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# Board Cover Memorandum

**To** Board of Education

**From** Sondra Aguilera, Acting Superintendent  
Jennifer Blake, Executive Director, Special Education Department  
Jorge Wahner, Director, Special Education School Supports

**Meeting Date** September 14, 2022

**Subject** Memorandum of Understanding – Education for Change Public Schools – Special Education Local Plan Area (SELPA) - Special Education Department

**Ask of the Board** Ratification by the Board of Education of a Memorandum of Understanding by and between the District and Education for Change Public Schools, Oakland, CA, for the latter to provide special education placement and/or services for a student enrolled in Cox Academy Charter School, for the period of September 14, 2022 through July 7, 2023, at no cost to the District.

**Background** Education for Change Public Schools has a student with disabilities that cannot be served by their in their continuum of services. They are requesting placement and providing funding for the student to be one of our district’s special education classes, which will meet his unique needs

**Discussion** The Special education department discussed the potential impacts and benefits of granting the placement request. The team determined that space in the program was not at issue as enrollment in this specific class is low, but not low enough to warrant closing the program. The team also considered the fiscal impact, but as EFCPS is funding the entire cost of the placement there is no negative fiscal impact. We also determined that offering charter schools the option to enroll students with disabilities in our programs would make them less likely to counsel students with high needs out of their schools, thus putting the entire fiscal burden on OUSD.

**Fiscal Impact** As stated above, EFCPS is funding the entire cost of the placement. There is no negative fiscal impact to OUSD. In fact, there is a positive fiscal impact of the alternative of the student being dropped from the charter school and becoming the sole agency responsible for the student’s education.

**Attachment(s)** • Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING**

Between  
**OAKLAND UNIFIED SCHOOL DISTRICT AND  
EDUCATION FOR CHANGE PUBLIC SCHOOLS**  
REGARDING: \*\*\*\*\* , DATE OF BIRTH: \*\*\*\*\*

***Placement into the Counseling Enriched Program***

This Memorandum of Understanding (MOU) is made and entered into between the Oakland Unified School District (“OUSD”), the local educational agency (“LEA”) providing services, and Cox Academy, an Education for Change Public School (“Charter”), the LEA receiving services. This MOU shall be effective as of the date of the last-executed signature below. This MOU shall be in effect until 7/7/23. The MOU may be amended at any time by mutual consent of the Parties. If, at any time during the term of this MOU, Student disenrolls from Charter, this MOU shall terminate.

**I. PURPOSE OF MOU**

This MOU is regarding the provision of special education placement and/or services for \*\*\*\*\* (“Student”), a student enrolled in Charter.

Whereas, Education Code section 56195.1, subdivision (e) provides that membership in a special education local plan area (“SELPA”) does not limit a LEA, including a charter school’s, authority to contract for special education services from another LEA whether or not the LEA is part of the same SELPA;

Whereas, OUSD is a member of Oakland SELPA and is willing to contract with Charter to provide special education and related services to students enrolled in Charter;

Whereas, Charter is a charter school deemed an LEA for the purposes of special education under Education Code Section 47640 and is a member LEA of the El Dorado Charter SELPA;

Whereas, Student is enrolled Charter, making Charter the LEA responsible for providing Student’s special education placement and services;

Whereas, Charter seeks to contract with OUSD in order for Student to be placed in a program operated by the OUSD and/or receive related services from OUSD.

**II. SPECIAL EDUCATION RESPONSIBILITIES**

**CHARTER:**

**Prior to Initial Placement:**

1. Conduct all necessary assessments to determine student needs. Assessment reports shall not be more that 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 Charter.
4. Determine the availability and appropriateness of programs in OUSD by contacting

- the OUSD special education administrator.
5. Enter into an MOU with OUSD outlining responsibilities of the parties.
  6. Coordinate observations and IEP meetings with OUSD.
  7. Arrange for and provide/fund transportation for the student to attend the OUSD 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 Charter.
2. In accordance with the fiscal agreements in this MOU, the Charter shall reimburse OUSD for all services for the student.
3. Ensure that OUSD is implementing the student's educational program consistent with his/her IEP.
4. It shall be the financial and legal responsibility of the Charter 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.
5. If OUSD is named as a party to a legal dispute, the DOR will cooperate in dismissing, with prejudice, OUSD as a party.

**OUSD:**

**Prior to Initial Placement:**

1. Enter into an MOU with the Charter outlining responsibilities of the parties.

**Subsequent to Placement:**

1. Provide all services identified in the student's IEP, dated [\*\*\*\*\*], attached hereto as Exhibit A and incorporated herein by reference. In the event OUSD 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, OUSD shall immediately notify the Charter in writing. Thus, it is the responsibility of the Charter 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 on at least a trimester basis to the Charter.
3. Notify Charter if it has reason to believe that Student requires reevaluation, change of placement or services, and/or an IEP team meeting.
4. Ensure that staff members working with Student will assist with the drafting of proposed goals and objectives for review and approval by the Student's IEP team. Ensure that staff members working with Student are available to attend IEP meetings or other meetings regarding Student. However, the Charter, not OUSD, 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 Charter.
6. Provide all necessary low incidence materials and equipment consistent with the student's IEP.
7. Contact the Charter and offer to complete the necessary assessments prior to the Charter conducting new assessments.
8. Ensure that all staff working with Student possess appropriate and current credentials and certifications.
9. Initiate billing to Charter. (see Fiscal Responsibilities for detailed instructions).
10. If a legal dispute arises regarding a student's educational program and/or an OUSD

assessment, OUSD will fully cooperate with the Charter, including but not limited to making its employees and documents available.

### **III. INDEMNIFICATION AND HOLD HARMLESS**

Charter shall protect, defend, indemnify, forever hold harmless and assume the costs of defense including attorney's fees of OUSD, 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 OUSD, 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 OUSD, its Board, officers, members, representatives, agents, guests, invitees, and/or employees.

OUSD shall indemnify and hold the Charter harmless from any adjudicated liability related to the OUSD'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 OUSD, OUSD will be obligated to provide contribution to the Charter 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.

### **IV. RESPONSIBILITY FOR LITIGATION COSTS**

Charter retains all financial and legal responsibilities under the Individuals with Disabilities Education Act (IDEA) and related federal and California laws. As Student's responsible LEA, Charter remains the proper party to defend any and all legal disputes, claims, complaints, due process proceedings and/or civil litigation related to Student's educational program pursuant to this MOU.

OUSD's responsibility is limited to implementing the educational program provided for in the student's IEP and cooperating with Charter. Thus, OUSD shall only be considered a service provider, and not the responsible LEA.

If OUSD is named as a party to a legal dispute, the DOR will cooperate in dismissing, with prejudice, OUSD as a party.

If a legal dispute arises regarding a student's educational program and/or an OUSD assessment, OUSD will fully cooperate with the Charter, including but not limited to making its employees and documents available.

### **V. FISCAL RESPONSIBILITIES**

1. OUSD and Charter shall verify and approve Student's placement. OUSD must submit an invoice for payment, as appropriate based Student's placement beginning August 8, 2022 or actual date of enrollment. The Charter will claim the student on its CALPADS report.

2. The Charter, shall sign the MOU verifying fiscal obligations, student placement and related services in a timely manner.
3. The costs for placement and services identified on the IEP are listed below.

Specialized Academic Instruction	\$	15,000.
Embedded Counseling Services	\$	44,000.
Speech services	\$	3,150.
Occupational Therapy	\$	340.
Materials and Platforms	\$	3,400.
ESY	\$	3,000.
 Total Cost of Placement and Services	 \$	 68,890.

If after Student is enrolled, his IEP team determines that any additional services are required, Charter will provide additional funding for the cost of these services.

#### **VI. MEET AND CONFER**

If a dispute arises regarding any aspect of this MOU, the Parties agree that they shall meet and confer in a good faith effort to amicably resolve their difference prior to initiating any litigation. If the initial attempt to resolve the dispute is not successful, the Parties may, by mutual agreement, participate in alternative dispute resolution.

#### **VII. CONFIDENTIALITY**

The Parties agree to keep the terms of this MOU strictly confidential except as required by law. However, for purposes of implementation and enforcement of the Agreement, the Parties mutually consent to disclosure and admissibility of this MOU.

#### **VIII. SEVERABILITY/WAIVER**

If any provision of this MOU is determined to be illegal, unenforceable, or invalid, such provision shall in no way affect the validity of any other provision of this MOU. No waiver of any provision of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

#### **MEMORANDUM OF APPROVAL**

This MOU entered into this \_day of July 2022 by and between the undersigned parties.

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Sondra Aguilera  
Chief Academic Officer  
Oakland Unified School District

Approved as to form:

 8/8/2022  
Joanna Powell, OUSD Attorney

*Sundar Chari*

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Sundar Chari  
Chief Business Officer

Education for Change Public Schools

Approved as to form:

8/7/22  
Education for Change Public Schools Attorney

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Gary Yee, President, BOE

  
Sondra Aguilera, Acting Superintendent & Secretary, BOE