

Memorandum of Understanding
by and between
WestEd and Mount Diablo Unified School District

This Memorandum of Understanding (“MOU”) is effective as of December 1, 2019, and sets forth the agreement between WestEd and Mount Diablo Unified School District (“Partner”) regarding the study for the *Investigating the Use of Virtual Labs to Promote Chemical Reasoning and Practice Skills* study (the “ChemVLab+ study”) in high school classrooms (“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

This MOU sets forth the parameters for WestEd’s conduct of the ChemVLab+ study and the collection of education record data in the District.

The *Investigating the Use of Virtual Labs to Promote Chemical Reasoning and Practice Skills* study is funded by the US Department of Education, Award No. R305A170049, and led by WestEd, headquartered in San Francisco, CA, in collaboration with Dr. David Yaron at Carnegie Mellon University in Pittsburgh, PA. The current project aims to develop and refine ten interactive, online chemistry activities that address difficult-to-learn content, disciplinary core ideas, and crosscutting concepts by engaging students in science and engineering practices of the NGSS. The online chemistry activities allow students to perform experiments and analyze data in a flexible, multimedia, virtual chemistry lab environment. The District’s participation is dependent upon its willingness to permit the study activities specified in this MOU. WestEd anticipates that the District’s direct costs will be minimal.

Active data collection for the ChemVLab+ study will be conducted during the 2019-2020 and 2020-2021 school years.

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, 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. Project Activities

A. Project activities include

Participating teachers will:

- Use 8 virtual lab activities in his/her high school chemistry classroom (approx. 8 class periods). These NGSS-aligned activities use authentic problem solving in an online chemistry lab. Students receive individualized feedback and hints as they work through the activities, and teachers can see reports that estimate student proficiency on key chemistry concepts.
- Complete and upload class rosters (approx. 1 hour)
- Participate in up to 6 hours of professional development delivered in a webinar format throughout the school year.
- Complete an online questionnaire on instructional practices (approx. 10 minutes).
- Distribute study informational letters to parents, collect parent consent or opt-out forms, and return all consent or opt-out documentation to WestEd (approx. 1 hour).
- Administer study pre and post-surveys to students (approx. 10 minutes each survey)
- Complete an online instructional log describing classroom practice following each activity (approx. 10 minutes each log)
- Facilitate classroom observations and student think-alouds during the observation if site visits are feasible (approx. 1 hour). Students participating in the cognitive labs or “think alouds” will use the online chemistry activities simultaneously as their classmates, but they will be audio-recorded separately. These cognitive labs will take approximately 30-45 minutes.
- Participate in an end of the year follow-up teacher interview on the quality and utility of the activities (approx. 30 minutes)

All participating students, regardless of whether they opt-out of the study, will use the activities and take the student surveys. For students who opt-out, no data will be collected. If any data is returned by teachers for opt-out students, it will be destroyed.

- B. [Describe all activities involving the collection or generation of individual (youth and adults) records or other potentially protected information. Describe what media types (paper, electronic, video/audio) will be collected and any associated external relationships (subs, consultants, vendors/software).]

4. Definitions Regarding Shared Data

A. “Data,” as used in this MOU, shall mean and refer to 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. 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) August 31, 2022, 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. Per the grant provided by the US Department of Education, Award No. R305A170049, de-identified research data may be shared with other researchers to stimulate new advances. Shared research data will not include any personally identifiable information or similar information that could be used to identify a particular person in a research study. Data requestors must complete a data use agreement prior to gaining access to the de-identified research data.
- 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.

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. Paper-based data containing PII will be stored in locked file cabinets. WestEd will store the Data in accordance with a Data Security Plan, as provided under Appendix B, available upon request
- B. WestEd will only transfer PII using secure, encrypted transmission methods.
- C. Teacher logs and surveys will be collected using SurveyMonkey. Student activity log data will be collected using Carnegie Mellon’s Online Learning Initiative Platform.

Both solutions provide industry standard security protocols for data at rest and in transit.

- D. WestEd will insert other requirements, if any, including de-identification, aggregation, prohibition of storing local copies of the Data, portable or cloud-based storage, mobile devices, etc.
- 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. [If applicable, insert review/approval language regarding release of aggregate reports]
- F. Educational Records shared by Partner Mount Diablo Unified School District are and shall continue to be Partner's property.

7. **WestEd's Responsibilities**

- A. WestEd will use the Data collected for the project for research purposes only, and destroy or de-identify all Data containing PII when the PII is no longer needed for Project purposes, or 30 days after the expiration of this MOU, whichever occurs earlier.
- B. WestEd will agree that no individual will be identifiable in any reports, publications, or other documents that are created.
- C. WestEd will inform parents of students in participating classes that the ChemVLab+ study is taking place and give them an opportunity to opt out of data collection.
- D. 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:

Jodi Davenport
Deputy Director, STEM Program
WestEd
Email: jdavenp@wested.org Phone: 510.302.4274

8. **Partner Responsibilities:**

- A. Partner will collaborate with WestEd, as needed, to facilitate the coordination of the data transfer.
- B. Partner [or Partner staff assigned to work on the Project] will provide demographic and other information for data gathering as specified in Appendix A.
- C. Partner [or Partner staff assigned to work on the Project] will agree to participate in data sharing for the duration of this MOU.
- D. Partner [or Partner staff assigned to work on the Project] will allow the study curriculum and associated measures to be used in participating schools.
- E. Partner [or Partner staff assigned to work on the Project] will allow researchers from

WestEd to observe classrooms using the study curricula for the purposes of documenting fidelity of implementation.

- F. Partner [or Partner staff assigned to work on the Project] will be the owner of the student-level data provided, notwithstanding the agreement to share such information.
- G. 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
Partner
Address
City, State Zip
Email

9. 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

By: _____
Name: _____
Title: _____
Date: _____

Mount Diablo Unified School District

By: 
Name: Michael Jimenez
Title: Asst. Superintendent
Date: 12-10-19

APPENDIX A

"Data" as used in this MOU shall mean:

- 1) Student-level data retrieved from the District for participating students each study year:
 - Student scores on the California Science Test
- 2) Student-level data collected directly from participating sites. This will include the following for individual students participating in each year of the study:
 - Student name and **student** ID number¹ (via teacher-provided roster)
 - **Grade** level (via teacher-provided roster)
 - **Gender** (via teacher-provided roster)
 - Ethnicity (via teacher-provided roster)
 - Special education status (Yes/No) (via teacher-provided roster)
 - English language learner status (Yes/No) (via teacher-provided roster)
 - Pre-tests, post-tests, and student surveys **administered** as part of the study
 - Student activity logs from the online chemistry activities

¹ Student names and student ID numbers will only be used to link students' demographic information and California Science Test scores with their demographic data, pre- and post-test results, surveys and activity logs. Once the data collection and linking is complete, masked IDs will be assigned and students' names and student ID numbers will be removed from the data set.