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MEMORANDUM FROM SMCOE TO DISTRICTS REGARDING MOU

TO: San Mateo County SELPA Administrators Council

FROM: Jeneé Littrell, Deputy Superintendent Student Services Division
Sarah Notch, Administrator of Special Education and Instruction

SUBJECT: **Action Item**—Memorandum of Understanding Regarding IEP Placement of District Students in SMCOE Special Education Programs

DATE: August 26, 2019

During the 2018-19 school year, it came to the SMCOE's attention that there did not exist a current form of contractual agreement which sets forth the respective duties and obligations of the SMCOE and a District of Special Education Accountability (DSEA)¹ in those situations where the DSEA places a student in a special education classroom operated by the SMCOE. By contrast, most districts have in place agreements with other districts or non-public schools which outline each party's responsibilities with regard to out-of-district IEP placements.

Because the Individuals with Disabilities Education Act (IDEA) and related federal and California laws confirm that the DSEA retains all financial and legal responsibilities for its students which the DSEA places through an IEP in an SMCOE special education program, and also to address various misunderstandings experienced by both the SMCOE and DSEAs regarding their respective duties and responsibilities in such situations, a workgroup made up of representatives from the SMCOE², local districts, and the San Mateo County SELPA, with the assistance of attorneys from the San Mateo County Counsel's Office, met on several occasions over the last six months to collectively prepare a Memorandum of Understanding (MOU) that

¹ DSEA is a relatively new acronym used by the California Department of Education to refer to the Local Educational Agency (LEA) that is legally and financially responsible for ensuring that a student receives a Free and Appropriate Public Education, and is now being used in place of the term "District of Residence."

² The law is different for those situations where a student is placed in an SMCOE program by a noneducational agency, or where a student is attending one of the SMCOE's court schools and this MOU does not apply to those situations.

would expressly set forth the responsibilities of both the DSEA and the SMCOE both prior and subsequent to IEP placements.³

Now that this process is completed, the SMCOE is requesting that DSEAs place an item on the agenda for an upcoming school board meeting which authorizes the Superintendent or his/her designee to enter into the MOU on the DSEA's behalf.⁴ This MOU should be approved by DSEAs before the start of the 2019-20 school year, and going forward the MOU shall be in place as a precondition to the SMCOE's acceptance/placement of students into one of SMCOE's special education programs.

To be clear, this MOU imposes no additional financial obligations on those districts which place students in SMCOE special education programs. Rather, the MOU formally outlines and clarifies the roles and responsibilities of the SMCOE and the DSEA to ensure that both sides understand and comply with their legal and contractual responsibilities. The MOU also includes important new terms which exist for the protection of both the SMCOE and the DSEA, including mutual indemnification and dispute resolution. Consistent with the current practice, DSEAs will continue to be billed for the actual cost of all services provided for the student by the SMCOE.

DSEAs are advised to contact their assigned school deputy or another attorney with any questions or concerns.

Warm regards,



Jeneé Littrell
Deputy Superintendent
Student Services Division



Sarah Notch
Administrator, Special Education and Instruction
Student Services Division

³ This workgroup also discussed programmatic changes to the SMCOE's special education programs in order to best serve DSEAs and the students whom DSEAs place in the SMCOE's special education programs.

⁴ This MOU may be appropriately placed on a school board's consent agenda.