Memorandum of Understanding

by and between

WestEd and San Leandro School District

This Memorandum of Understanding ("MOU") is effective as of September 12, 2021, and sets forth the agreement between WestEd and San Leandro School District ("Partner") to for the sharing, use, and protection of data related to the Equity in Practice Mathematics Course Taking and Achievement Patterns ("Project"). At times herein, WestEd and Partner are referred to each as a "Party" and collectively referred to as "the Parties."

This MOU is a Non-Financial agreement.

1. Purpose

As part of the work of the Equity in Practice Mathematics Course Taking and Achievement Patterns, WestEd will conduct a descriptive study to assess students' math achievement. The study will provide San Leandro School District with analysis on students' math performance.

The study is guided by the following goals:

1) Goal: Understand demographics of access and success in 8th grade and 11th grade Math:

- document who enrolls in and succeeds in 8th and 11th grade advanced math courses
- understand the patterns in the years prior to the current pathway strategy and since the current pathway strategy has been implemented.

2) Goal: Understand what predicts success in advanced math

- identify the factors that most strongly predict success in advanced 8th grade math courses
- understand how accurately we can predict who succeeds based on prior grades and test scores
- understand the implications of that for equity if student were based on these patterns
- know the extent to which Black, Latinx, Indigenous and English Learner students who would be likely to succeed in advanced grade 8 math are actually placed in advanced courses.
- potentially refine and repeat this analysis for 11th grade

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 12/31/2022.

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. Definitions Regarding Shared Data

A. “Data," as used in this MOU, shall mean and refer to student-level data collected from the district as referred to 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.)

F. “Data Security Plan” as used in this MOU shall mean and refer to Appendix B. Individuals working on the project with access to the Data shall have signed confidentiality agreements regarding said Data.

4. Confidentiality and Protection of Data

A. WestEd will not receive Data from UWSL and will not redisclose PII to UWSL. All tools, maps, and data analyses and reports exchanged between UWSL and WestEd will be de-identified.

B. 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).

C. 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).

D. 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.

E. PII will be destroyed at the earlier of: (1) when the PII is no longer needed for analysis, (2) December 31, 2121, or (3) within 30 days of the termination of this MOU pursuant to section 2.B hereinabove, and delivery to WestEd of USBE's written demand for destruction of the PII.

F. De-identified Data may be retained by WestEd after the completion of the Projects, and may be further used, shared, released or disclosed by WestEd without consent, to the extent permitted under FERPA.

G. 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.

5. 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, as provided under Appendix B, available upon reasonable request.

B. WestEd will only transfer PII using secure, encrypted transmission methods.

C. WestEd will follow the Data Security Plan, as provided under Appendix B.

D. 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.

E. Educational Records shared by Partner are and shall continue to be Partner's property.

6. Data Sharing

A. 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.

7. WestEd's Responsibilities

A. WestEd will use the Data for education research or evaluation purposes only.

B. WestEd will oversee the process for transferring Data from through Box.com or through a Secure File Transfer Protocol (SFTP). As such, Data will be encrypted in transit using 256-bit TLS protocol.

C. WestEd will ensure that any computer on which the Data reside is encrypted and password protected.

D. WestEd will only report on aggregated data. All findings will be delivered and shared with the San Leandro Unified Board of Education and Superintendent.

E. 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:

Jason Snipes
WestEd
730 Harrison Street
San Francisco, CA 94107
jsnipes@wested.org

8. Partner Responsibilities:

A. Partner will transfer Data to WestEd within 30 days of WestEd's requests as they occur over the study period.

B. Partner will transfer Data to WestEd using Box.com or a Secure File Transfer Protocol (SFTP).

C. Partner will Answer any questions about the data that is shared with WestEd to facilitate the analysis for the evaluation.

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:

Name Celine Liu
Partner San Leandro USD
Address 13701 Bancroft Ave
City, State Zip San Leandro, CA 94578
Email cliu@slusd.us

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:

Lauren Wrotniak
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		**San Leandro School District**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

APPENDIX A

"Data" as used in this MOU refers to the following: Student-level variables retrieved from the District - the variables below will be requested for individual students.

- State Student ID number
- IEP status (yes/no)
- Grade level
- Gender
- Race/Ethnicity
- Student eligibility for free-or reduced-price lunch
- English learner status
- Mathematics Courses including course number/id, course name, course grade, semester/term, semester- or year-long, a-g flag (i.e., c course?)
- State summative math assessment for school years 2017-18, 2018-19, and 2020-2021.
- STAR math assessment for school years 2017-18, 2018-19, 2019-20, and 2020-21 including test name, scaled score and test percentile rank.

APPENDIX B

PROJECT DETAILS	
Project Name*	Equity in Practice Mathematics Course Taking and Achievement Patterns
Project Director*	Jason Snipes, jsnipes@wested.org
Main Contact*	Jose Franco, jfranco@wested.org
Project overview* **Briefly describe the nature of the project, the deliverables, and the use of data.**	As part of the work of the Equity in Practice Mathematics Course Taking and Achievement Patterns, WestEd will conduct a descriptive study to assess students' math achievement. The study will provide San Leandro School District with analysis on students' math performance. The study is guided by the following goals: 1) Goal: Understand demographics of access and success in 8th grade and 11th grade Math: o document who enrolls in and succeeds in 8th and 11th grade advanced math courses o understand the patterns in the years prior to the current pathway strategy and since the current pathway strategy has been implemented. 2) Goal: Understand what predicts success in advanced math o identify the factors that most strongly predict success in advanced 8th grade math courses o understand how accurately we can predict who succeeds based on prior grades and test scores o understand the implications of that for equity if student were based on these patterns o know the extent to which Black, Latinx, and Indigenous students who would be likely to succeed in advanced grade 8 math are actually placed in advanced courses. o refine and repeat this analysis for 11th grade A report for internal use by the district will be prepared.
Project staffing* **List the name(s) and responsibilities of the investigator(s), staff, and others who will manage, control access to, and have access to the data.**	Jason Snipes, jsnipes@wested.org - PI responsible for project Jose Franco, jfranco@wested.org- responsible for client contact Stacy Marple, smarple@wested.org- support analysis Min Huang, Mhuang2@wested.org- responsible for all data Raifu Durodoye, rdurodo@wested.org- supporting data analysis
Performance period start*	9/12/21

Performance period end*	1/1/22
Special data security requirements*	WestEd will oversee the process for transferring Data from school districts to WestEd through Box.com or through a SFTP. As such, Data will be encrypted in transit using 256-bit TLS protocol.
Back-up and storage* Describe how and where the data will be stored and/or backed up. [Remember that Box is the official storage for client files unless otherwise specified in the contract.]	Min Huang will have access to the identifiable data for the duration of the study. All student-level data will be encrypted in transit and at rest. Data transfer will occur via WestEd's secured box folder or through a Secure File Transfer Protocol (SFTP), and all data will be kept on their own secured encrypted, password protected WestEd computer for anlayses. A back up of the student-level data and teacher-level data files will be stored in WetEd's secured box folder with limited access.
Data retention* Describe any specific requirements for data retention.	All PII related to this project will be destroyed by the end of the study (i.e., by December 31, 2021).
Responsible Staff: Deletion/Archive* Enter the name(s) of staff who should be automatically notified when this data should be deleted.	Min Huang
ISP communication* Detail how the protocols described in this plan will be communicated to project staff and external partners.	The protocols described will be shared via email with the project staff. All WestEd project staff have CITI certification in Human Subjects research and will have taken the WestEd Data Responsibilities course to meet the contract requirements for California.