

**Memorandum of Understanding**  
**by and between**  
**WestEd and Ector County Independent School District**

This Memorandum of Understanding (“MOU”) is effective as of December 1<sup>st</sup>, 2023, and sets forth the agreement between WestEd and **Ector County Independent School District** (“Partner”) to engage in the evaluation of the Air Tutors program (“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 Air Tutors program aims to improve students’ understanding of foundational math concepts and to improve math achievement. It uses live online tutoring with a ratio of four students to every tutor, where tutors provide instruction in foundational math skills including decimals, fractions, proportions, and basic geometry. As part of the work of the evaluation of the Air Tutors program, the Partner will participate in a quasi-experimental design study to measure the impact of the program on students’ math achievement.

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 August 31<sup>st</sup>, 2026.
- 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. WestEd will collect educational records in order to analyze the impact of the Air Tutors program.

**4. Definitions Regarding Shared Data**

- A. “Data,” as used in this MOU, shall mean data listed 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.
- G. "Provider" as used in this MOU shall mean a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

## 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. X Studies Exception [34 CFR § 99.31(a)(6)] for the purposes of improving instruction
- 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) August 31, 2026, or (3) within 30 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, as provided under Appendix B.
- B. WestEd will only transfer PII using secure, encrypted transmission methods.
- C. WestEd will not share data with any third parties.
- D. WestEd will de-identify data upon receipt. All findings will be reported at the aggregate level and contain only De-identified Data.
- 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 the Partner's property.

## **7. WestEd's Responsibilities**

- A. WestEd will engage in the Project Activities listed above and will analyze the Data to prepare the evaluation.
- B. Securely collect Data from Partner and ensure that all Data is securely stored.
- C. 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:

Anne Porterfield  
WestEd  
730 Harrison Street  
San Francisco, CA 94107

anne.porterfield@wested.org

**8. Partner Responsibilities:**

- A. Partner will share student-level data with WestEd twice.
- B. 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: Manuela Escajeda  
District: Ector County Independent School District  
Address: 802 N. Sam Houston, Odessa, TX 79761  
Email: Manuela.Escajeda@ectorcountysd.org

**10. General Provisions:**

- A. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas, 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. Parties understand that Partner's ability to indemnify is restricted under State of Texas law. To the extent permitted under Texas law (with respect to Partner), 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 or other proceeding may be commenced before the Parties have met pursuant to this provision, except as described herein.

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](mailto: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:

Susan Mundry  
WestEd  
730 Harrison Street  
San Francisco, CA 94107  
[smundry@wested.org](mailto:smundry@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**

By: \_\_\_\_\_

Name: Susan Mundry

Title: Division Director

Date: \_\_\_\_\_

**Ector County Independent School District**

By: \_\_\_\_\_

Name: Chris Stanley

Title: Board President

Date: \_\_\_\_\_

## APPENDIX A

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

- Student ID number
- School Name
- Grade level
- Date of birth
- IEP status
- Gender
- Race/Ethnicity
- Classroom teacher's name
- Eligibility for free or reduced-price meal
- English Learner status
- Math assessment scores
  - Star diagnostic assessment scores
  - CMAS scores
- Indicator for whether the student received Air Tutors tutoring

## APPENDIX B Data Security Plan

- **Categories of data:** Data shared from partner; data collected as part of project
- **Student or education data included:** Yes
- **Health data included:** No
- **Data storage:** Box
- **Physical data:** No
- **Project software needs – standard:** Smartsheet; Stata
- **Non-standard software or hardware:** No
- **Data description:** Attendance data will be collected from Air Tutors. Student-level data will be collected from the states and districts and will include the following variables:
  - School name
  - Student ID number
  - Grade level
  - Date of birth
  - IEP status
  - Gender
  - Race/Ethnicity
  - Classroom teacher's name
  - Eligibility for free or reduced-price meal
  - English Learner status
  - Math assessment scores

**Coded data:** Yes

**Process for coded data:** The key for coded data will be stored in Box in a restricted folder, and only Fong and Porterfield will have access to it.

**DSP data destruction contact:** Anne Porterfield

**PII destruction date:** 08/31/2026

**De-identified data destruction date:** 08/31/2026

**Data breach notification time:** 72 hours