

## MEMORANDUM OF UNDERSTANDING

Between Rarenswood City SCHOOL DISTRICT and SAN MATEO COUNTY OFFICE OF EDUCATION

The purpose of this Memorandum of Understanding (MOU) is to outline responsibilities between the San Mateo County Office of Education (SMCOE) and a District of Special Education Accountability (DSEA) in situations where the DSEA seeks to place a student in a special education classroom operated by the SMCOE. It is agreed that when a student is placed in an SMCOE special education program by the Rarenswood City School District (District) through the IEP process, then, and in that capacity, the District remains the DSEA and therefore retains all financial and legal responsibilities under the Individuals with Disabilities Education Act (IDEA) and related federal and California laws.

As the student's DSEA, the District remains the proper party to initiate and/or defend any and all legal disputes, claims, complaints, due process proceedings and/or civil litigation related to a student's educational program pursuant to this MOU. Placements under this MOU shall not be deemed inter-district transfers, as the student remains a resident of the placing District. Thus, the SMCOE acts as a service provider, and not as the DSEA.

SMCOE's responsibility is therefore limited to implementing the educational program provided for in the student's IEP, to initiating timely communication, and to collaborating with the District around all aspects of the referral and IEP process as outlined in this MOU.

1. **Services to be performed by the SMCOE and the District.** In consideration of the payments hereinafter set forth, the SMCOE and the District shall comply with the terms, conditions, and specifications set forth herein, in **Exhibit A**, and attached hereto.
2. **Contract Term.** This MOU is made and entered into as of 9/12/19 (Date) between the SMCOE and the District. This MOU shall be in effect until terminated in accordance with Section 7 herein, or until revised by mutual and written consent of all parties.
3. **Payments.** In consideration of the services rendered in accordance with all terms, conditions, and specifications set forth herein and any Exhibit(s) or attachment(s) attached hereto, the District shall make payment as specified in the manner specified herein and in Exhibit A. In the event that the District makes any advance payments, the SMCOE agrees to refund any amounts in excess of the amount owed by the District at the time of contract termination.
4. **Hold Harmless.** : Each party will defend, indemnify and hold the other party, its officers, employees and agents harmless from and against any and all claims, damages and liability arising out of the performance of this Agreement but only in proportion to and to the extent such claims, damages or liability are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees.
5. **Confidentiality.** All data produced or compiled by either the SMCOE or the District in performance of this Agreement shall be considered confidential unless it can be obtained as a public record and shall not be shared with a third party without the prior written consent of the other entity. Both the SMCOE and the District shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as each entity requires of its own personnel.

Pursuant to Education Code section 49076(a)(2)(G) and 34 CFR sections 99.31(a)(1) and 99.7(a)(3)(iii), a local educational agency may share information from student records with a contractor or consultant with a legitimate educational interest who has a formal written agreement regarding the provision of outsourced

institutional services or functions by the contractor or consultant. Consistent with this authorization, the SMCOE and the District agree that the disclosure of information from student records under this MOU will comply with the requirements of Education Code sections 49073 et seq., the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99, as amended), and any other applicable state and federal laws and regulations regarding educational records, data privacy and confidentiality, and further agree to adhere to the requirements of such laws and regulations in carrying out their responsibilities under this MOU.

The requirements of this section shall survive the termination of this MOU.

6. **Non-Assignability.** Neither the SMCOE nor the District shall assign this MOU or any portion thereof to a third party without the prior written consent of the other entity, and any attempted assignment without such prior written consent in violation of this section shall: (1) be voidable at the election of the non-consenting party; and (2) automatically give the non-consenting party the option to terminate this MOU without prior notice.
7. **Termination of MOU.** Both the SMCOE's and the District's superintendents may, at any time after execution of the MOU, terminate this MOU, in whole or in part, for the convenience of the SMCOE or the District by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty (30) days from said notice. In the event of termination, the SMCOE shall be paid for all work satisfactorily performed through the date of termination except where the placing District determines the quality or quantity of the work performed is unacceptable. The placing District may immediately terminate this MOU based upon unavailability of Federal, State, or local funds by providing written notice to the SMCOE as soon as is reasonably possible after the placing District learns of said unavailability of funding.
8. **Retention of Records.** Both the SMCOE and the District shall maintain all records related to this MOU for no fewer than three years after the District makes final payment or after the termination of this MOU and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the SMCOE, the District, the State of California, other regulatory agencies, and/or Federal grantor agencies.
9. **Merger Clause.** This MOU, including all exhibits/attachments attached hereto, which are incorporated herein by this reference, constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by both the SMCOE's and the District's superintendents. In the event that any term, condition, provision, requirement or specification set forth in the body of this MOU conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this MOU, the provisions of the body of this MOU shall prevail. This MOU constitutes the entire agreement between the SMCOE and the District as related to the matters herein.
10. **Governing Law.** This MOU, including any exhibits, and any disputes arising out of this MOU shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this MOU shall be venued in the County of San Mateo or in the United States District Court for the Northern District of California.
11. **Dispute Resolution.** In the event that concerns arise related to this MOU, the parties are encouraged to attempt to informally resolve such concerns at the lowest level of authority possible. MOU concerns should first be discussed between the SMCOE administrator for special education and the District special education administrator. If a resolution is not achieved, SMCOE's Superintendent/Designee will communicate with the District's Superintendent/Designee to continue working towards a student-focused resolution. In the event that

resolution still cannot be reached, the SELPA Governing Board will hear and decide any unresolved disputes relative to the MOU at the next scheduled SELPA Governing Board Meeting.

**MEMORANDUM OF APPROVAL**

This MOU entered into this 12<sup>th</sup> day of September by and between the undersigned parties.

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[SIGNED] \_\_\_\_\_, Superintendent  
\_\_\_\_\_  
School District (DSEA)

\_\_\_\_\_  
[SIGNED] Nancy Magee, San Mateo County Superintendent of  
Schools  
SMCOE

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## **EXHIBIT A**

### **SPECIAL EDUCATION RESPONSIBILITIES**

#### **PLACING DISTRICT:**

##### **Prior to Initial Placement:**

1. **Referral.** As the District of Residence (DOR) and the District of Special Education Accountability (DSEA), the placing District will provide SMCOE with a completed referral packet including the current IEP, assessments and triennial completed within 2 years (in case of a Preschool referral, the timeline will be within 6 months) of the referral date.
2. **Placement IEP.** If District student referral is accepted by SMCOE, the placing District shall develop the IEP in collaboration with SMCOE staff as needed.
3. **Placement IEP Meeting.** Placing District shall schedule an IEP meeting to offer SMCOE program.
4. **SMCOE Consent for Placement.** The placing District shall not make an IEP offer for SMCOE program placement without first obtaining the written consent of the SMCOE.
5. **Scheduling Placement IEP Meeting.** The placing district will coordinate observations and IEP meetings with SMCOE.
6. **LIF Equipment.** The placing district will arrange for and provide all necessary low incidence materials and equipment consistent with the student's IEP upon placement. SMCOE staff will collaborate with the district of placement in the identification of necessary low incidence materials and equipment and potential sources to acquire low incidence materials and equipment in a timely manner.

##### **Subsequent to Placement:**

1. **DSEA Administrative Designee.** The placing District will assign a representative/administrative designee with authority to make educational decisions legally required of the DSEA (e.g. offering a free appropriate public education – FAPE) to participate in IEP meetings. While attendance at IEP meeting by the DSEA representative is preferable, SMCOE will accommodate participation by phone or other electronic means. Notification to SMCOE of the District's need for alternative participation means should occur at least one business day prior to any scheduled meeting.
2. **SEIS Record.** The placing District will own the SEIS record and provide edit access to SMCOE identified administrators and service providers.
3. **IEP Note-taker.** Unless otherwise agreed upon by both parties, the placing District representative who attends the IEP will serve as note-taker and an SMCOE representative will serve as a facilitator in IEP meetings.
4. **Offer of FAPE.** The placing District representative/administrative designee attending the IEP will make the offer of FAPE at an appropriate time in IEP meeting.
5. **Finalize / Distribute IEP.** Following the IEP meeting, the placing District representative will update and finalize the IEP document, including making any necessary edits. The placing District representative will then affirm and attest the IEP within seven (7) days of the IEP meeting. The placing District is responsible for distributing and circulating the IEP with the original signature page/s to the relevant/necessary parties, including the student and his/her representatives.
6. **Prior Written Notice.** SMCOE will alert placing district within one business day of situations which may require Prior Written Notice (PWN), including parent requests for assessments for additional

services. The PWN will be written in collaboration between the placing District and the SMCOE. The placing District shall be responsible for sending/transmitting the PWN to the student and his/her agents.

7. **Transition Planning.** The placing district will participate in transition planning in situations where a change of educational placement is being considered by the IEP team.
8. **Home / Hospital Instruction.** Any student determined to require Home/Hospital Instruction through the IEP process will be withdrawn by the placing District from the SMCOE special education program, in which case Home/Hospital services will be delivered by the placing District.
9. **Fiscal Responsibility.** In accordance with the fiscal agreements in this MOU, the placing District shall reimburse the SMCOE for the actual cost of all services provided for the student by the SMCOE.
10. **Legal Disputes: Financial Responsibility.** It shall be the financial and legal responsibility of the placing District to handle any and all legal disputes and claims, including but not limited to, responding to IEE requests, negotiating settlement agreements, mediations, due process hearings, compliance complaints and any and all other legal actions related to a student's educational program pursuant to this MOU.
11. **Legal Disputes: Party of Interest.** If the SMCOE is named as a party to a legal dispute, the placing District will intervene as the real party in interest and will endeavor to have the SMCOE dismissed as a party with prejudice.
12. **Hold Harmless.** The placing District shall protect, defend, indemnify, forever hold harmless and assume the costs of defense including attorney's fees of the SMCOE, its Board, officers, members, representatives, agents, guests, invitees, and/or employees, from and against any and all liabilities, claims, losses, judgments, damages, demands or expenses resulting from educating the student, assessing the student and/or implementing the IEP by the SMCOE, excepting those liabilities, claims, losses, judgments, damages, demands or expenses arising out of or caused by the sole negligent, reckless, unlawful or intentional acts of the SMCOE, its Board, officers, members, representatives, agents, guests, invitees, and/or employees. This duty to indemnify and hold harmless expressly does not apply to situations where the SMCOE has breached its obligations under this MOU, including by failing to properly implement the student's IEP.

## **SMCOE:**

### **Prior to Initial Placement:**

1. **Program Availability.** SMCOE will consult with placing District about the availability and appropriateness of SMCOE program, including related services.
2. **LIF Equipment.** Within 10 business days of receipt of the referral, SMCOE will alert placing district of any Low Incidence, materials or equipment which may be necessary to support student placement in SMCOE program, and share potential sources where material and equipment may be acquired.

### **Subsequent to Placement:**

1. **Schedule Annual IEP.** SMCOE Representative will contact placing District and other IEP team members at least 60 calendar days prior to the due date of annual/triennial IEPs to schedule an IEP meeting and confirm which entity will conduct any related evaluations/assessments.
2. **Parent Request for IEP.** Within 1 business day of receipt of a request by a parent for an IEP meeting, SMCOE will notify the placing district and facilitate scheduling of the meeting.
3. **Notice of Meeting.** Except in situations where a meeting this timeline is not possible (such as emergency IEP meetings), SMCOE will send Notice of Meeting with excusal form at least ten (10) calendar days prior to IEP meeting.
4. **IEP Attendance.** SMCOE will attend all IEP meetings in cooperation with placing District personnel.
5. **IEP Note-taker.** Unless otherwise agreed upon by both parties, the placing District representative who attends the IEP will serve as IEP note-taker and an SMCOE representative will serve as IEP facilitator.
6. **Draft IEP.** SMCOE case manager will share draft present levels of performance, updated goals with placing District representative/designee within 5 days of IEP meeting.
7. **Interpretation/Translation Services.** SMCOE will attempt to provide IEP-related interpretation and/or translation services utilizing its bilingual family counselors or other staff members. When SMCOE staff are unable to provide this service, the placing district will be notified accordingly and the SMCOE shall arrange for a private agency to provide the service, to be billed at cost to the placing District, unless the placing District elects to itself provide the interpretation and/or translation service.
8. **Delivery of FAPE.** SMCOE will provide all services identified as its responsibility in IEP. In the event SMCOE is unable to implement any portion of the IEP and believes the student cannot receive FAPE in its program, SMCOE shall provide written notice thereof to the placing District. As necessary, the placing District shall then coordinate and conduct an IEP meeting at which the SMCOE will or will not participate as determined by the placing District in its discretion.
9. **Request for Assessment.** If an educational rights holder requests that a student placed in an SMCOE special education program be assessed for additional IEP eligibility and/or services, or makes any request requiring action by the placing District, the SMCOE shall within one business day provide notice thereof to the placing District so that the placing District may evaluate the request/recommendation and respond within the appropriate window. If a PWN is required, the PWN will be written by the placing District in collaboration with the SMCOE. The placing District shall be responsible for sending/transmitting the PWN to the student and his/her agents.
10. **Triennial and other Assessments.** SMCOE staff will conduct triennial evaluations and/or assessments to determine student eligibility for additional related services identified in item number 1. Under special circumstances, placing District may request to utilize its own Related Service provider by making a request in writing to the SMCOE Administrator for Special Education. The agency which conducts the assessment—the DSEA or SMCOE—is responsible for developing the Assessment Plan, soliciting parent consent, completing the assessment in timelines outlined in state and federal law, and scheduling an IEP meeting to share assessment results.
11. **Related Services.** Unless otherwise agreed by the parties, SMCOE will be responsible for the provision of any of the following Related Services for which the student is determined eligible through the IEP process: Speech and Language Pathologist, Assistive Technology/Augmentative Alternative Communication, Adaptive PE, Visual Impairment, Orientation & Mobility, Deaf and Hard for Hearing, Educational Audiology, Licensed Vocational Nurse, Intensive Individual Instruction, Occupational Therapy, Physical Therapy, and Transportation. Under special circumstances, placing District may request to utilize its own Related Service provider by making a request in

writing to the SMCOE Administrator for Special Education. In the event SMCOE is unable to provide a related service as identified in the IEP, SMCOE shall provide written notice thereof to the placing District. (See item number 8 above, regarding Delivery of FAPE.)

12. **Service Logs.** The delivery of SMCOE Related Services will be logged in SEIS service tracker by end of each month and available for review by the placing District.
13. **Educationally Related Mental Health Services.** When an assessment for Educationally Related Mental Health Services (ERMHS) is determined to be appropriate by the Placing District, SMCOE will develop an assessment plan, solicit parent consent for assessment and for release for confidential student records, and will contact Behavioral Health and Rehabilitation Services (BHRS) to initiate an assessment. SMCOE will schedule an IEP meeting for BHRS to share results of the ERMHS. If ERMHS services are determined appropriate through the IEP process, BHRS shall deliver these services and will bill the placing District for services. NOTE: Placing District may request to utilize its own ERMHS provider to conduct assessment and/or deliver ERMHS services by making a request in writing to the SMCOE Administrator for Special Education.
14. **Attendance Logs.** SMCOE will provide the placing District with monthly attendance log of all placing District students enrolled in SMCOE Special Education Programs.
15. **Student Suspension.** SMCOE will notify placing District if and when a student has received 5 days suspension in a school year, cumulative, and for each subsequent day of suspension thereafter.
16. **Manifestation Determination.** A Manifestation Determination IEP will be held in accordance with IDEA through the cooperation of the placing District and the SMCOE when necessary.
17. **Benchmark Reporting.** Fall, Winter, and Spring Benchmark report on IEP goal progress will be provided to the placing District within 14 days of completion by SMCOE staff members.
18. **Transportation.** SMCOE will make every effort to secure transportation for the placed student. However, in cases where SMCOE is not able to accommodate the transportation for the student placed in the SMCOE program, it is the responsibility of the placing district to provide transportation. The district is also responsible for any interim transportation necessary between placement and transportation being able to begin for the placed student.
19. **Cost / Billing.** The placing District is responsible for all costs associated with student placement. SMCOE will initiate billing based on annual estimates posted on the SMCOE secure site. SMCOE will bill quarterly and will process via journal transfer or invoice. Estimates are based on student counts and are subject to change.
20. **Legal Disputes.** If a legal dispute arises regarding a student's educational program and/or the SMCOE's assessment(s), the SMCOE will fully cooperate with the placing District, including but not limited to making its employees and documents available for testimony and documentary evidence.
21. **Hold Harmless.** SMCOE shall indemnify and hold the placing District harmless from any adjudicated liability related to the SMCOE's negligent, reckless, unlawful or intentional acts arising out of its obligations under this MOU. In the event that an administrative body or court of law determines that the claim of a student arises out of the negligent, reckless, unlawful or intentional acts of SMCOE, SMCOE will be obligated to provide a contribution to the placing District in accordance with its proportionate share of liability. The amount of the contribution shall be determined by an informal resolution between the superintendents, or designees, going before the County Board of Education or arbitration and identifying who will incur the cost of this process.



SAN MATEO  
COUNTY  
OFFICE OF  
EDUCATION

**Excellence and Equity in Education**

Nancy Magee • County Superintendent of Schools

**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)<sup>1</sup> 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 SMCOE<sup>2</sup>, 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

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<sup>1</sup> 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."

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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

<sup>3</sup> 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.

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