

MEMORANDUM OF UNDERSTANDING

MAKING WAVES ACADEMY & CAP

This Memorandum of Understanding (“MOU”) is entered into by and between Making Waves Academy (“MWA”) and the College and Alumni Program (“CAP”) of Making Waves Foundation (“MWF”), (collectively the “Parties”).

Preamble.

The purpose of the agreement is to facilitate the collection, analysis, and sharing of student data by and between MWA and CAP in order to track the performance of former and current MWA and CAP students and to evaluate and improve the success of the Parties’ respective educational programs from middle school through college.

1. Data Sharing

- 1.1 Scope. The Parties shall provide one another with data concerning their respective former- and current students (“Student Data”). The Parties will agree on the inclusive dates for the Student Data to be provided and on the manner and form for exchanging same. The Student Data may include personally identifiable information such as names, contact information, date of birth, gender, and ethnicity as well as admissions information, terms of enrollment, courses, grades, relevant performance or survey data, and any other types of information on which the Parties may agree. Student data is any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche containing information directly relating to a student and is maintained by MWA or by a party acting for MWA.
- 1.2 Uses. The Student Data may be used by the Parties for contacting current and former students and for conducting studies and performing analyses to assist with MWA and CAP program design, evaluation, delivery, and instruction.
- 1.3 No Warranty. Except as otherwise agreed, the Parties will provide Student Data to one another “as is.” Neither party guarantees the completeness of its data.
- 1.4 Intellectual Property. Any IP developed from shared Student Data will require a separate agreement as to if/when/how it may be shared with third parties.
- 1.5 Timeline. Any Student Data exchanged pursuant to this MOU shall be destroyed on the earliest of (i) the date when it is no longer needed, (ii) the date the MOU is terminated, and (iii) ten years from the date the data is first exchanged.

2. Confidentiality

The Parties shall maintain the confidentiality and security of any and all confidential student information (“Confidential Student Data”) exchanged between them as a part of this MOU. The confidentiality requirements set forth in this section shall survive the termination or expiration of this MOU or any subsequent agreement intended to supersede this MOU. To ensure the continued confidentiality and security of the Confidential Student Data exchanged, the Parties shall establish a system of safeguards that will at a minimum include the following:

- 2.1 Procedures and systems that ensure that access to Student Data is limited to persons who are authorized to have access to said data under this MOU.
- 2.2 All persons involved in the handling, transmittal, and/or processing of Student Data exchanged by the Parties will be required to execute a confidentiality agreement requiring said persons to maintain the confidentiality of all data containing personally identifiable information.
- 2.3 Procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit Student Data provided under this MOU.
- 2.4 Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit Student Data provided under this MOU.
- 2.5 Procedures and systems that ensure that all Confidential Student Data processed, stored, and/or transmitted under the provisions of this MOU shall be kept in secured facilities and maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.
- 2.6 The procedures and systems developed and implemented to process, store, or transmit Student Data provided under this MOU shall ensure that any and all disclosures of Confidential Student Data comply with all provisions of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) and applicable California law relating to the privacy rights of students, such as but not limited to, the Information Practices Act and the California Public Records Act insofar as such laws are applicable to the Parties.

3. Indemnification

MWA and CAP agree to defend, indemnify, and hold each other, and each entity’s officers, employees, and agents harmless from and against any liability, loss, expense (including reasonable attorneys’ fees), or claims of injury or damages arising out of the performance of the terms of this MOU but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying entity, and/or its officers, employees or agents.

4. Entire Agreement

This document states the entire agreement between the Parties with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements.

5. Execution Authority

Each of the persons signing this MOU on behalf of a party represents that he or she has authority to sign on behalf of and to bind such party.

6. Assignment

Neither party to this MOU may assign its rights, duties, or obligations under this MOU, either in whole or in part, without the prior written consent of the other party.

7. Severability

If any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this MOU, such provision shall be fully severable. This MOU shall remain in full force and effect unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this MOU.

8. Waiver

Waiver by either party of any breach of any provision of this MOU or warranty or representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this MOU shall not operate as a waiver of such right. All rights and remedies provided for in this MOU are cumulative.

9. Amendments

This MOU may be amended or modified at any time by written agreement of the Parties.

10. Effective Date

This MOU shall become effective as of the date of its execution by the last to sign the agreement (“Effective Date”).

11. Term of this MOU/Termination

This MOU shall remain in force from the Effective Date for an indefinite period. Either party may terminate this MOU upon 30-days written notice.

12. Authority

Each of the persons signing this MOU on behalf of MWA or MWF represents that he or she has authority to sign on behalf of such party.

Alton B. Nelson, Jr.
Chief Executive Officer, Making Waves Academy

Patrick O'Donnell
Chief Executive Officer, Making Waves Foundation

Melissa Fries
Executive Director, CAP

Dr. Evangelia Ward-Jackson
Senior School Director, Making Waves Academy

Effective Date