

MEMORANDUM OF UNDERSTANDING

Between the following six elementary school districts that form the North County Consortium (Jefferson Elementary School District, Pacifica School District, Bayshore School District, Brisbane School District, Millbrae School District and San Bruno School District.)

The purpose of the Memorandum of Understanding is to ensure that, when necessary, students have access to special education programs operated by another school district within the North County Consortium when an appropriate program is not available in the pupil's district of residence. It is agreed that when a student is placed in a special education program in the Receiving District through the IEP process, then the District of Residence (DOR) retains all financial and legal responsibilities under the Individuals with Disabilities Education Act (IDEA) and related federal and California laws. As the student's district of residence and responsible LEA, the DOR 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 educational program pursuant to this MOU. This Memorandum of Understanding may be referred to as "MOU" and/or "Agreement" interchangeably.

Receiving District's responsibility is limited to implementing the educational program provided for in the student's IEP and cooperating with the DOR. Thus, Receiving District shall only be considered a service provider, and not the responsible LEA. Placements under this MOU shall not be deemed an interdistrict transfer, as the student is considered to be a resident of the DOR. Each school district listed above in this MOU may be referred to hereafter individual as "School District" and/or "Party" interchangeably and collectively as "School Districts" and/or "Parties" also interchangeably.

1. **Services to be performed by Each School District.** The following exhibits and attachments are attached to this Agreement and incorporated in this Agreement by reference. In consideration of the payments hereinafter set forth, Each School District shall comply with the terms, conditions, and specifications set forth herein, in **Exhibit A**, and the charge for services, as set forth in **Exhibit B**, with the **Attachment** to Exhibit B attached hereto.
2. **Contract Term.** This Memorandum of Understanding (MOU) is made and entered into as of July 1, 2016 between the following six elementary school districts that form the North County Consortium: Jefferson Elementary School District, Pacifica School District, Bayshore School District, Brisbane School District, Millbrae School District and San Bruno School District School District. Subject to termination as provided in Section 7, this MOU shall be in effect for five (5) years until June 30, 2021, and subject to annual review by each school district, 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 of Residence shall make payment(s) as specified in the manner specified herein and in **Exhibit B**, subject to reduction for any monies received from an outside source, including but not limited to the Special Education Local Plan Area (SELPA), State funds and/or Federal Funds, by the Receiving District for that particular student. In the event that the District of Residence makes any advance payments, Receiving District agrees to refund any amounts in excess of the amount owed by the District of Residence at the time of contract termination.
4. **Hold Harmless.** Each District agrees to indemnify and defend the other District and its employees and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the negligence of each District and/or its employees/officers/agents in the performance of this Agreement, including any sanctions, penalties, or claims of damages resulting from either District's failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement.

5. **Confidentiality.** All data produced or compiled by any Party in performance of this Agreement shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of each Party. Each Party shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as each District requires of its own personnel. The requirements of this Section shall survive termination of this Agreement.
6. **Non-Assignability.** Either District shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the other District, and any attempted assignment without such prior written consent in violation of this Section shall automatically give the District the option to terminate this Agreement without notice.
7. **Termination of Agreement.** Each District's Superintendent may, at any time after execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of 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, Receiving District shall be paid for all services satisfactorily provided through the date of termination except where the District of Residence determines the quality or quantity of the service performed is unacceptable. The District may immediately terminate this Agreement based upon unavailability of Federal, State, or local funds by providing written notice to Receiving District as soon as is reasonably possible after District of Residence learns of said unavailability of funding.
8. **Retention of Records.** Each District shall maintain all records related to this Agreement for no fewer than three years after the District makes final payment or after termination of this Agreement and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the District, the State of California, other regulatory agencies, and/or Federal grantor agencies.
9. **Merger Clause.** This Agreement, 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 each District's Superintendent. In the event that any term, condition, provision, requirement or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of the body of this Agreement shall prevail. This Agreement constitutes the entire Agreement between each District.
10. **Mediation Prior to Filing any Legal Action.** Each District agrees that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, or any other mutually agreed mediator for mediation. Either District may commence mediation by providing the other Districts a written request for mediation, setting forth the subject of the dispute or the relief requested. Such mediation will conclude no later than forty-five (45) days from the date that such written request was received by the other District, unless such date should fall on a Saturday, Sunday or recognized holiday, in which case the mediation will conclude by 6pm, Pacific Prevailing Time on the next business day. The Districts will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Districts agree that they will participate in the mediation in good faith and that they will share equally in its costs, provided, however, that each District will bear the cost of its own attorneys. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Districts, their agents, employees, experts and attorneys, and by the mediator or any of the mediators employees, are confidential, privileged and inadmissible for any purpose,

including impeachment, in any other proceeding involving the Districts, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

11. **Governing Law.** This Agreement, including any exhibits, and any disputes arising out of this Agreement 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 Agreement shall be venued in the County of San Mateo.

MEMORANDUM OF APPROVAL

This MOU entered into this __ day of _____ by and between the undersigned parties.

[SIGNED]
_____, Superintendent
Jefferson Elementary School District

[SIGNED]
_____, Superintendent
Pacifica School District

[SIGNED]
_____, Superintendent
San Bruno School District

[SIGNED]
_____, Superintendent
Millbrae School District

[SIGNED]
_____, Superintendent
Bayshore School District

[SIGNED]
_____, Superintendent
Brisbane School District

EXHIBIT A
SPECIAL EDUCATION RESPONSIBILITIES

DISTRICT OF RESIDENCE (DOR) :

Prior to Initial Placement:

1. Conduct all necessary assessments to determine student needs. Assessment reports shall not be more than 2.5 years old at the time of placement.
2. Convene an IEP meeting to identify potential LEA/SELPA programs.
3. Document the need for services to be provided outside the DOR.
4. Determine the availability and appropriateness of programs in Receiving District by contacting the Receiving District special education administrator. DOR may not make an IEP offer in a Receiving District program without first obtaining the consent of the Receiving District.
5. Coordinate observations and IEP meetings with Receiving District.
6. Arrange for and provide/fund transportation for the student to attend Receiving District program.
7. Arrange for and provide all necessary low incidence materials and equipment consistent with the student's IEP upon placement.
8. Sign an MOU Placement Form outlining costs of the program.

Subsequent to Placement:

1. Attend all IEP meetings, assess the student and make all educational decisions as required by law (e.g. offering a free appropriate public education (FAPE)). Participate in transition planning for possible return to the DOR.
2. In accordance with the fiscal agreements in this MOU, the DOR shall reimburse Receiving District for all services for the student, less any funds received for that particular student from any outside source, including but not limited to the Special Education Local Plan Area (SELPA), the State of California, and/or the Federal Government. (see Fiscal Responsibilities for detailed instructions).
3. The DOR will attend IEP meetings as scheduled and facilities by the Receiving District. The DOR remains responsible for making educational decisions as required by law. The full IEP team must include representatives from both the DOR and the Receiving District.
4. Ensure that Receiving District is implementing the student's educational program consistent with his/her IEP and ensure that Receiving District has access to Student's IEP in SEIS.
5. If notified that the Receiving District cannot implement services called for in a Student's IEP, DOR must take any and all necessary action to ensure the student's IEP is properly implemented and he/she receives a FAPE.
6. It shall be the financial and legal responsibility of the DOR to handle 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 educational program pursuant to this MOU.
7. If Receiving District is named as a party to a legal dispute, the DOR will cooperate in dismissing, with prejudice, Receiving District as a party.
8. The DOR shall protect, defend, indemnify, forever hold harmless and assume the costs of defense including attorney's fees of Receiving District, 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 Receiving District, 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 Receiving District, its Board, officers, members, representatives, agents, guests, invitees, and/or employees.

RECEIVING DISTRICT:

Prior to Initial Placement:

1. Consult with DOR about the availability and appropriateness of a Receiving District program.
2. Sign an MOU Placement Form outlining costs of the program.

Subsequent to Placement:

1. Provide all services identified in the student's IEP. In the event Receiving District is unable to implement any or all portions of the student's IEP, and/or it believes that the student cannot be provided a FAPE in its program, Receiving District shall immediately notify the DOR in writing.
2. Provide progress reports on at least a trimester basis to the DOR.
3. Update SEIS and ensure that Student's IEP to be accurate and up to date.
4. Attend all IEP meetings in cooperation with the DOR personnel. The Receiving District agrees that it is responsible for facilitating the IEP team meetings, with input from the DOR. The DOR remains responsible for making educational decisions as required by law. The full IEP team must include representatives from both the DOR and the Receiving District.
5. Help complete all necessary IEP documents in cooperation with the DOR.
6. Contact the DOR and offer to complete the necessary assessments prior to the DOR conducting new assessments.
7. Issue detailed and accurate billing to DOR, noting any funds received from any outside source relating to the particular student, including but not limited to funds received from the Special Education Local Plan Area (SELPA), the State of California and/or the Federal Government. (see Fiscal Responsibilities for detailed instructions).
8. If a legal dispute arises regarding a student's educational program and/or Receiving District assessment(s), Receiving District will fully cooperate with the DOR, including but not limited to making its employees and documents available for testimony and documentary evidence.
9. Receiving District shall indemnify and hold the DOR harmless from any adjudicated liability related to the Receiving District'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 Receiving District, Receiving District will be obligated to provide contribution to the DOR in accordance with its proportionate share of liability. The amount of the contribution shall be determined by informal resolution between the superintendents, or designees, going before the County Superintendent of Schools or arbitration and identifying who will incur the cost of this process.

EXHIBIT B
FISCAL RESPONSIBILITIES

When the DOR determines through the IEP process that a student shall be served outside the DOR in a Receiving District placement in accordance with this MOU, including with the consent of the Receiving District, the following shall occur:

1. The DOR and Receiving District shall verify and approve each student's placement.
2. The costs for placement and services identified on the IEP are listed on **Attachment A** to Exhibit B.
3. The DOR and Receiving District shall sign the MOU Placement Form specific to each Student being placed pursuant to this MOU verifying fiscal obligations, student placement and related services in a timely manner. The MOU Placement Form is **Attachment B** to Exhibit B.
4. The Receiving District must submit an invoice for payment, as appropriate based on student's placement beginning Receiving District or actual date of enrollment, noting any funds received from any outside source relating to the particular student, including but not limited to funds received from the Special Education Local Plan Area (SELPA), the State of California and/or the Federal Government.
5. The DOR will transfer ownership of the particular student to the Receiving District in SEIS and list the DOR as a shared teacher in SEIS so that both Districts have access to the Student's IEP through SEIS for the accuracy of CASEMIS reporting.
6. The Receiving District will claim the student's enrollment for the purposes of ADA calculation, CASEMIS reporting. The DOR will pay for the agreed-upon services, consistent with the MOU Placement Form, and the total amount reimbursed will be reduced by the amount the Receiving District received from any outside source relating to the particular student, including but not limited to funds received from the Special Education Local Plan Area (SELPA), the State of California and/or the Federal Government.

ATTACHMENT A

2016-17 Base Costs and Related Services

Base Cost of Special Education Class (includes teacher, two aides, facility, administrative, & psychologist costs)

Teacher = \$94,887

Two instructional aides = \$73,634 (for both combined)

Psychologist prorated per collaborative class = \$8,925

Facility costs = \$8,925

Administrative costs = \$16,736

Total without behavioral aide= \$203,107 203,053

*(Add to Total if use of Behavioral aide is needed = \$42,693)

Class Size	Base Cost per Student
6	\$33,843
8	\$25,382
10	\$20,305
12	\$16,921

If the special education class offers related services that are built into the program and provided to all students in the class, the cost of these services will be added to the base cost of the class and divided equally among the enrolled students.

Related Services Costs

Name of Service	Cost of F.T.E	Maximum Caseload	*Hourly Rate of Service Provided Weekly (assessed in one hour increments)
Speech	\$89,250	55	\$75
Occupational Therapy	\$94,500	35	\$79
Adapted P.E.	\$89,250	40	\$75
Nurse	\$89,250		\$75
Behavioral Therapist	\$115,500		\$97

*Example of Hourly rate (PSD: 184 work days, 6.5 hours a day); Each district calculate the district rate and inform the host district.

If the Related Service is provided by a non public school agency or Independent Contractors, the host district may pass the additional costs on to the students receiving these services. Any additional amounts beyond the related service chart/calculated host district rate will need to be approved by the resident district.

ATTACHMENT B
MOU PLACEMENT FORM

School Year: _____

[To be completed by the District of Residence (DOR) upon initial enrollment in Receiving District]

Student Count Date: ☐ Initial Placement

District of Residence (DOR) _____

Student Name _____
Last First Birthdate

Parent/Guardian Name _____
Last First

Address _____

SpEd Program _____ Grade _____

School Site Where Requested Program is Located _____

Related Services Needed _____

In accordance with the MOU, the DOR agrees to transfer funds for the cost of the listed services to the Receiving District upon receipt of an appropriate invoice at the designated count dates, deducting any funds received from an outside source for this particular student. The *projected* cost of these services per billing period is:

Services	# of Services	Cost	Total
[List all services to be provided by Receiving District]			
Specialized Academic Instruction			
Speech and Language			
		\$0.00	\$ 0.00
[Deduct any funds Receiving District receives from an outside source]			
Other Services:	<u>ESY Specialized Academic Instruction</u>		
Other Services:	<u>ESY Speech and Language</u>		
(Enter cost of services for a single period only.) TOTAL COST THIS PERIOD:			\$

If after the student is enrolled, and an additional aide, specialized equipment, or other significant additional services are required for this student, upon mutual agreement of the DOR and receiving LEAs, the DOR will provide additional funding for the cost of these services.

Sending (DOR)

Receiving District

School District

Date

School District

Date