

MEMORANDUM OF UNDERSTANDING

CONTRA COSTA COUNTY OFFICE OF EDUCATION AND

Mt. Diablo Unified SCHOOL DISTRICT

DATE OF FULL EXECUTION: February 22, 2016

This Memorandum of Understanding ("MOU") is entered into by the Contra Costa County Office of Education ("CCCOE") and the Mt. Diablo Unified School District ("District") and shall be in effect as of July 1, 2015 through June 30, 2016 or until revised by mutual and written consent of all parties;

WHEREAS, in December of 2013, the California Supreme Court held in *Los Angeles Unified School District v. Garcia* (12/12/13, No. S199639) that California Education Code section 56041 governs which educational agency is responsible for providing special education and related services to qualifying individuals between the ages of 18 and 22 years incarcerated in a county jail (also referred to herein as "inmate" and "student"). Thus, the school district where the inmate's parents reside is responsible for providing the inmate with a free appropriate public education ("FAPE") while the student is incarcerated;

WHEREAS, the school district where the inmate's parents live, or if deceased, district of residence where parents resided when the student turned 18 years old, may have a difficult time providing staff to implement a FAPE for the inmate while the student is incarcerated;

WHEREAS, difficulties arising from designating the district in which the county jail inmate's parents reside as the entity responsible for providing FAPE in a county jail may be overcome by the district's ability to contract with another agency to deliver the necessary services; and,

WHEREAS, the CCCOE has a long-standing relationship with the Contra Costa County Sheriff's Department and Contra Costa County Jail staff resulting from its provision of general education adult school services to inmates,

The CCCOE and District agree as follows:

PURPOSE

The purpose of the MOU is to assist the District in providing special education and related services to qualifying individuals between the ages of 18 and 22 years of age who are incarcerated in a Contra Costa County Jail. It is agreed that, pursuant to the terms of this MOU, CCCOE is only a service provider and is not the responsible local educational agency ("LEA") nor is it a "public agency involved in decisions regarding the pupil" pursuant to California Education Code sections 56028.5, 56500, 56501 (a), Title 34 of the Code of Federal Regulations section 300.33, and related federal and California law. Receipt of special education and/or related services under the terms of this MOU does not constitute any kind of transfer for the student between educational agencies, including, but not limited to, an inter-district transfer. Under the terms of this MOU, the student remains a resident of District and District remains the public agency responsible for making decision regarding the student.

It is agreed that the District retains all financial and legal responsibilities for the student under the Individuals with Disabilities Education Act Improvement Act of 2004 ("IDEA") and related federal and California laws. As the student's district of residence and responsible LEA and public agency, the District remains the proper party to defend any and all legal disputes, claims, complaints, due process proceedings and/or civil litigation related to a student's special educational program.

SPECIAL EDUCATION RESPONSIBILITIES

DISTRICT:

1. Comply with any and all requirements of the IDEA and related federal and California laws for student, including, but not limited to those related to assessment, individualized education program ("IEP") team meetings, and development of the student's IEP.
2. Determine what, if any, special education and related services the District can contract with CCCOE to provide to student while incarcerated; District remains responsible for any and all implementation and

- oversight of implementation of the student's IEP, including if CCCOE is unable or becomes unable to provide any and/or all special education and related services contained in the student's IEP.
3. Provide any and all necessary supplemental supports (e.g. assistive technology devices, low incidence equipment, etc.) needed pursuant to the student's IEP to implement the agreed upon CCCOE-provided special education and/or related services.
 4. Shall not list CCCOE as a service provider on the student's IEP because it is only a service provider under contract with the District; District remains the responsible agency and should be listed as such on the IEP. Moreover, the student shall not have a right to stay put to CCCOE as the provider of any special education and related services for which CCCOE is contracted to provide.
 5. Sign MOU and submit to CCCOE to begin services for student.
 6. In accordance with the fiscal agreements in this MOU, reimburse CCCOE for all special education and related services CCCOE provides to student.
 7. Bear the financial and legal responsibility of handling any and all legal disputes and claims, including but not limited to, negotiating settlement agreements, mediations, due process hearings, compliance complaints and any and all other legal actions related to a student's special education program.
 8. If CCCOE is named as a party to a legal dispute, will cooperate in, and agree with, dismissing, with prejudice, CCCOE as a party.
 9. Protect, defend, indemnify, forever hold harmless and assume the costs of defense including attorney's fees of CCCOE, 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 providing any and all special education and related services to student, 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 CCCOE, its Board, officers, members, representatives, agents, guests, invitees, and/or employees.

CCCOE:

1. Confirm or decline availability of special education and/or related services requested by District for student.
2. Provide all special education and related services agreed upon for the student pursuant to this MOU. Special education and related services agreed upon will be provided by CCCOE in accordance with the student's IEP. In the event CCCOE is unable to implement any or all portions of the student's IEP agreed upon pursuant to this MOU, it believes that the student cannot be provided a FAPE from its service providers, and/or that the District should consider a change in its offer of FAPE, CCCOE shall immediately notify the District in writing. However, it remains the responsibility of the District to take any and all necessary action to ensure the student's IEP is properly implemented and he/she receives a FAPE.
2. Provide progress reports to the District at the rate agreed upon in the student's IEP; the District remains responsible for communication with the adult student and/or parent/guardian regarding these progress reports and for monitoring the student's progress.
3. Assist with and facilitate communication between the District and the Sheriff's Department to the extent that such communication is necessary for the implementation of the student's IEP or for the District's compliance with the IDEA and related federal and California law.
4. Attend all IEP meetings in cooperation with the District personnel. However, the District, not CCCOE, is responsible for facilitating the IEP team meetings and making educational decisions as required by law.
5. Help complete all necessary IEP documents in cooperation with the District. However, the District, not CCCOE, is responsible for all IEP documents and paperwork as required by law.
6. If a legal dispute arises regarding a student's educational program, the CCCOE will fully cooperate with the District, including but not limited to making its employees and documents available.
7. Indemnify and hold the District harmless from any adjudicated liability related to the CCCOE's the sole negligent, reckless, unlawful or intentional acts of CCCOE, its Board, officers, members, representatives, agents, guests, invitees, and/or employees 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 the sole negligent, reckless, unlawful or intentional acts of CCCOE, its Board, officers, members, representatives, agents, guests, invitees, and/or employees, CCCOE will provide contribution to the District in accordance with its proportionate share of liability. The amount of the contribution shall be determined by informal resolution between the superintendents, or designees, or arbitration with any costs related to arbitration split equally between the parties.

FISCAL RESPONSIBILITIES

When the District determines that it will contract with CCCOE to provide special education and related services to qualifying individuals between the ages of 18 and 22 years incarcerated in a Contra Costa County Jail in accordance with this MOU, the following shall occur:

1. The CCCOE and District shall verify and approve with special education services that CCCOE will provide to the student pursuant to the student's IEP.
2. CCCOE must submit an invoice for payment to the District, as appropriate based on the provided special education and/or related services beginning with the initial date of services. The District will claim the student on its CASEMIS report.
3. The District will pay the invoice within sixty (60) days of receipt.
4. Cost of student and administrative service shall be fully reimbursed to the CCCOE. Reimbursement shall be based on the number of students served and the district's share of those services.

TERM OF MOU

This MOU supersedes any prior or contemporaneous written or oral understanding or agreement with respect to the terms set forth in this MOU. This MOU may be amended only in writing executed by both parties.

The term of this MOU shall be from July 1, 2015 through June 30, 2016

The parties acknowledge that any subsequent MOU is to be renegotiated prior to June 30, 2016. If the subsequent MOU has not been executed prior to June 30, 2016, this MOU shall remain in force and effect until terminated as provided herein or a new MOU is executed.

APPROVAL

Date
Bill Clark
Associate Superintendent
Contra Costa County Office of Education

Date
Name: Wendi S. Aghily
Title: Director/Special Education, SELPA
School District: Mt. Diablo Unified School District