Memorandum of Understanding

by and between

WestEd and San Leandro Unified School District

This Memorandum of Understanding ("MOU") is effective as of Feb 9, 2022 and sets forth the agreement between WestEd and San Leandro Unified District ("Partner") to for the sharing, use, and protection of data related to the implementation and impacts of Empathic Instruction professional learning modules ("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

The purpose of this project is to offer the Empathic Instruction (EI) teacher professional development (PD) to teachers in San Leandro Unified School District (SLUSD) with the goals of

1) To learn how EI promotes racial equity in discipline and belonging in learning communities.
2) To explore how to best support uptake and implementation of EIs in districts, schools, and classrooms.
3) To analyze disciplinary data to answer the questions does participation in EI (a) reduce disciplinary action in schools and (b) impact racial equity in disciplinary actions.

At the completion of the Project, WestEd will present SLUSD with a report on the following metrics:

- shifts in disciplinary outcomes before and after EI implementation
- measures of implementation of the EI model
- information from focus groups with teachers describing shifts in their self-reported practices

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 30, 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. Definitions Regarding Shared Data

A. “Data," as used in this MOU, shall mean and refer to appropriate teacher, school- or classroom level data collected by SLUSD 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 individual 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 redisclose teacher PII to SLUSD. All and data analyses and reports exchanged between SLUSD 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 SLUSD'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 SLUSD 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.

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 Unified School District**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

APPENDIX A

"Data" as used in this MOU refers to the following: student -, school-, or classroom-level variables retrieved from the District. After consultation with staff at SLUSD, the variables below, or other equivalent measures of discipline and expulsion, may be requested for students, classrooms and/or schools. All student data will be received with encrypted student identifiers, and the only SLUSD district will hold the key connecting those identifiers to the district identifiers.

- District-Level
    - District enrollment
    - Total Expulsions
    - Expulsion Rate (Total)
    - Total Suspensions
    - Suspension Rate (Total)
    - Suspensions By Reason (as available)
    - Unduplicated Count of Students Expelled (Total)
    - Unduplicated Count of Students Expelled (Defiance-Only)
    - Unduplicated Count of Students Suspended (Total)
    - Unduplicated Count of Students Suspended (Defiance-Only)
    - Expulsion Count Violent Incident (Injury)
    - Expulsion Count Violent Incident (No Injury)
    - Expulsion Count Weapons Possession
    - Expulsion Count Illicit Drug-Related
    - Expulsion Count Defiance-Only
    - Expulsion Count Other Reasons
- School-Level
    - School enrollments
    - Suspensions by school
    - Expulsions by school
    - Any relevant school- or classroom level disciplinary data collected by SLUSD
- Student-Level (middle school students only)
    - Roster data connecting students to teachers

- Student Race Reporting Category
- Student gender
- Student low-income status
- Student disability status
- Student EL status

APPENDIX B Data Security Plan

PROJECT DETAILS	
Project Name*	Empathic Mindset Pilot
Project Director*	Jason Snipes
Main Contact*	Stacy Marple
PAC # (including P- or C-)* [Unless required by the client or our IRB, you should wait until you have a signed contract, since those can have stipulations that are applicable to the DSP.]	P-00016521
Includes human subjects research* Does this project have IRB approval or an exemption determination? [Y, N, or N/A]	y
ORI/IRB approval number If yes, include the protocol number:	Protocol #2021-12-1
Project staffing/Data Access List* 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. Please specify specifically those who will have access to client data files that may be classified and their level of access. Security and privacy training may be required for project directors. More information here	Jason Snipes is the lead investigator and will have access to the data Riafu Durodoye will also have access to the data and perform any deidentification of quantitative data
Partners and other entities* Describe how partners, consultants, and/or subcontractors will be involved in your project's data, including data transfer, collection, use, analysis, etc. Also indicate if you will or plan to have an MOU with these third parties if sharing data.	n/a
Performance period start*	December 17 2021
Performance period end*	December 17 2023
DESCRIPTION OF SENSITIVE DATA	

Describe the sensitive data. Be explicit about types of protected data such as, Education Records, Proprietary, Health, Criminal Justice, or other sensitive data. Also include whether any of the data will be hard copies such as printouts or answer forms.	Data on disciplinary actions each teacher implemented are the only sensitive data. Data will only be in electronic form kept on a secure box folder. Data will be deidentified upon receipt.
Data classification*: Please classify the client data files based on WestEd's data classification policy found here.	Confidential
Special data security requirements* (THESE ARE FOUND IN YOUR CONTRACTUAL REQUIREMENTS OR DATA SHARING AGREEMENT) Describe special data security requirements such as incident response, procedures for breach notification, encryption requirements, limitations on use of cloud storage, use of the Secure Computing Environment (SCE), geographic data access restrictions, etc.	
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. Box data classifications will be applied based your data classification specified on row 15]	All data will be in WestEds secure box folder
Data retention* Describe any specific requirements for data retention. [For instance, if a certificate of destruction is needed]	Standard Data retention and deletion
Responsible Staff: Deletion/Archive* Enter the name(s) of staff who should be automatically notified when this data should be deleted.	Jason Snipes, Raifu Durodoye

De-identified data processes For coded data, please identify (i) where the key will be stored, (ii) how it will be kept confidential, and (iii) who will have access to the key. If investigator(s) will not have access to the key, what measures will be taken to assure this?	The data key will be held by Raifu Durodoye, and he will be the only person to have the key. It will be kept on a restricted box folder to which only he will have access.
ISP communication* Detail how the protocols described in this plan will be communicated to project staff and external partners.	All staff will be emailed the protocols in this plan for review, and then they will be confirmed during a staff meeting.

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