

FONTANA UNIFIED SCHOOL DISTRICT
Fontana, California

Instructional Services

ITEM TITLE: Memorandum of Understanding and FAS Standard Contract

BOARD OF EDUCATION MEETING: 04/04/12
Discussion/Action Session

BACKGROUND:

In a letter to San Bernardino County SELPA's dated November 16, 2010, San Bernardino County Department of Behavior Health (DBH) terminated the interagency agreement concerning the provision of AB2720 Mental Health Services. Services were terminated on December 16, 2010.

In a letter to San Bernardino County SELPA's dated March 19, 2012, a Memorandum of Understanding between San Bernardino County Department of Behavior Health (DBH) and San Bernardino County Superintendent of Schools (SBCSS) for Educationally Related Mental Health Services was received from DBH.

The Memorandum of Understanding and County of San Bernardino Financial Accounting System (FAS) Standard Contract delineates responsibilities for providing Educationally Related Mental Health Services to special education pupils in San Bernardino County as indicated and approved within each child's/youth's Individualized Education Plan (IEP). State legislation mandates the MOU between the County of San Bernardino Department of Behavior Health, the San Bernardino County Superintendent of Schools, and the Special Education Local Plan Areas (SELPA's)

service delivery to eligible students; effective the 2011/12 school year.

FISCAL IMPLICATION:

Amount to be received by FUSD: \$750,000.00

RECOMMENDATION:

The Superintendent recommends that the Board of Education approve the Memorandum of Understanding and County of San Bernardino Financial Accounting System (FAS) Standard Contract between San Bernardino County Department of Behavior Health (DBH) and San Bernardino County Superintendent of Schools (SBCSS) delineate responsibilities for providing to special education pupils Educationally Related Mental Health Services in the amount of \$750,000.00.

JDavis/cs



Fontana Unified School District

March 27, 2012

To Whom It May Concern:

The following is the requested information regarding the Fontana Unified School District's (FUSD) insurance program. This coverage would include our employees in the "course and scope of their employment" when acting in accordance with our Board

AUTOMOBILE COVERAGE

FUSD is a member of Keenan and Associates (Southern California Relief) and is self-insured by State Statute to a total of \$1,000,000. Excess Liability up to \$24,000,000

LIABILITY INSURANCE

FUSD is a member of Keenan and Associates (Southern California Relief) and is self-insured by State Statute to a total of \$1,000,000. Excess Liability up to \$24,000,000 with a \$50,000 self retention.

WORKERS' COMPENSATION

FUSD is self-insured, self-administered for workers' compensation benefits. Safety Midwest Employers Causality Company is our excess carrier with a retention for each occurrence of \$650,000.

If more information is needed, please contact me at (909) 357-5000 ext. 7292.

Very truly yours,

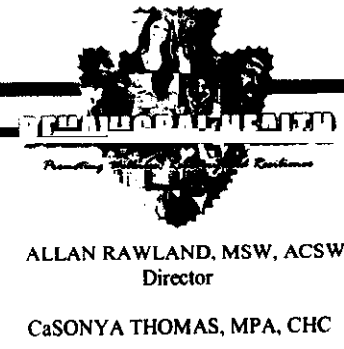
Larry Wilkie, Director
Risk Management

Barbara L. Chavez
Leticia Garcia
Sophia Green
Gus Hawthorn

Cali L. Olsen-Binks

County of San Bernardino

268 W. Hospitality Lane, Suite 400 • San Bernardino, CA 92415 • (909) 382-3133 • Fax (909) 382-3105



March 19, 2012

Terrie Deitz
Fontana Unified School District
9680 Citrus Avenue
Fontana, CA 92335

**RE: Memorandum of Understanding and Aggregate Contract for
Educationally Related Mental Health Services**

Dear Ms. Deitz:

Enclosed please find one (1) original MOU and one (1) original contract for your signature regarding the above referenced matter. Please sign the ten (10) signature pages for the MOU and the eight (8) signature pages for the contract in **blue ink** where *indicated* and **return them to our office via overnight mail by April 1, 2012**

Please note under this agreement, the ***Indemnification and Insurance*** article regarding

have this required insurance documentation on file.

Please return the signed contracts and insurance documents to the address below by the delivery date noted above. If needed, the insurance documentation may be submitted at a later date under separate cover.

Contract Administration
Department of Behavioral Health
Attn: Sheryl Murillo
268 West Hospitality Lane, Suite 400
San Bernardino, CA 92415-0026

In addition, please fax a copy of all insurance documents to: **EDIX SERVICES GROUP at (911) 577-7900.**

Thank you for your assistance. If you have any questions or concerns, feel free to contact me at (909) 382-3059 or contact, Elizabeth Atkins, Contract Staff Analyst II at (909) 382-3007 or by e-

Sincerely,

Sheryl Murillo, Secretary I
DBH Contract Administration
Enclosure

Board of Supervisors

JOSIE GONZALES, CHAIR Fifth District



FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code	SC	Dept.	A	Contract Number
<input type="checkbox"/> Change					
<input type="checkbox"/> Cancel					
County Department Department of Behavioral Health		Dept.	Orgn.	Contractor's License No.	

County of San Bernardino

Elizabeth Atkins

(909)382-3007

\$0

F A S

CONTRACT TRANSMITTAL

Contract Type
 Revenue Encumbered Unencumbered Other Non-financial MOU

If not encumbered or revenue contract type, provide reason:

Commodity Code	Contract Start Date	Contract End Date	Original Amount	Amendment Amount
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Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
AAA	MLH	MLH				\$0
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
						\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
						\$

Understanding between

CONTRACTOR San Bernardino County Superintendent of Schools and San Bernardino County Special Education Local Plan Area (SELPA)

Federal ID No. or Social Security No.

Contractor's Representative

Address Phone () -

Nature of Contract: (Briefly describe the general terms of the contract)

Agreement between the County of San Bernardino Department of Behavioral Health, the San Bernardino County Superintendent of Schools, and the Special Education Local Plan Areas (SELPA) for students with disabilities. The Agreement covers the allocation of funds and service delivery to eligible students.

County of San Bernardino Department of Behavioral Health, the San Bernardino County Superintendent of Schools, and the Special Education Local Plan Areas (SELPA) for students with disabilities. The Agreement covers the allocation of funds and service delivery to eligible students.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

County Counsel	Department Head
Date 3/16/12	Date

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

MEMORANDUM OF UNDERSTANDING

Between

San Bernardino County Department of Behavioral Health (DBH)

and

SPECIAL EDUCATION LOCAL PLAN AREAS (SELPA)

for

SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS (SBCSS)

for

EDUCATIONALLY RELATED MENTAL HEALTH SERVICES

WHEREAS, on June 30, 2011, Governor Brown signed the California Budget Act, Senate Bill 87 (SB 87) and Assembly Bill 114 (AB 114), thereby providing clarification and funding for the provision of

WHEREAS, SB 87 and AB 114 assigned the responsibility for the provision of

WHEREAS, the funding for the provision of Educationally Related Mental Health Services in the 2011-12 school year

WHEREAS, upon passage of Assembly Bill 100 a portion of the funding for Educationally Related Mental Health Services in the 2011-2012 school year include the reallocation of Mental Health Services Act Proposition 63 funds to County Mental Health Agencies hereafter referred to as AB 100 Special Education Pupil (SEP) funds; and

WHEREAS, the requirements to access AB 100 SEP funds designated for the provision of Educationally Related Mental Health Services require a memorandum of understanding (MOU) or contract with the County Mental Health Agency to address the interagency service responsibilities for the provision and transition of mental health services identified on a pupil's Individualized Education Plan during the 2011-12 fiscal year; and

WHEREAS, the Department of Behavioral Health (DBH) is the County Mental Health Agency for San Bernardino County, and the San Bernardino County Superintendent of Schools (SBCSS) is designated by EC 56140 with the responsibility to ensure that appropriate special education programs and services are provided by all students with disabilities residing within the three Special Education Local Plan Areas (SELPA) within the County Department of Education, East Valley SELPA (EV-SELPA), West-Lin SELPA (WE-SELPA) and the Fontana

Unified School District, San Bernardino City Unified School District and Morongo Unified School District (hereinafter collectively referred to as SELPA),

NOW THEREFORE, DBH, SELPA and SBCSS agree to the following term, conditions and procedures:

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ATTACHMENT A – BUSINESS ASSOCIATE AGREEMENT

I. PURPOSE

The intent of the MOU is to establish guidelines for the utilization of AR 100 Special Education Pupil (SEP) funds which are intended for Educationally Related Mental Health Services (ERMHS) for special education students who are identified and approved within each child's/youth's Individualized Education Plan (IEP). The ERMHS may be provided by DBH staff, DBH mental health contract agencies selected by SELPA and/or residential facilities selected by SELPA.

DBH shall utilize AR 100 SEP funds allocated to each participating district.

- ERMHS provided by DBH staff to special education pupils includes:
 - Assessment Centers (JDAC, formerly termed Juvenile Hall), hereafter referred to as "ERMHS-JDAC."
 - ERMHS provided to qualifying special education students by DBH contract agencies designated by SELPA, hereafter referred to as "ERMHS-Outpatient."
- ERMHS provided to qualifying special education students in a residential placement (not including cost of residential placement), hereafter referred to as "ERMHS-Residential."

This MOU supersedes and cancels any prior oral or written understanding, promises or representations with respect to the funding of ERMHS. DBH shall be billed to Medi-Cal and/or for 100% of services not billed to Medi-Cal. Specific requirements of funding sources apply as none of these funds may be federal in origin.

II. SBCSS/SELPA RESPONSIBILITIES

B. SELPA is responsible for selecting the DBH mental health contract agency and coordinating efforts to ensure ERMHS are provided as per SELPA instructions. Service providers are required to adhere to the DBH Outpatient Chart Manual requirements.

C. SELPA will provide the following data for each student:

- Name
- Date of birth
- Provider name
- Date of Service
- Unit/ Minutes/ Mode of service
- Estimated cost per unit and service function code (SFC)

The information shall be provided in sufficient detail to enable DBH to establish a link between services claimed and the individual student's IEP for the possibility of Medi-Cal EPSDT billing and such other accountings as may be required under Realignment.

SELPA shall provide an accounting of expenditures incurred pursuant to this MOU for each fiscal year of this agreement which shall be due on or before August 1st of the following fiscal year.

E. SELPA or its designated agency shall monitor contracts with nonpublic, nonsectarian schools and special education mental health providers to ensure that services on the IEP are provided.

III. SBCSS/SELPA GENERAL RESPONSIBILITIES

- A. SBCSS/SELPA shall follow procedures based on Federal and State law for identification, referral, and placement of students with exceptional needs, as well as related services.
- B. SBCSS/SELPA will provide educational services to individuals with exceptional needs, and appropriate mental health services as a result of an IEP meeting.
- C. SBCSS/SELPA will have an ongoing search component for receiving appropriate referrals for special education and for necessary related services.

IV. DBH RESPONSIBILITIES

- A. DBH shall administer the use of AB 100 SEP funds to support the provision of ERMHS as follows:

1. ERMHS-JDAC: Services provided to qualifying special education students in JDACs. These services will be provided by DBH staff in accordance with the child's/youth's IEP. DBH shall provide documentation of service delivery in a manner most expedient and compliant with prevailing privacy laws (e.g., HIPAA, et. al.), including its role as a Business Associate for the documentation of such services.

DBH will provide SBCSS with information on IEP related mental health services provided to students in JDACs. DBH will provide information to the appropriate school district and to facilitate services.

2. ERMHS-Outpatient: Services provided to qualifying special education students in local communities. These services shall be provided by the Mental Health Agencies identified by the SELPA from those agencies currently contracted with DBH. The AB 100 SEP funds

will be used to pay for the cost of these services, up to the maximum amount of the Medi-Cal Medical Services as well as 100% cost for services to children and youth who are not Medi-Cal beneficiaries but not to exceed the Schedule of Maximum Allowances (SMA) rate.

To facilitate the provision of these services, DBH shall modify the existing contracts

- Desert Mountain SELPA Children's Center (DMSCC) (School Based Contract #08-807)
- South Coast Community Services (SCCS) (Wraparound Contract #11-363)
- South Coast Community Services (SCCS)
- West End Family Counseling (WEFC) (School Based Contract #08-815)
- Pacific Clinics (School Based Contract #08-811)

3. ERMHS-Residential: Services provided to qualifying special education students within a residential treatment program. These services will be provided by staff of the residential facilities identified by SELPA, and as specified in the IEP, in support, stabilization and maintenance of the child's/youth's placement with the goal of transitioning the child/youth to a lower level of care. This will not include the costs of residential placement or transportation.

DBH shall develop a contract with all SELPAs for an aggregate amount available to reimburse for the costs of ERMHS-Residential. The actual amount paid through the ERMHS-Residential shall not exceed the amount of AB100 SEP ERMHS funding through 7/1/11.

all other ERMHS is completed.

FUND ALLOCATIONS

A. The maximum amount of AB 100 SEP funding under this MOU for FY 2011/12 shall not exceed \$1,173,500. Since the collective need for ERMHS across the entire county exceed this funding amount, and since AB 100 SEP specifies that any unutilized funds must be returned to the state for disbursement to other counties, 100% of these funds for ERMHS Funds shall be allocated as follows:

1. Fund administrative activities by DBH to facilitate the provision of all services in an amount not to exceed \$50,000.
2. Fund the provision of ERMHS JDAC by DBH to students within JDAC in an amount not to exceed \$75,000.

DBH's Forensic Adolescent Services Team will track the hours and cost of IEP related mental health services provided to DBH Forensic Services for processing and reimbursement.

3. The remaining portion of the AB 100 SEP funds (\$1,048,500) will be allocated between SELPA as follows:

SELPA	Average Daily Attendance	Percentage of Total ADA of SB County	Amount AB 100 SEP Funds designated per SELPA
Morongo Unified	8,569	2.14312%	\$22,470
Fontana Unified	39,097	9.77765%	\$102,519
SB City Unified	50,847	12.71636%	\$133,331
EV-SELPA	82,416	20.61134%	\$216,110
DM-SELPA	99,419	24.86359%	\$260,695
WE-SELPA	119,509	29.88794%	\$313,375
Totals:	399,857	100.00%	\$1,048,500

These funds shall be utilized to fund the provision of ERMHS-Outpatient and ERMHS-Residential, as defined above. The combined amount of these two programs shall not exceed \$1,048,500. Any funds not utilized by a single SELPA shall be made available to the remaining SELPAs evenly (e.g., 1/5th of the remaining funds allocated to each of the five remaining SELPAs).

- a. ERMHS-Outpatient: These designated funds will primarily support the provision of ERMHS to qualified special education students by the DBH contracts specified by [REDACTED]. The other five SELPAs have identified one contract agency, DM-SELPA Children's Center (DMSCC) to provide these services. The identified contract agency(ies) for each SELPA is as follows:

Community Based Organization	Program	Contract Number	SELPA(s) Served by this CBO
DMSCC	[REDACTED]	[REDACTED]	Fontana Unified SB City Unified EV-SELPA DM-SELPA
SCCS	SB163 Wraparound Children's Intensive Services	11-363 08-564	WE-SELPA WE-SELPA
[REDACTED]	[REDACTED]	08-815	WE-SELPA
Pacific Clinics	EPSDT School Based	08-811	WE-SELPA

The mental health services provided to special education students by these outpatient contracted agencies shall be funded at 100% for services not reimbursable by Medi-Cal and at 9.2% for services reimbursable by Medi-Cal. Funding of cost of services provided will not exceed the SMA Rate. The payment mechanisms are specified within the existing contracts with these agencies (DBH's established database, SIMON, using the appropriate invoicing codes).

- b. ERMHS-Residential: These designated funds will secondarily support the provision of [REDACTED]

[REDACTED] contract between DBH and all SELPAs for an aggregate amount will specify the means by which these services will be invoiced by each SELPA, and the manner of draw-down from remaining ERMHS funds as accounted for and balanced throughout the course of this agreement.

The actual amount paid through the ERMHS-Residential shall not exceed the amount [REDACTED] of 6/30/19. Invoices for ERMHS Residential

- B. The maximum financial obligation is limited by available state and county funds and is available only for services provided during the specified fiscal year.
- C. Funds made available under this MOU shall not supplant any federal, state or any governmental funds intended for services of the same nature as this MOU. SBCSS/SELPA shall not claim reimbursement or payment from DBH for, or apply sums received from DBH with respect to that portion of its obligations which have been paid by another source of revenue. SBCSS/SELPA agrees that it will not use funds received in relation to this MOU, either directly or indirectly, as a means for purposes of obtaining funds from another revenue source without prior written approval of DBH.

VI. GENERAL PROVISIONS

- A. DBH, SELPA and SBCSS acknowledge that AB 114 amends and repeals various sections of the Education, Government and Welfare, & Institutions Codes to repeal the State's AB 3632 mandated Superintendent of Schools.
- B. DBH's role as the administrative agent for MHA Proposition 63 funds (now AB 100 SEP) and fiscal record-keeper for any EPSDT Medi-Cal funding and ensuing audits, if any, shall not be construed as a waiver or commitment to obligate itself to the provision of ERMHS formerly characterized as AB 3632/2726 Individuals with Disabilities Act (IDEA) services effective July 1, 2011.
- C. Pursuant to federal law, local education agencies are required to update the IEP of each child that will experience a change in services as a result of this shift of responsibility.
- D. All services will be authorized through a pupil's IEP and will not include the involvement of DBH staff. The array of services available to be provided for a child with a disability is defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, and shall include those related services as defined in paragraph (20) of Section 1401 of the United States Code, and designated instruction and services. Not all services need to be provided by any one contractor, and the provision of any of these services is at the discretion of the IEP team.
- E. DBH, SELPA, and SBCSS agree that it is mutually advantageous to have the appropriate mental health services provided by the appropriate contractor.
- F. Whenever a pupil who has been receiving mental health services, pursuant to an IEP, transfers into a school district in another county, the responsible SELPA, SBCSS, or IEP team shall ensure the continuation of mental health and educational services as specified in the student's existing IEP or as modified by a subsequent IEP pursuant to EC 56325.
- G. SELPA or SBCSS will be financially responsible for the provision of all special education mental health related expenses, including special education instruction, designated instruction, and related services, including but not limited to: residential placement, transportation of pupil with a disability to and from the mental health service specified on the pupil's IEP and any claim for transportation costs for parent to travel to and from pupil's residential placement, if payment of parent's travel costs is authorized under state or federal law and as determined by the pupil's IEP team to be necessary for the child to benefit from their specialized instruction as specified on the pupil's IEP.

H. SBCSS/SELPA will not seek to have DBH added as a party to any administrative or civil action brought by student pursuant to the IDEA or otherwise related ERMHS services. In the event County is made a party to the actions, SBCSS/SELPA will conduct all settlement negotiations with the participation of the County.

I. Health Insurance and Portability and Accountability Act (HIPAA)

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) otherwise defined as Protected Health Information (PHI) or electronic Protected Health Information (ePHI). The HIPAA Privacy and Security Regulations specify requirements with respect to contracts between an entity covered under the HIPAA Privacy and Security Regulations and its Business Associates. A Business Associate is defined as a party that performs certain services on behalf of, or provides certain services for, a Covered Entity and, in conjunction therewith, gains access to PHI or ePHI. Therefore, in accordance with the [redacted] Regulations, SBCSS and SELPA shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as Attachment A.

J. Employment and Civil Rights. All parties to this agreement shall comply with the County's Equal Employment Opportunity [redacted]

1. **Equal Employment Opportunity Program:** SBCSS and SELPA agree to comply with the [redacted] Equal Employment Opportunity Program of the County of San Bernardino and rules and regulations adopted pursuant thereto: Executive Order 11240, as amended by Executive Order 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964 (and Division 21 of the California Department of Social Services

10000), the California Fair Employment and Housing Act, and other applicable Federal, State, and County laws, regulations and policies relating to equal employment or social [redacted] welfare recipients, including laws and regulations hereafter enacted.

T) SBCSS and SELPA shall not unlawfully discriminate against any employee applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, marital status, age, political affiliation or disability. Information on the above rules and regulations may be obtained from County DBH Contracts Unit.

2. **Civil Rights Compliance**

SBCSS and SELPA shall develop and maintain internal policies and procedures to assure [redacted] compliance. SBCSS and SELPA shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments or [redacted] on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical disabilities. SBCSS and SELPA shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified individuals with disabilities in all federally

assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977. SBCSS and SELPA shall include the indemnification and compliance provisions of this contract in all subcontracts to perform

work under this contract. SELPA may require a determination of medical necessity pursuant to Title 9, CCR, Section 1820.205 Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.

- K. Independent Contractor Status. Nothing contained in this agreement shall be construed as creating a joint venture, partnership or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the Party hereto. In the performance of this Agreement, the parties, and their agents and employees, shall act in an independent capacity and not as officers, employees or agents of the other parties.

Indemnification. SBCSS and SELPA shall indemnify and hold harmless the County (and its authorized officers, employees, agents and volunteers approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this agreement from any cause whatsoever including the acts, errors or omissions of any

This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. SBCSS and SELPA's indemnification obligation applies to the County's "active" as well as "passive" negligence but not to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

SELPA and SBCSS will indemnify and hold harmless County and its authorized officers, employees, agents and volunteers from any and all costs or expenses incurred by the County in an administrative or civil action brought pursuant to the Individuals with Disabilities Act (IDEA) against the County as a result of an alleged denial of Free and Public Education (FAPE) arising out of SELPA and/or SBCSS's alleged failure to offer or provide appropriate ERMHS to a student including any administrative or judicial decision requiring the County to provide money, services

of a particular program or service if the FAPE by the SELPA and/or SBCSS is caused by the sole negligence or willful misconduct of the County.

- M. Insurance. The San Bernardino County Superintendent of Schools and the San Bernardino County Department of Behavioral Health are authorized self-insured entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

- N. Force Majeure. Neither party shall be deemed to be in default of the terms of this MOU if either party is prevented from performing its obligations under the terms of this Agreement by causes beyond its control including without being limited to: acts of God; any laws and /or regulations of State or Federal government; loss of funding and/or re-categorization and re-benching of available funding; or any catastrophe resulting from flood, fire, explosion, or other issues beyond the control of the

defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party(ies) written notice of the cause for the delay. The party shall use reasonable diligence to correct the cause of the delay if correctable and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance of the terms of this MOU.

- O. Laws and Venue. The venue of any action or claim brought by any party to the Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning the Contract is brought by any third-party and

venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

- P. Third Party Rights. Nothing in this MOU shall be construed to give any rights or benefits to anyone other than SELPAs, SBCSS, and DBH. (Note: EPSDT Medi-Cal beneficiaries are ~~directed to these laws and regulations pertaining to the delivery of Medi-Cal direct services known~~ incidental to the delivery of those direct services.)

- Q. Dispute Resolution. DBH, SELPAs and SBCSS agree that the following process will be used to address disputes as to the implementation of this MOU only after collaborative efforts have been

Education services, nothing in this MOU nor any of its terms and/or conditions shall be construed as to characterize DBH as a "public non-educational agency" within the meaning of CFR Title 34, Section 300.33, and/or California Education Code Sections 56028.5 and 56500 which would give rise to procedural safeguards and/or any "due process" rights to parties outside this agreement.

For the term of this agreement, DBH, SELPA, and SBCSS will name a mutually agreed upon facilitated communication through non-binding mediation. The parties shall use the following process:

- A written notice of the request for dispute resolution, including a description of the non-initiating party.
- If the issue is not resolved within five (5) business days, the agency initiating the dispute shall request that the outside party be contacted to schedule a meeting between the
- No later than sixty (60) calendar days from the date mediator is contacted, a resolution plan between the two agencies will be developed.
- The responsible DBH, SELPA, and SBCSS personnel services shall be responsible for assuring the agreements included in the resolution plan are implemented.
- The costs for this service shall be shared equally between DBH, SELPA, and SBCSS.

- R. Integration. This is an integration MOU and represents the entire understanding of the SBCSS / SELPA and DBH as to those matters contained herein, and supersedes and cancels any prior

oral or written understanding, promises or representations with respect to those matters covered

hereto.

S. Notices. All notices and communications regarding the provision of special education services described in this Agreement should be provided to the following contact person for each agency in the Agreement:

1. DBH Representative	Timothy F. Hougren, Ph.D.
2. Superintendent of Schools	Gary Thomas, Ed.D.
3. Desert Mountain SELPA	Ronald Powell, Ph.D.
4. East Valley SELPA	Anita Kuesterholtz, M.A.
5. West End SELPA	Joann Reilly, M.A.
6. Fontana Unified School District	Michelle Southworth
7. Morongo Unified School District	Kathi Papp
8. San Bernardino City Unified School District	Helen Rodriguez

In the event the contact person changes, the party with the change shall provide all parties in writing with the name, business address and telephone number of the new contact person within five (5) business days of the change.

T. Amendments. All parties agree any alterations, variations, modifications, or waivers of provisions of the agreement shall be valid only when they have been reduced to writing, duly signed and attached to the original of the agreement and approved by the required persons and organizations.

VII. RIGHT TO MONITOR AND AUDIT

A. DBH staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested. Full

B. SBCSS/SELPA shall cooperate with DBH in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.

C. SBCSS/SELPA shall provide all reasonable facilities and assistance for the safety and convenience of DBH representative in the performance of their duties. All inspections and evaluations shall be

VIII. TERM

This MOU is effective as of July 1, 2011 and expires June 30, 2012, but may be terminated earlier in accordance with provisions of Section IX of this MOU.

This MOU may be extended for two one-year periods if additional or alternative funds are specified with the state

IX. EARLY TERMINATION

- A. This MOU may be terminated without cause upon thirty (30) days written notice by either party. DBH's Director or designee is authorized to exercise DBH's rights with respect to any termination of this MOU. The SBCSS or his/her appointed designee has the authority to terminate this MOU on behalf of SELPA and SBCSS.
- B. SELPA and SBCSS will only be reimbursed for costs and uncancelable obligations incurred prior to the date of termination. SELPA and SBCSS will not be reimbursed for costs incurred after the date of termination.

MOU are reduced or eliminated, DBH may immediately terminate this MOU upon written notice to

X. CONCLUSION

- A. This MOU, consisting of 12 (twelve) pages, Approval Signature Page, and Attachments A and B, is the full and complete document describing the agreement between the San Bernardino County Department of Behavioral Health, the San Bernardino County Superintendent of Schools, and the SELPA with the County of San Bernardino.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit the respective organizations to the terms and conditions set forth in this document.

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

CaSonya Thomas
Director County of San Bernardino DBH

Date

APPROVAL SIGNATURE LINE

Gary Thomas, Ed.D., Superintendent of Schools
San Bernardino County Superintendent of Schools

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Ronald Powell, Ph.D. Administrator
Desert Mountain SELPA

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Anita Ruesterholtz, M.A. Administrator
East Valley SELPA

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Joann Reilly, M.A. Administrator
West End SELPA

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Cecilia Duggan, Assistant Superintendent
Fontana Unified School District

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Cecilia Duggan, Assistant Superintendent

Date

Fontana Unified School District

APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Principal/Assistant Superintendent

Date

Fontana Unified School District

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

Cathy Duggan, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

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APPROVAL SIGNATURE PAGE

Oscar Duenas, Assistant Superintendent
Fontana Unified School District

Date

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

San Bernardino City Unified School District

INTERAGENCY COOPERATIVE AGREEMENT

APPROVAL SIGNATURE PAGE

COUNTY OF SAN BERNARDINO



Josie Gonzales, Chairman, Board of Supervisors

Dated _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors

By _____

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, San Bernardino County Superintendent of Schools/Special Education Local Plan Areas, hereinafter referred to as BUSINESS ASSOCIATE, may use, access or disclose Protected Health Information to perform functions, activities or

COVERED ENTITY as specified in this Agreement and the attached CONTRACT, provided such

not limited to, California Civil Code 56 – 56.16, 56.20, 56.36, Health and Safety Codes 1280.1, 1280.15, 1280.16, 1280.20, Title 42 of the Code of Federal Regulations Part 2, and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, PUBLIC LAW 111-5 (THE HITECH ACT) and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of Business Associate. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

i. Definitions.

- a. "Breach" means the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), CA and/or Civil Code 56.36 which compromises the security or privacy of the Protected Health Information. For the purposes of HITECH, a breach shall not include:
1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority permitted by the HIPAA Privacy Rule; or
 2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
 3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. "Business Associate" means with respect to a Covered Entity, a person who:
1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity performs or assists in the performance of :
 - (a) a function or activity involving the use or disclosure of Personally Identifiable Information for purposes of the management, administration, financial management, management, and repricing; or
 - (b) any other function or activity regulated by the HIPAA Privacy or HIPAA Security Regulations; or

Provider other than in the capacity of a member of the workforce of such Covered Entity, or in the capacity of an administrative, accreditation, or financial services to or for such Covered Entity, where the provision of the service involves the disclosure of personally identifiable Health Information from such Covered Entity to the person.

Business Associate

covered by HIPAA Privacy and Security Regulations

- e. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- f. "Discovered" means a breach shall be treated as discovered by Covered Entity or Business Associate as the first day on which such breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- g. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- i. "HIPAA Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
- j. "HIPAA Security Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
- k. "HITECH Act" means the privacy, security and security Breach notification provisions applicable to Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

information, including demographic information collected from an individual, and;

- 1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and

individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and

- (a) that identifies the individual; or

(b) with respect to which there is a reasonable basis to believe the information can

m. "Protected Health Information" or "PHI" means Personally Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity; (ii) Business Associate creates for its own purposes from Personally

is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Personally Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(a); records described at 20 U.S.C. Section 1232a(a)(4)(B)(iv); and

n. "Secured PHI" means PHI that was rendered unusable, unreadable or indecipherable to

o. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

p. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as such terms have under HIPAA, the HIPAA Privacy Rule, the HIPAA Security Rule and the HITECH Act.

II. Obligations and Activities of Business Associate.

Health Information other than as permitted or required by this Agreement and as specified in the attached **CONTRACT** or as required by law. Further, Business Associate shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

b. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Health Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. section 164.502(a)(4)(vi). Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(a)(4). However, this prohibition shall not effect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.

c. **Appropriate Safeguards.** Business Associate shall implement the following administrative, physical, and technical safeguards in accordance with the Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312 and 164.316:

1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this

members of its workforce implement policies and procedures to prevent these

- (a) Whether there has been an impermissible use, acquisition, access or disclosure of PHI under the Privacy Rule;
- (b) Whether an impermissible use or disclosure compromises the security or privacy of the PHI, by posing a significant risk of financial, reputational or

(c) Whether the incident falls under one of the breach exceptions.

the potential breach with decision whether a breach has occurred.

- (a) If a breach has not occurred, notification to patient/client(s) is not required.
- (b) If a breach has occurred, notification to the patient/client(s) is required, and and make available to the Covered Entity.

4. Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal

the right to conduct its own investigation and analysis.

f. **Permitted Disclosures.** If Business Associate discloses Protected Health Information to a third party, including any agent or subcontractor, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Health Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was

notify Business Associate of any breach of confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)].

g. **Access to Protected Health Information.** Business Associate shall provide access to Protected Health Information in a Designated Record Set to Covered Entity or Individual, at the request or direction of Covered Entity and in the time and manner designated by the Covered Entity, as required by of 45 CFR 164.524.

h. **Amendment of Protected Health Information.** If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR 164.526, in the time and manner designated by the Covered Entity.

i. **Access to Records.** Business Associate shall make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use, access and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered

a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security

j. **Audit and Monitor.** Covered Entity reserves the right to audit and monitor all records, policies, procedures and other pertinent items related to the use, access and disclosure of Protected Health Information of the Business Associate as requested to ensure

subcontractor of Business Associate that received Protected Health Information from

- b. **Ownership.** The Protected Health Information shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the Protected Health Information.
- c. **Regulatory References.** A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or ~~as amended~~.
- d. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the ~~requirements of the Privacy and Security Rules and patient confidentiality regulations~~ and Accountability Act and patient confidentiality regulations.
- e. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered regulations.
- f. **Indemnification.** Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and subcontractors ~~from~~ and all claims, actions, losses, damages, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to ~~the performance of the terms of the Agreement.~~