

Memorandum of Understanding

by and between

WestEd and [REDACTED]

This Memorandum of Understanding (“MOU”) is effective as of [REDACTED] (Date), and sets forth the agreement between WestEd and [REDACTED] (“Partner”) to conduct the Personalized Affective Learning Study (the “Study”). At times herein, WestEd and Partner are referred to each as a “Party” and collectively referred to as “the Parties.”

1. Purpose

WestEd, in partnership with the University of Massachusetts Amherst (UMass), is conducting an independent research study of an online math tutoring platform for sixth grade math classrooms. Funded by the U.S. Department of Education’s Institute of Education Sciences (R305A190256), the **Personalized Affective Learning Study** will investigate the impact of using the MathSpring platform for 6th grade math instruction on teacher practices and student achievement. MathSpring is a free, research-based, online platform that students use to practice math in topic areas selected by a teacher. This study will expand on promising results from pilot studies with the purpose of conducting a large-scale, rigorous evaluation of the intervention’s efficacy. To that end, WestEd is leading a randomized control trial study to test whether MathSpring improves student outcomes related to learning and attitudes toward math.

The Parties also wish to adequately protect student, parent, teacher, and/or Partner staff data and to comply with all applicable Federal, State, and local laws, ordinances, regulations, and directives relating to confidentiality.

2. Term and Termination

- A. This MOU is effective as of the date first set forth above and expires December 31, 2023.
- B. Either Party may terminate or amend this MOU at any time without cause, provided that written notice is given to the other Party at least 30 days in advance.
- C. The termination or expiration of this MOU shall not affect the rights or obligations regarding confidentiality or the retention, storage, or destruction of Data, as set forth in Sections 5 and 6 herein. Such rights and obligations shall survive the term of this MOU.

3. Project Activities

- A. The study will take place during the 2021-22 school year in [REDACTED] (Name of Partner).
- B. Participating teachers will be **randomly assigned** to either the “immediate use” treatment group or the “delayed use” control group. Teachers assigned to the “immediate use” treatment group will attend professional learning sessions and use

MathSpring with their students during the 2021-22 school year. Teachers assigned to the “business as usual” control group will use their existing math instructional and homework practices during the 2021-22 school year, and may begin using MathSpring with their students in the 2022-23 school year. Professional learning sessions will be available to teachers in the “delayed use” group in the Summer before the 2022-23 school year.

- C. To understand math instructional practices across the two conditions, data will be collected in the form of principal and teacher interviews, teacher surveys, and classroom observations. To understand the effect of MathSpring on different groups of students’ math learning outcomes and attitudes toward math, the study will collect student demographic data, school enrollment and attendance records, and assessment data. The assessments include the 5th grade and 6th grade state standardized math assessments that will be administered during the 2020-21 and 2021-22 school years respectively (if available), and a researcher-administered assessment during the 2021-22 school year (as described in further detail in Section 8 below). All teachers will receive stipends in recognition of their participation in professional learning (PL) and research data collection activities.

4. Definitions Regarding Shared Data

- A. “Data,” as used in this MOU, shall mean and refer to any data collected from schools, principals, teachers or students, including student demographic data, student assessment data, principal interview data, teacher survey, interview, or observation data that will be collected as part of the Study. The data elements that need to be shared to WestEd by Partner are described in Appendix A.
- B. “Personally Identifiable Information” or “PII,” as used in this MOU, shall mean any information or Data that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify an individual with reasonable certainty.
- C. “De-identified Data,” as used in this MOU, shall mean Data from which all Personally Identifiable Information has been removed or obscured so that a reasonable person, who does not have personal knowledge of the relevant circumstances, would not be able to identify any individual with reasonable certainty.
- D. “Non-Financial” as used in this MOU, shall mean agreements that are typically non-monetary by nature, but occasionally involve the provision or exchange of something of value (e.g. Stipends). These types of arrangements set out expectations, terms, and requirements that protect the interests of the investigators and the participating organizations.
- E. “Educational Records,” as used in this MOU are official records, files and data directly related to a student and maintained by the education agency or institution, or by party acting for the agency or institution (e.g. including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of

achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.)

5. Confidentiality

- A. WestEd agrees to take all necessary precautions to safeguard the Data and comply with all applicable Federal, State, or local laws, ordinances, regulations, and directives relating to confidentiality. These include, but are not limited to, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR part 99), the California Information Practices Act (California Civil Code § 1798 *et. seq.*), and the Privacy Act of 1974, as amended, (5 U.S.C. § 552).
- a. FERPA Exception – WestEd is authorized to receive this data under the following FERPA exception:
- i. Studies Exception [34 CFR § 99.31(a)(6)] for the purposes of improving instruction
 - ii. School Official Exception [34 CFR §§ 99.31(a)(1) and 99.7(a)(3)(iii).] – WestEd is considered a “school official” by [insert organization name] and: is performing a service or function for which the [insert organization name] would otherwise use its employees; is under the direct control of the school with respect to the use and maintenance of education records; and complies with the PII from education records use and redisclosure requirements
 - iii. Audit/Evaluation Exception [34 CFR §§ 99.31(a)(3) and 99.35] – WestEd has been designated as the “Authorized Representative” of [insert organization name] to audit or evaluate a Federal or State supported education program.
- B. WestEd will limit internal access to PII to individuals working on the Project with legitimate interests in the PII and whose work reasonably requires access to the Data (i.e. on a need-to-know basis).
- C. WestEd will take reasonable steps to maintain the confidentiality and security of the Data at all stages of the Project. PII will only be used for the purposes of the Project.
- D. PII will be destroyed at the earlier of: (1) when the PII is no longer needed for analysis, (2) 6/30/2030, or (3) within 90 days of the termination of this MOU pursuant to section 2.B hereinabove, and delivery to WestEd of Partner’s written demand for destruction of the PII.
- E. De-identified Data may be retained by WestEd after the completion of the Project, and may be further used, shared, released or disclosed by WestEd without consent, to the extent permitted under FERPA.
- F. If WestEd publishes any reports or other publications created with the use of Data, WestEd will not include information that could lead to the identification of any

individual whose information is included in the Data.

6. Data Handling, and Storage

- A. All computers used to upload, analyze, or store Data containing PII will be encrypted and password-protected. WestEd will store Data in a password-protected and encrypted cloud-based content management system. WestEd will store the Data in accordance with a Data Security Plan, available upon reasonable request.
- B. WestEd will only transfer PII using secure, encrypted transmission methods.
- C. WestEd will limit access to PII to only those individuals working on the Study who have legitimate interests in the PII and on a need to know basis.
- D. Names of study participants, schools or districts will be blinded for analysis. No individual shall be identifiable in any reports, publications, or other documents created by WestEd or its contractors with the use of Data nor will any identifying information such as district or school names be included.
- E. Reports containing aggregate-level data and results will also be presented to the members of professional associations and may be published in professional association publications.
- F. Educational Records shared by Partner are and shall continue to be Partner's property.

7. Data Sharing

- A. Third-party sharing. WestEd will take steps to maintain the confidentiality and security of the Data at all times. The Data may be stored securely at WestEd or at an entity under a written agreement with WestEd to provide hosting services, or collection, storage, processing or analysis of some or all of the Data. Data stored at such a contracted entity shall be protected in accordance with the terms of this MOU. No PII of any participants will be shared in any forms.
- B. WestEd will ensure that all persons and entities, including employees, contractors, and consultants who will have access to student-level data or PII to first enter into an agreement with WestEd that includes security and confidentiality terms no less stringent than those included in this MOU.

8. WestEd's Responsibilities

- A. WestEd will assign a coordinator to liaison with district representatives, individual schools, teachers to communicate with and provide support for teachers to complete research activities.
- B. WestEd will follow regulations of Partner to obtain teacher consent, and distribute parent opt-out form for students to participate in the study (with some assistance from teachers).

- C. WestEd will collect all Data directly from Partner and teachers during the Study. Data will be collected for research purposes only. All Data collected during the study will be retained in a place physically secure from access by unauthorized persons. Any computer on which the Data reside will be password protected at all times.
- D. WestEd will provide participating teachers in both treatment and control groups with a stipend for completing required study data collection activities (up to \$800). Stipends shall be paid no later than 30 days following the end date of the Study.
- E. WestEd will provide teachers in the treatment group with up to \$600 for participating in professional development activities to take place during the summer of 2021 and the 2021-22 school year. Professional development activities that take place during the school year will occur outside of school hours. Amounts will be calculated at a rate of \$200/day.
- F. WestEd will provide teachers in the control group with up to \$400 for participating in professional development during the Summer of 2022. Amounts will be calculated at a rate of \$200/day.
- G. WestEd will work with UMass to provide teachers in the treatment group access to MathSpring for the 2021-22 school year, and to provide teachers in the control group access during the 2022-23 school year.
- H. WestEd will designate a liaison to facilitate communications between WestEd and Partner for coordinating the activities necessary to carry out this MOU. WestEd's contact person for this project is:

Mingyu Feng
WestEd
400 Seaport Ct, #222
Redwood City, CA 94063
Telephone: (650) 381-6475
Email: mfeng@wested.org

9. Partner Responsibilities:

- A. Partner will collaborate with WestEd, as needed, to facilitate the coordination of the research activities, including any required permissions activities related to the Study.
- B. Partner will provide student demographic data (gender, race/ethnicity, Individualized Education Program (IEP) status, free-and reduced-price lunch or other low income status indicator, English language learner status) and student assessment results, including previous years' state standardized math assessments administered to the students who participate the study during the 2021-22 school year.
- C. Partner will approve participating schools/teachers to provide WestEd classroom rosters during the 2021-22 school year that will allow the study team to monitor students who join a classroom after the school year started and those students who leave a classroom during the school year.

- D. Partner shall designate a liaison to facilitate communications between Partner and WestEd for coordinating the activities necessary to carry out this MOU. Partner's contact person for this project is:

Liaison Name: _____
Partner Name: _____
Address: _____
City, State, Zip: _____
Email: _____

The District's participating teachers shall:

- E. Agree to be in their randomly assigned condition—either the treatment group or control group.
- F. Teach at least one Grade 6 math class during the 2021-22 school year.
- G. Help distribute and collect informational letters and opt-out forms from parents in their math classes.
- H. Provide basic information about the class sections (e.g. teaching schedule, level of student group, etc.) and classroom rosters during the 2021-22 school year.
- I. Complete pre- and post-surveys about their teaching background (pre-survey only), and math instructional practices.
- J. Administer surveys and assessments to students in their 6th grade math classes.
- K. Agree to participate in interviews (~45 minutes) and classroom observations at mutually agreed upon times.
- L. Teachers assigned to the treatment condition further shall:
 - a. Participate in up to three days of professional learning activities to take place in the 2021-22 Summer and school year.
 - b. Use MathSpring a minimum of once every other week per year in the 2021-22 school year in 6th grade math classrooms. Suggested session length is 30 minutes to 1 hour.

10. General Provisions:

- A. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without regard to conflict of law principles.
- B. Amendments. This MOU may be amended at any time by mutual agreement of the Parties without additional consideration, provided that before any amendment shall take effect, it shall be in writing and signed by both Parties.

- C. Assignment. Neither Party shall voluntarily or by operation of law, assign or otherwise transfer its rights or obligations under this MOU without the other Party's prior written consent. Any purported assignment in violation of this paragraph shall be void.
- D. Severability. The provisions of this MOU are severable and the unenforceability of any provision of this MOU shall not affect the enforceability of any other provisions hereof.
- E. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any liability, loss, damage, expense, costs (including without limitation reasonable attorneys' fees) arising from any third party claim, demand, assessment, action, suit or proceeding related to its use of the Data under this MOU and/or any Appendix, unless such loss or damage was caused by the sole negligence or willful misconduct of the party seeking indemnification.
- F. Limitation of liability. Except as stated in Section E, each Party shall bear all costs, risks, and liabilities incurred by it arising out of its obligations and efforts under this MOU. Neither Party shall have any right to any reimbursement, payment or compensation of any kind from the other Party, unless expressly agreed to in writing by both Parties.
- G. Representations and Warranties. Data is provided on an "AS IS" basis WITHOUT ANY WARRANTY, REPRESENTATION OR UNDERTAKING WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR FREEDOM FROM INFRINGEMENT.
- H. Relationship between the Parties. Nothing in this Agreement shall be construed to grant either Party the right to make commitments of any kind for or on behalf of the other Party, without the prior written consent of the other Party. Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize an employment relationship between the parties or a joint venture, partnership, or formal entity of any kind.
- I. Dispute resolution. The Parties shall exercise commercially reasonable efforts to settle any claim, controversy, or dispute (collectively "Disputes") arising out of or relating to this Agreement. The Parties shall discuss any such Dispute no later than 30 days after either Party gives written notice to the other Party of a Dispute, including the legal and factual basis for such Dispute. No suit, arbitration or other proceeding may be commenced before the Parties have met pursuant to this provision, except as described herein.

In the event that a Dispute cannot be resolved through good faith negotiations, the Parties agree that such Dispute shall be finally settled through binding arbitration. The arbitration shall be administered by JAMS, in San Francisco, California, pursuant to its Comprehensive Arbitration Rules and Procedures. The decision of the arbitrator shall be final and conclusive upon the Parties. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

Notwithstanding the foregoing, either Party may seek injunctive or provisional relief to protect confidential information at any time.

- J. Notices. All notices permitted or required under this MOU shall be in writing and shall be delivered by electronic mail, or by certified or registered mail, return receipt requested, to each Party's respective contact listed above, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. All notices related to the Data or Educational Records shall be delivered to Director of Privacy and Data Security: infosecurity@wested.org. Notices of intent to terminate this MOU shall be provided to the applicable contact above, and, if to WestEd, also be delivered to:

Virgilio Tinio
WestEd
730 Harrison Street
San Francisco, CA 94107
contracts@wested.org

- K. Negotiation and execution. This MOU has been negotiated by both Parties and shall not be strictly construed against either Party. This MOU may be executed in one or more original, electronic, or faxed counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each of the persons signing this MOU represents that he or she has the authority to sign on behalf of and bind their respective party.

IN WITNESS WHEREOF, the Parties have, by their respective duly authorized representative, executed this MOU as of the day and year first written above.

WestEd

Partner: _____

By: _____

By
(Signature): _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A

"Data" to be shared by Partner with WestEd in this MOU is described. Student-level variables below will be requested for individual students who are in 6th grade and participate in the Study during the 2021-22 school year.

- Student name
- Teacher name
- School name
- Student LASID (local ID) and SASID (state ID)
- Student's date of birth
- Grade level
- Gender
- Race/Ethnicity
- Student's enrollment and attendance for each study year
- Student low-income status (such as eligibility for free-or-reduced-priced lunch)
- English Language Learner (ELL) status
- Student need for special education services
- MCAS test scores (scale score, achievement level, growth percentile, and raw score) from 2020-21 (5th grade score) and 2021-22 (6th grade score) academic years