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Special Education Memorandum of Understanding SV-12-1383-13

SECTION 6: Special Education

For provisions related to the education of students with disabilities, this Memorandum of Understanding (“MOU”) presents model language 1) where the school has elected to remain a school of the San Diego Unified School District (“District”) for purposes of special education (Option 1), 2) where the school exercises choice of personnel for purposes of delivering special education services (Option 2), and 3) where the school has elected to have a *local education agency* (“LEA”) designation within a Special Education Local Plan Area (“SELPA”) (Option 3). At any point during the duration of the charter, the charter school has the right to change SELPA options with proper notification, in writing, at least one year in advance of change.

6.1 School of the District Designation (Option 1).

- 6.1.1 The Charter School has elected to be treated as a public School of the District for the purposes of special education services and funding. In this section, the term, “District”, will be used to indicate the SELPA composed exclusively of the San Diego Unified School District.
- 6.1.2 The Charter School shall comply with all applicable requirements of federal and state law concerning the education of children with disabilities, including the requirements of the Individuals with Disabilities Education Act (20 U.S.C. 1401 *et seq.*) (IDEA), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).
- 6.1.3 The Charter School shall adhere to the policies, procedures, and other requirements, including enrollment of students with disabilities, of the District’s Local Plan for Special Education and to District policies regarding services to special education students.
- 6.1.4 The Charter School must notify parents in writing, through the enrollment packet, of the special education services available at their charter. It is understood that all children will have access to the Charter School and no student shall be denied admission due to disability.
- 6.1.5 The Charter School shall have the same responsibility as any other public school in the District to work cooperatively with the District to identify and refer students who have or may have exceptional needs that qualify them to receive special education services.
- 6.1.6 The District shall provide under school of designation a complete continuum of special education services to all students of the Charter School consistent with the services it provides at its other public schools pursuant to this Agreement.
- 6.1.7 For students who enroll in the Charter School with a current Individualized Education Plan (“IEP”), the District and the Charter School shall conduct an IEP meeting in accordance with applicable law and the District’s enrollment policy for special education students wanting to attend a school of choice.

- 6.1.8 The District shall be responsible for providing all appropriate special education and related services, including development of written IEPs, in accordance with all applicable state and federal laws for all students with exceptional needs. The District/SELPA is responsible for providing special education services to students attending the charter but living outside District boundaries.
- 6.1.9 IEP Teams must consist of a representative of the District, as determined by the District SELPA representative for charter schools. The Charter School shall be responsible for having other School members present as defined by IDEA.
- 6.1.10 The District shall strive to ensure that IEP Teams are knowledgeable of the Charter School's instructional design, mission, and charter in the development of IEPs, while acknowledging that IEP development is based on the individual needs of each student.
- 6.1.11 The District and Charter School shall assume joint responsibility for ensuring appropriate documentation of the IEP process and for compliance with all parent and student rights.
- 6.1.12 Decisions regarding eligibility, goals/objectives, program, placement, and exit from special education shall be the decision of the IEP team. Services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures, and requirements of the District and of the Local Plan for Special Education.
- 6.1.13 Prior to changes in services or placement, an IEP team including SELPA staff shall be convened with the consent of the parent and prior written notification as required by IDEA.
- 6.1.14 To the extent that the agreed-upon IEP requires educational or related services to be delivered by staff other than the Charter School staff, the District shall provide and/or arrange for such services, including, but not limited to, identification, evaluation, IEP development and modification, and specialized academic instruction. The Charter School shall be consulted regarding the assignment of all District personnel engaged in Special Education service delivery on a charter school site. If the Charter School has concerns about the performance of District staff, it shall document and communicate these concerns to a designated District manager/s for follow-up and investigation. If the concerns are validated, the District shall work with the school to identify alternative staff. The Charter School shall report to the District deficiencies in staffing that impede the IEP process or the implementation of supports to students identified in their IEP. If the deficiencies are not resolved within 30 days, the District will provide the Charter School with a list of approved providers. The Charter School will select a provider, paid by the District, to correct the deficiency until the District can provide a permanent solution.

- 6.1.15 In consultation with the Charter School, the District shall address/respond to/investigate all complaints received under the Uniform Complaint Procedure involving special education.
- 6.1.16 The District shall, when necessary, initiate a request for a special education due-process hearing to ensure compliance with applicable laws. If a parent or guardian requests a due-process hearing, the District shall, in consultation with the Charter School, represent the SELPA and Charter School in all aspects of the claim. If the claim results in a finding of systemic noncompliance at the Charter School, the School shall promptly implement the corrective actions necessary to address the noncompliance.
- 6.1.17 District and/or SELPA information and training opportunities regarding special education shall be available to Charter School staff to the same extent that the District provides such information and opportunities to site staff at all other schools in the District.
- 6.1.18 The Charter School shall have the same responsibility as any other public school in the District to work cooperatively with the District in identifying and referring students who have or may have exceptional needs that qualify them to receive special education services. The Charter School, with the assistance of the District, will develop, maintain, and implement policies and procedures to ensure identification and referral of students who have, or may have, such exceptional needs. These policies and procedures will be in accordance with Federal law and California law. The Charter School may not deny admittance to a student with a disability based on the lack of existing supports and services for that student. Nor may the Charter refuse to serve a student with disabilities as required by law.
- 6.1.19 The Charter School agrees to implement a student study team process which is a general education function, and to monitor and guide referrals for special education services.
- 6.1.20 The Charter School is solely responsible for obtaining the cumulative files, prior and/or current IEPs, and other special education information on any student enrolling who previously attended another school.
- 6.1.21 The District and Charter School shall jointly determine and provide personnel when special education assessments are necessary, including assessments for all referred students, annual assessments, and tri-annual assessments, in accordance with the District's general practices and procedures, and applicable law.
- 6.1.22 The District shall retain all state and federal special education funding for Charter School students which is allocated through the SELPA.
- 6.1.23 The District shall calculate a projected special education local contribution charge each year and shall provide documentation showing the calculation of the rate. The charge shall be based upon the charter school's equitable share of the District's unfunded cost of delivering special education services for the prior fiscal year. The District shall invoice the Charter School for special education

charges on a monthly basis from November through August. The District's unfunded special education costs (hereafter referred to as "local contribution") for the fiscal year just ended per unit of District wide general education official enrollment at the fourth Friday of the current school year, multiplied by each unit of the Charter School's general education official enrollment at the fourth Friday of the school year. School enrollment includes all students, regardless of district of residence.

- 6.1.24 The District shall provide the Charter School with documentation as to the calculation of the Charter School's share of the local contribution and allow the Charter School an opportunity to provide input and respond to the calculation prior to invoicing the Charter School for the fiscal year. This amount will be subject to an independent audit each year by an organization mutually agreed upon by the District and the charter schools. Any disputes over the calculation of the local contribution shall be resolved through a mutually agreed upon dispute resolution process.

6.2 Charter Schools Exercising Choice of Personnel for Purposes of Delivering Special Education Services (Option 2).

- 6.2.1 Application. This option is for Charter Schools that want to hire their own staff and applies only if the Charter School is designated as a school within the San Diego Unified School District SELPA. This option is available to all Charter Schools authorized by the District who are deemed to be financially viable by the District and have been in operation for at least two years and/or are replicating. If a Charter School chooses Option 2, they will have the option to provide all or some of the special education services required that must be provided at the Charter School. Employees hired by the Charter School are not District employees.
- 6.2.2 Service Delivery. The Charter School agrees to follow all San Diego Unified School District's Special Education policies and guidelines. IEP meetings may be held without a District representative from SDUSD. The District retains the right to send a representative as needed on a case-by-case basis.
- 6.2.3 Program Monitoring. The District will work with a designated contact person (of the Charter School's choice) in the electronic monitoring of student special education compliance statistics using the District's system. This person will be responsible for communicating to the District the services needed to meet compliance requirements and be responsible for delivery of special education services in compliance with the legal timeline. The District will monitor compliance statistics on a quarterly basis. Special education staff hired by the Charter School will have access to the electronic IEP system used by the District. The Charter School will release teachers for training in the use of the electronic IEP.
- 6.2.4 Service Deficiency. The Charter School shall maintain compliance with timelines for developing and implementing IEP's. If the Charter School does not meet compliance, the Charter School will accept monitoring from a SELPA

representative to bring the Charter School into compliance. Said monitoring shall be implemented in a manner consistent with monitoring procedures applied to District-managed schools. Continued non-compliance may result in the forfeiture of this option for the delivery of special education services.

- 6.2.5 Staffing Allocations. The District shall provide the calculation of the fulltime equivalent allocations of special education personnel needed to provide the services called for in the IEPs of students attending the Charter School. Allocation will be calculated based upon the number of personnel units and the amount of support materials the District would have allocated to the Charter School had the District been providing special education services directly. The District shall inform the Charter School of projected personnel allocations for the coming school year when the budget is adopted (usually in the month of June), with a final initial allocation being locked in on the fourth Friday of each school year.

The Charter School may request a change in personnel allocations made by the District and adjustments may be made per mutual agreement. All staff hired by the Charter School to provide special education services must meet appropriate credentialing requirements. All staff must be in place to serve students by the first day of school. Difficulties with meeting this requirement should be reported immediately to the District SELPA representative. Personnel allocations will be reviewed and adjustments will be made when appropriate.

- 6.2.6 Contracting of Special Education Services. The SELPA has an obligation to provide services for all students with an IEP. At times, contracting of services may be warranted. The charter school must contact the District/SELPA to discuss available District resources prior to negotiating a contract with a private agency. Any contracts between a Charter School and an outside provider must be renegotiated annually by July 1st. The contract with the District and any contracts with outside providers shall be approved by the charter school governing board.

If the Charter School elects to perform services itself, District may, at its own discretion, audit the Charter School to determine if the special education service providers and Charter School staff have the capacity to adequately perform said services. Under this option, the Charter School special education staff, must attend appropriate District special education training and meetings as required by the District/SELPA representative.

- 6.2.7 Reimbursement. The District will reimburse the Charter School for the actual costs of providing special education services, not to exceed the average annual salary and benefits of the District for equivalent service providers. The reimbursement will be based on the District determined staffing and supply allocations for the Charter School. The invoicing for reimbursement is the responsibility of the Charter School and must include copies of contracts, employee agreements, and invoices from vendors detailing services provided, payroll records, and receipts for any associated costs. The District will reimburse the Charter School within 30 days of billing. Reimbursement of instructional

supplies for teachers shall not exceed the budgeted amount provided to special education teachers employed by the District.

- 6.2.8 Local Contribution Calculation. The District shall calculate a projected special education local contribution charge each year and shall provide documentation showing the calculation of the rate. The charge shall be based upon the Charter School's equitable share of the District's unfunded cost of delivering special education services for the prior twelve months. District shall invoice the charter school for special education charges on a monthly basis from November through August. The District's unfunded special education costs (hereafter referred to as "local contribution") for the fiscal year just ended per unit of District wide general education official enrollment at the fourth Friday of the current school year, multiplied by each unit of the Charter School's general education official enrollment at the fourth Friday of the school year. School enrollment includes all students, regardless of district of residence.
- 6.2.9 Provision of Special Education Services to Students Attending the Charter School and Residing outside District Boundaries. The Charter School shall admit students residing outside the District's attendance boundaries who are eligible for services under the Individuals with Disabilities Education Act and state law (commencing with Education Code section 56000 et seq.). The District/SELPA is responsible for providing special education services to students attending the charter but living outside District boundaries.
- 6.2.10 Liability. District shall defend the Charter School in any special education due process hearing arising from the Charter School's implementation of federal and state laws regarding education for students with disabilities and this provision shall indemnify the Charter School for any liabilities associated with such action to the same extent as provided to charter schools electing the "School of District Designation (Option 1) above.

6.3 LEA of a SELPA Designation. This Option is Available for Charter Schools Leaving the SDUSD SELPA (Option 3).

- 6.3.1 The Charter School shall be a local education agency (LEA) of the (Name of SELPA) _____ Special Education Local Plan Area ("SELPA") for purposes of the provision of special education funding and services.
- 6.3.2 The Charter School shall adhere to the (Name of SELPA) _____ Local Plan for Special Education and to other policies, procedures, and requirements of said SELPA regarding services to special education students. Any student who wants to attend the Charter School shall not be denied admission based on disability.
- 6.3.3 The District shall not be held liable for any action relating in any way to special education, including, but not limited to identification, assessment or provision of services while the Charter is a member of the (Name of SELPA) _____. A Charter School of the District that chooses to be an LEA of another SELPA will indemnify the District, holding harmless and defending the District from any