

MEMORANDUM OF UNDERSTANDING Between
SANTA CLARA COUNTY OFFICE OF EDUCATION AND
SCHOOL DISTRICTS of SANTA CLARA COUNTY

Regarding

SPECIAL EDUCATION REGIONAL PROGRAMS AND RELATED SERVICES

This Memorandum of Understanding ("MOU") is made and entered into between the Santa Clara County Office of Education ("SCCOE") and the undersigned School Districts of Santa Clara County.

It is the intent of each of the undersigned School Districts of Santa Clara County to provide a free and appropriate public education ("FAPE") for all eligible children with disabilities who are residents of their respective districts. To assist in providing such educational programs and services, the undersigned School Districts of Santa Clara County desire to have access to SCCOE regional programs and services through a district of residence ("DOR")-initiated placement in appropriate cases. SCCOE desires to assist the DOR in providing such an educational program to DOR students in appropriate cases, but does not have sufficient resources to do so without fiscal reimbursement from the DOR.

When a student is placed in a special education program outside the student's DOR through the Individualized Education Program ("IEP") process, the DOR retains financial responsibility for the student's special education and related services. The procedures outlined below emphasize the importance of cooperation and collaboration and places an expectation upon the SCCOE to execute its responsibilities and implement the student's offer of FAPE as if it were the DOR. However, in all cases where a child is placed in a SCCOE regional program, ultimate responsibility for placement, program, and due process issues remain with the DOR.

I. DEFINITIONS

1. **DOR** - District of residence;
2. **SCCOE** - Santa Clara County Office of Education;
3. **LEA** - local educational agency;
4. **SELPA** - special education local plan area;
5. **School Districts** - all undersigned school districts in Santa Clara County, which are:
Alum Rock Union School District, Berryessa Union School District, Cambrian School District, Campbell Elementary School District, Campbell Union High School District, Cupertino Union School District, East Side Union High School District, Evergreen School District, Franklin-McKinley School District, Fremont Union High School District, Gilroy Unified School District, Lakeside Joint School District, Loma Prieta School District, Los Altos Elementary School District, Los Gatos Union School District, Los Gatos-Saratoga Joint Union High School District, Luther Burbank School District, Milpitas Unified School District, Morgan Hill Unified School District, Moreland School District, Mt. Pleasant Elementary School District, Mountain View-

Los Altos School District, Mountain View-Whisman School District, Oak Grove School District, Orchard School District, Palo Alto Unified School District, Santa Clara Unified School District, San Mateo Union High School District, Saratoga Union School District, San Jose Unified School District, Sunnyvale Elementary School District, and Union School District.

6. **Base programs** - regional programs provided by SCCOE consisting of placement and certain included related services, paid for by DOR at an agreed upon and approved base rate designated in the SELPA's Budget Allocation Plan;

7. **Itinerant services** - services provided by SCCOE in addition to and/or independent of base programs. Itinerant services are paid for by DOR at agreed upon and approved rates designated in the SELPA's Budget Allocation Plan;

II. RECITALS

1. SCCOE and School Districts are Local Educational Agencies and receive state and federal special education funding for purposes of provision of special education program, placement, and services under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1400 *et seq.*
2. SCCOE operates and provides regional programs (placement and services) for students with disabilities. The SCCOE regional programs exist as an extension of the continuum of available placements for School Districts. A district of residence interested in placement of a student in an SCCOE regional program must complete a referral for its desired SCCOE base program. Upon acceptance of said referral by SCCOE, SCCOE commits to implement the FAPE offered to the student by the DOR.
3. SCCOE also provides non-placement-based services, that is itinerant services by various specialists, assessments by various specialists, and assistive technology, including but not limited to augmentative alternative communication devices and services, (collectively, itinerant services). DORs may refer students in need of SCCOE itinerant services. Upon acceptance of said referral by SCCOE, SCCOE commits to implement the itinerant services offered by the DOR through SCCOE.
4. In either case, whether in the provision of placement/services or in the provision of itinerant services, the DOR and SCCOE are both members of the student's IEP team and shall collaborate to meet the student's unique educational needs.
5. The purpose of this MOU is to articulate how the DOR and SCCOE will share responsibility for the education of students accessing SCCOE regional programs in an equitable and orderly fashion.

III. GENERAL RESPONSIBILITIES

1. *Costs.*
 - a. Unless otherwise agreed upon in writing, the cost of a student's placement in a SCCOE base program or receipt of itinerant services from SCCOE shall be set by the DOR SELPA's Budget Allocation Plan.
 - b. Unless otherwise agreed in writing, transportation, including bus aides, related services, and equipment deemed necessary during transportation by the student's IEP team, is the exclusive responsibility of the DOR.
 - c. Unless otherwise agreed in writing, should a student request an independent educational evaluation (IEE), the LEA that conducted the assessment(s) shall be

responsible for processing the IEE request, including funding. If the LEA that conducts the assessment determines that the assessment should be defended, both LEAs will participate in the due process request.

2. *Communication.*

- a. SCCOE and DOR shall mutually cooperate with the sharing of student records and information.
- b. The SCCOE shall provide the student and DOR with all required progress reports at the same time and at the same frequency as those reports are provided to parents.
- c. The SCCOE shall provide as much notice as possible to the DOR if it is believed that SCCOE no longer can offer an appropriate program and/or placement. In such a case, the administrator responsible for special education from the DOR will be contacted by SCCOE to develop a plan of action. If an IEP meeting is required, the SCCOE and DOR will coordinate an IEP team meeting to discuss and determine appropriate special education and related services.

3. *Stay Put.* SCCOE and DOR shall abide by stay put obligations pursuant to 20 U.S.C. Section 1415(j) and similar state laws, including any stay put order issued by the Office of Administrative Hearings or other competent court. The DOR shall continue to bear financial responsibility for the student in a stay put SCCOE placement for so long as the student is a resident of DOR. If the student's residency changes during the pendency of a stay put dispute, SCCOE shall assign financial responsibility to the student's new district of residence. School Districts of the SELPA shall accept financial responsibility of stay put SCCOE placements for any new resident of their district during the pendency of the stay put dispute.

IV. RESPONSIBILITIES FOR STUDENTS IN BASE PROGRAMS

1. The SCCOE base programs include the program components described in the Budget Allocation Plan. Unless otherwise agreed in writing, SCCOE shall implement all components of a student's IEP that are included in the base program.
2. If the IEP team determines that the student requires a related service, accommodation, or effective communication that is not included in the base program, SCCOE and DOR shall designate the local educational agency responsible for implementing the additional component(s) of the IEP within the services grid and notes section of the IEP document. The DOR remains the authorizing school agency and will be responsible for any additional costs incurred by SCCOE for IEP components that exceed the base program.
3. Unless otherwise agreed in writing, for a student participating in SCCOE base program, SCCOE shall conduct all required/agreed upon assessments of the student.
4. Where the student participates in an SCCOE base program, SCCOE shall provide case management for the student.
5. The case manager shall be responsible for inviting all appropriate personnel to the IEP meetings. Where case management is provided by SCCOE, the case manager shall invite the DOR representative to each IEP. If not excused by the student's family, SCCOE shall invite a general education teacher from the campus where student's base program is located to attend. If SCCOE cannot obtain the attendance of a general education teacher, the SCCOE case manager will notify DOR promptly, and DOR will produce a general

education teacher. If interpreter services are required by the student's family, the case manager shall be responsible for obtaining interpreter services.

6. A representative from SCCOE and DOR, each of whom has the authority to make decisions and commit resources on behalf of their respective LEA, shall be invited to and shall attend all IEP meetings for students in base programs, unless properly excused.
7. The SCCOE is responsible for discipline of all students enrolled in a base program, in collaboration, if applicable, with the school administration of the integrated site where the student's base program is housed.
 - a. Student(s) may be suspended or expelled from SCCOE and/or the District where the student's base program is housed for infractions of established discipline procedures and in accordance with law.
 - b. The DOR shall be responsible for the costs of any suspension/suspension pending expulsion placement or interim alternative educational setting.
 - c. If a student is expelled from the district where a student's base program is housed, SCCOE shall offer the student an equivalent base program at an alternative SCCOE-operated site, if such a program exists.
 - d. If student is expelled from the SCCOE, the DOR is responsible for the student's expulsion placement. The DOR shall be responsible for the prorated daily cost equal to the number of days the student was enrolled in SCCOE.

V. RESPONSIBILITIES FOR STUDENTS RECEIVING ITINERANT SERVICES

1. Where the student receives itinerant services from SCCOE, DOR shall provide case management for the student.
2. Unless otherwise agreed in writing, for a student receiving itinerant services from SCCOE, SCCOE shall conduct all required/agreed upon assessments of the student by the itinerant service providers already serving student or available from SCCOE to School Districts. All other assessments in areas where services are provided or available through DOR, DOR shall assume the assessment responsibilities referenced herein, unless otherwise agreed in writing.

VI. DISPUTES BETWEEN SCCOE AND DOR

1. If a dispute should arise between the DOR and SCCOE concerning the proposed placement, services to be provided, costs and/or program exit, the LEAs agree to attempt to resolve the problem(s) through, first, a direct meeting of the special education directors and then, if not resolved, a meeting between the superintendent/designee.

VII. HEARINGS, APPEALS, CDE COMPLAINTS, UNIFORM COMPLAINTS, OFFICE FOR CIVIL RIGHTS COMPLAINTS

1. *Alternative Dispute Resolution:*
 - a. SCCOE and School Districts agree that early resolution of disputes with families is preferable to litigation whenever possible.
 - b. When SCCOE or DOR becomes aware of parental requests that may require prior written notice (34 C.F.R. § 300.503), it shall immediately notify the responsible

administrator of the other LEA (principal, program specialist, or special education director, as applicable). Based on the content of parents' request, the LEAs shall work together to determine which LEA is in the better position to respond. Both LEAs shall be copied on any letters of prior written notice to parents of students in SCCOE base programs.

- c. When SCCOE or DOR becomes aware of a disagreement with a family that will not be resolved by prior written notice, or that the LEA reasonably anticipates may escalate to a formal complaint, it shall immediately notify the Special Education Administrator of the other LEA. Both SCCOE and the DOR shall collaborate to offer parents an alternative dispute resolution meeting, which both LEAs shall attend in an attempt to resolve the dispute without a formal complaint. The LEAs agree to each bear their own attorneys' fees for ADR, if any.

2. *Due Process Hearing Requests:*

- a. When SCCOE or DOR becomes aware of any impending complaint or request for due process hearing, it shall immediately notify the Special Education Administrator of the other LEA.
- b. Both SCCOE and DOR shall be parties to due process hearings. If the student is the Petitioner and fails to name both LEAs, the unnamed LEA shall take such action as is necessary to join in the due process hearing.
- c. Irrespective of the manner in which student/parent frames his/her claim, the SCCOE and DOR shall cooperate with regard to the defense of said claim(s). This cooperation shall include, but is not limited to, participation by both named LEAs in mediation, and each LEA making its records available and its employees reasonably available for testimony in cases involving the other party. Undersigned School Districts shall also cooperate in the defense of due process hearings by making their employees reasonably available for testimony or witness preparation meetings.
- d. Within the settlement or mediation context, the SCCOE and DOR shall act in good faith to allocate responsibility between the LEAs based on the particular allegations of the complaint. For example: (1) a claim for failure to implement an IEP is primarily the responsibility of SCCOE, whereas (2) a claim that an IEP requires additional services or a change of placement to provide a FAPE is primarily the responsibility of the DOR. Reasonable student attorneys' fees agreed upon via settlement shall be split equally between the named LEAs, unless otherwise agreed.
- e. If legal representation is required, each LEA shall be represented by separate legal counsel and each shall fund its own attorney's fees and costs, unless otherwise agreed. With informed consent, the LEAs may elect to utilize joint representation.
- f. If a due process hearing request is not settled, and a hearing decision is issued by the Office of Administrative Hearings, the LEAs shall implement any corrective actions included the OAH Decision in accordance with how responsibility is apportioned by the hearing officer. Any attorneys' fees and costs due to the prevailing student/parent shall be paid by the LEA responsible for the claims under which the student prevailed. In cases of mixed responsibility for claims under which the student prevailed, the LEAs shall act in good faith to allocate/apportion the fees due equitably between the LEAs.

3. CDE Compliance Complaints:

- a. When one LEA becomes aware of the filing of a CDE complaint, it shall immediately notify the Special Education Administrator of the other LEA.
 - b. The responsibility for responding to requests for information issued by CDE in connection with a compliance complaint shall be primarily assumed by the LEA whose actions form the basis of the complaint.
4. Uniform Complaints will be addressed to the LEA to which the complaint applies. When one LEA becomes aware of the filing of a Uniform complaint, it shall immediately notify the Special Education Administrator in the other LEA.
5. Responsibility for complaints filed with the United States Department of Education Office for Civil Rights, or litigation filed in federal or state court will be primarily assumed by the party whose actions form the basis of the particular complaint. The parties shall collaborate depending upon the nature of each case. When one LEA becomes aware of the filing of an OCR or court complaint, it shall immediately notify the Special Education Administrator of the other LEA.

VIII. NEGLIGENCE, WILLFUL ACTS OR OMISSIONS INDEMNIFICATION

1. SCCOE shall indemnify and hold DOR and its Board members, administrators, employees, agents, attorneys, volunteers and subcontractors harmless against all liability, loss, damage and expense (including reasonable attorney fees) resulting from or arising out of this agreement or its performance, to the extent that such loss, expense, damage of liability was proximately caused by the negligent or willful act or omission of SCCOE, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it.
2. DOR shall indemnify and hold SCCOE and its Board members, administrators, employees, agents attorneys, volunteers and subcontractors harmless against all liability, loss, damage and expense (including reasonable attorney fees) resulting from or arising out of this agreement or its performance, to the extent that such loss, expense, damage of liability was proximately caused by the negligent or willful act or omission of DOR, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it.
3. In case of comparative fault, where SCCOE and DOR are each adjudged partially negligent; the party's indemnification obligations shall be co-extensive with the percentage apportionment or fault.

IX. TERM

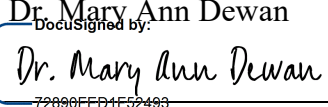

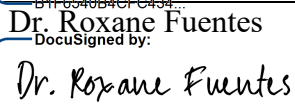
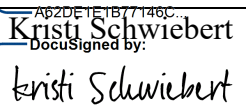
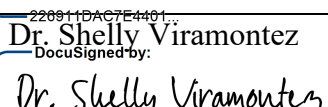
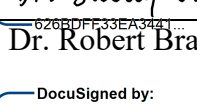
1. This Agreement supersedes all other agreements and shall remain in effect until replaced by another agreement.
2. This Agreement shall be in effect until revised by mutual consent of all Parties. Agreements terminate at the end of each extended school year. However, agreements will be considered renewed for the subsequent school year unless either party gives notice of termination at least 30 days prior to the end of the regular school year.
3. This Agreement may be terminated for good cause at any time by either party, or by mutual agreement, or by provision of written notification through the U.S. Mail at least thirty (30) days prior to the date of the end of the school year as stated in Section (B),

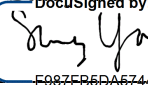




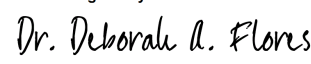
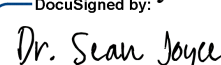
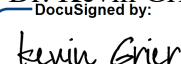
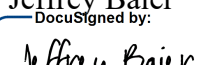

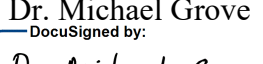


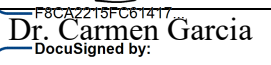

above. Termination is subject to stay put rights of the student, pursuant to 20 USC Section 1415(j), as discussed above.

4. This Agreement shall be effective on the date of signature by all Parties.

X. MISCELLANEOUS

1. Each Party agrees to cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
2. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party. Any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.
3. Any change, modification, or addition to this Agreement must be in writing and signed by all Parties.
4. This Agreement constitutes the entire agreement and understanding between the Parties. There are no oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms, or conditions are deemed merged into this Agreement and its attachments. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all Parties.
5. This Agreement may be signed in counterparts and a facsimile signature acts as an original.

| Local Educational Agency | Superintendent | Date |
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