYT. Where there is any conflict between this Agreement and TUSD policies and regulations as to the release of records by TUSD, TUSD policies and regulations shall control the release of records.
2. PYT Records. Where there is any conflict between this Agreement and PYT policies and regulations as to the release of PYTED records by PYT, PYT policies and regulations shall control the release of PYTED records by PYT.

G. Truancy

1. A Truancy Committee shall be established with representatives from PYT and TUSD.
2. The Truancy Committee shall be comprised of PYT Law Enforcement and PYTED.
3. The Truancy Committee shall also include TUSD personnel, which may include School Safety, Student Services, Counselors, and Dropout Prevention, at the discretion of the Superintendent.
4. The Truancy Committee shall develop a written plan to determine the procedures to be followed should a child be identified as at risk of being truant from school.
5. The written plan shall be presented to TUSD's Superintendent or designee and PYT's Education Oversight Committee, which is made up of members of the Tribal Council, and the Articulation Committee for comments and recommendations.
4. Enforcement of the Pascua Yaqui Tribe Truancy Ordinance (5 PYTC § 7-510-600) for all school-age children living on the Pascua Yaqui Tribe Reservation is within the sole jurisdiction of the Pascua Yaqui Tribe.
5. Pursuant to A.R.S. §15-141, TUSD may release student attendance records to PYT law enforcement for the purpose of (1) providing appropriate programs and services to intervene with juveniles currently involved in the juvenile justice system, (2) providing appropriate programs and services designed to deter at-risk juveniles from dropping out of school or other delinquent behavior and (3)

increasing the safety and security of the community and its children by reducing juvenile crime.

V. DISPUTE RESOLUTION AGREEMENT

A. The following procedures shall govern the resolution of any controversy, dispute or claim between or among PYT and TUSD (each, a “Party” and collectively, the “Parties”) arising out of the interpretation, performance, breach or alleged breach of this Agreement (“Dispute”):

- a. The Parties shall promptly attempt to resolve any Dispute by negotiation between individuals who have authority to settle the Dispute. In the case of PYT, such individual shall be the Chair of the Tribal Council of the Pascua Yaqui Tribe, or their designee. In the case of TUSD, such individual shall be the Superintendent or designee. Any Party may give the other Party written notice, in accordance with Section VIII of this Agreement, of any Dispute not resolved in the ordinary course of business. Within thirty (30) calendar days after delivery of the notice, each receiving Party shall submit to the other Party a written response. The notice and response shall include: (a) a statement of that Party’s position and a summary of arguments supporting that position, and (b) the name and title of the individual who will represent that Party for the purpose of attempting to resolve the Dispute by negotiation.
- b. Within sixty (60) calendar days after delivery of the initial notice, the Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute.
- c. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any Dispute, unless the party reasonably believes that continued performance will subject the Party to legal liability.
- d. If the Dispute has not been resolved by negotiation within one hundred and twenty (120) calendar days after delivery of the initial notice of negotiation, or if the Parties failed to meet within sixty (60) calendar days after delivery of the initial notice of negotiation, either Party may give notice of Termination of the Agreement.

VI. SEVERABILITY

If any provision of this Agreement, or any application thereof to the parties or any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect, without the invalid provision or application and, to this end, the provisions of this Agreement are declared to be severable.

VII. TERMINATION

Subject to the terms of Section V above, either party with thirty (30) days notice may terminate this Agreement.

VIII. NOTICES

All notices to PYT or TUSD (collectively, "Parties") must be in writing. All notices, payments, requests, demands or other communications required or permitted pursuant to the Agreement must be in writing and shall be effected either by (1) personal delivery or (2) delivered by overnight courier which regularly provides receipts or (3) certified or registered mail. In either case, the notice shall be sent return receipt requested, postage prepaid and properly addressed to the Parties at the addresses listed immediately below. Notice to PYT shall not be complete or proper unless given to all addresses. Notices shall be deemed communicated as of the date of actual receipt. PYT or TUSD may designate a new address by providing actual written notice to the other party of such new address. All notices shall be delivered as follows:

To PYT: Pascua Yaqui Tribe
Attn: Chairman of the Tribe
7474 South Camino De Oeste
Tucson, Arizona 85757

With a copy to: Attorney General
Pascua Yaqui Tribe
7777 S. Camino Huivisim, Building C
Tucson, Arizona 85757

To TUSD: Tucson Unified School District
Attn: Legal Department
1010 East Tenth Street
Tucson, Arizona 85719

IX. COMMITTEES

Any committees formed under this Agreement are not to be considered committees of the TUSD Governing Board that would be subject to the provisions of A.R.S. § 38-431 *et seq.* ("Open Meetings" Law). TUSD's Superintendent reserves the right to appoint and remove TUSD's representatives on any committee formed under this Agreement.

X. AMENDMENTS

This Agreement may be amended in writing by mutual agreement of the parties.

XI. GOVERNING LAW

The validity, interpretation, effect of the Agreement, and resolution of any disputes arising from the Agreement, shall be governed exclusively by the laws of the Pascua Yaqui Tribe, without giving effect to the conflict of laws, and shall be resolved in the court system or applicable administrative forum of PYT. The Agreement is to be construed strictly according to Pascua Yaqui Tribal law.

XII. NO WAIVER OF SOVEREIGN IMMUNITY

By entering into this Agreement, PYT in no way waives any rights held by PYT under the Constitution of the Pascua Yaqui Tribe, including, but not limited to, Article XXIV- Sovereign Immunity.

XIII. ENTIRE AGREEMENT

This document constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the parties and recorded with the Pima County Recorder, or Arizona Secretary of State, whichever is appropriate.

Dated this _____ day of _____, 2014.

Tucson Unified School District
No. 1 of Pima County

Pascua Yaqui Tribe

By: _____
Adelita Grijalva
Governing Board President

By: _____
Peter S. Yucupicio, Chairman

By: _____
Dr. Helidoro T. Sanchez
Superintendent

Approved as to Form:

Approved as to Form:

By: _____
TUSD Legal Counsel

By: _____
Attorney General