MEMORANDUM OF UNDERSTANDING
For Educationally Related Mental Health Services for FY 2012/2013/2014
Between
County of Alameda Health Care Services Agency, Behavioral Health Care Services, Alameda County Office of Education and San Leandro Unified School District

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), is made between the County of Alameda Health Care Services Agency, Behavioral Health Care Services ("BHCS"), the Alameda County Office of Education ("ACOE"), and the San Leandro Unified School District ("DISTRICT") (collectively the "Parties") with respect to the provision of Educationally Related Mental Health Services ("ERMHS") under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. II 1400, et seq.

RECITALS

WHEREAS, the federal Individuals with Disabilities Education Act (IDEA) entitles all students with disabilities to a "free, appropriate public education;" and

WHEREAS, the federal law includes a requirement for Educationally Related Mental Health Services for children with disabilities who require such services to benefit from special education; and

WHEREAS, in 1984, the California State Legislature enacted AB 3632, the Special Education Pupils Program, (at Government Code Sections 7570 et seq.) which transferred responsibility for providing mental health services required by special education students as determined by an individualized education program ("IEP") from school districts to county mental health departments; and

WHEREAS, the California commission on State Mandates determined that AB 3632 constituted a state mandate for which counties are entitled to reimbursement under Article XIIIB, section 6 of the California Constitution; and

WHEREAS, due to actions by the California Legislature and Governor of California, the responsibilities and funding for ERMHS has been transferred away from the counties and back to the school districts; and

WHEREAS federal IDEA funds allocated to the State of California and other funding from the State of California will be distributed by Special Education Local Plan Areas ("SELPAs") to be used to provide Educationally Related Mental Health Services ("ERMHS") to students with disabilities as determined by their IEP; and

WHEREAS, the SELPAs are currently responsible for: (1) board and care for IEP designated residential placement for eligible students, and (2) mental health services which include assessment, assessment reports, consultations and IEP attendance, individual therapy – including those provided

in a counseling enriched special day class, group therapy, family therapy, medication management, crisis intervention, collateral therapy, case management, day treatment both rehabilitative and intensive ("Mental Health Services"); services that may continue to be provided through BHCS; and

WHEREAS, the Parties have collaborated and enter into this MOU in order to work together for the provision of ERMHS to students with disabilities who receive such services as part of their IEPs; and

NOW, THEREFORE, it is agreed as follows:

A. Services

(1) ***Services:*** BHCS will provide ERMHS to students with disabilities, as requested by DISTRICT, including assessment, assessment reports, consultations and IEP attendance, individual therapy – including those provided in a counseling enriched special day class, group therapy, family therapy, crisis intervention, collateral therapy, case management, day treatment both rehabilitative and intensive work from July 1, 2012 through June 30, 2014, and shall bill DISTRICT, and DISTRICT shall be responsible for paying all costs pursuant to the terms of this MOU (Refer to Appendix "List of Rates"). BHCS will not provide Board and Care services, and is not responsible for any payments related to Board and Care.

(2) ***Assessments and Attendance at IEP meetings:*** BHCS will provide an assessment for a student once a referral is received from DISTRICT. Once completed, BHCS will write an ERMHS assessment report prior to the IEP meeting, including recommendations, which will be sent to the DISTRICT for review. BHCS will attend and participate as requested in IEP meetings. BHCS will sign as a participant to the IEP, however, is doing so as a service provider to the DISTRICT and shall not be liable for any allegations of or actual failure of the DISTRICT to provide FAPE or other claims. All costs related to the assessment and participation in IEP meetings shall be invoiced and billed to the DISTRICT.

(3) ***Notification of New Students:*** If DISTRICT desires Educationally Related Mental Health Services to start for a student, DISTRICT shall, using the appropriate authorization form from BHCS, transmit notification of the date and specific services they wish BHCS to begin providing to student. All services and costs shall be invoiced and billed to the DISTRICT. DISTRICT will be invoiced for actual costs of the services pursuant to this MOU.

(4) ***Current Students:*** For students who have been receiving ERMHS through BHCS prior to the signing of this MOU, BHCS will continue providing ERMHS for that student, unless written notice to change service(s) and/or provider is received by BHCS. All services and costs shall be invoiced and billed to the DISTRICT.

(5) ***IEP Copies:*** DISTRICT shall provide a copy to BHCS of any IEP that is completed for a student. A copy of the IEP is not considered a request or notification to begin or change services for a student.

(6) ***Provision of Services:*** When requested by DISTRICT, BHCS and contracted service providers shall present service logs for direct treatment of student as listed on student's IEP. Additionally, service providers should be prepared to provide evidence of any additional agreed upon costs, such as travel time, mileage, etc.

(7) ***Change in Services:*** BHCS will continue to provide ERMHS as specified in the student's IEP, until written notice to change services, on an approved BHCS/DISTRICT Authorization for ERMHS form, is received by BHCS. DISTRICT will send BHCS an Authorization for ERMHS form following each student's IEP Annual Review to confirm continuation or change to ERMHS, A copy of the approved form "Authorization for ERMHS" is attached hereto as Exhibit A. BHCS and DISTRICT may agree to modify or amend the form as needed throughout the year; however, the form may not be modified unless agreed to by both BHCS and DISTRICT. If so modified, DISTRICT will promptly distribute the form for use in referrals and changes to services.

(8) ***Out of State Services:*** The costs for all ERMHS provided to students in out of state placements are the sole responsibility of DISTRICT. BHCS will not provide any out of state ERMHS. If DISTRICT wishes BHCS to provide ERMHS for an out of state placement, a separate written agreement for that student will be entered into between DISTRICT and BHCS, including specification of the service being provided, costs and payment of expense.

(9) ***Medical Insurance Coverage:*** BHCS will direct all providers of ERMHS to ask a student's parent or guardian about any medical insurance coverage a student may have. If there is private medical insurance coverage and the parent/guardian consents, provider will first bill the student's private medical insurance for services. If the parent/guardian refuses to disclose private medical insurance information or refuses to allow ERMHS provider(s) to bill their insurance then the total cost of the ERMHS services provided remains the responsibility of the DISTRICT. If payment is received from private medical insurance, the amount received shall be deducted from the amount billed to the DISTRICT. DISTRICT is responsible for payment of any and all unreimbursed costs, including insurance coverage denials of payment for part or all of the ERMHS services. BHCS shall not be responsible for checking or applying for Medi-Cal coverage on behalf of any student, or related to services for any student.

(10) ***Stopping Services by Notice:*** If DISTRICT wants all services for a student stopped, they shall give notice by "Authorization for ERMHS" form, signed by DISTRICT, to BHCS. When possible, DISTRICT shall give at least 30 days notice to stop services. If BHCS receives an Authorization for ERMHS that is illegible or incomplete, BHCS will immediately notify the individual who sent the form that the request is incomplete. Notice to stop services shall not be considered given until an accurate and legible Authorization for ERMHS form is received. BHCS will stop providing services to a student not more than 30 days after notice is received or the date identified in the form if that date is later. In cases where services must be stopped immediately, DISTRICT shall clearly indicate that on the Authorization for ERMHS, and BHCS shall promptly notify the provider to immediately stop services.

(11) ***Failure to Pay for Services*** If payment is not received by BHCS, they may at their sole discretion stop providing services to some or all DISTRICT students. However, services will not stop without written notice to the DISTRICT providing the DISTRICT 30 calendar days to correct the problem. If full payment is provided to BHCS within those 30 days, services will not be discontinued.

(12) ***Service Period:*** The service period will be July 1, 2012 through June 30, 2014.

(13) ***ACOE Assistance***: ACOE will provide an individual as a point of contact who has the ability and can assist with facilitation of performance obligations of DISTRICT related to ERMHS. ACOE will assist BHCS with any issues that arise with DISTRICT, including obtaining information and facilitation of timely payment by DISTRICT of any amounts due.

(14) ***BHCS Assistance:*** BHCS will provide an individual as a point of contact for DISTRICT who can assist with facilitation of performance obligations of BHCS related to ERMHS, including accurate invoicing.

(15) ***Payment Address:*** Payments to BHCS for ERMHS are to be made payable to: **Alameda County Behavioral Health Care Services** and remitted to:

Alameda County Behavioral Health Care Services
Attn: ERMHS Financial Services Specialist
2000 Embarcadero Suite 101
Oakland, CA 94606

B. Board and Care

DISTRICT is responsible for all Board and Care coordination and costs.

C. Due Process

(1) ***Services:*** Unless otherwise prohibited by law, BHCS agrees to cooperate with DISTRICT in providing information and services that DISTRICT deems appropriate and requests for purposes of settlement or hearing, in any IDEA action against the DISTRICT that involves ERMHS. These services may include attendance at preparatory meetings, attendance at hearings and follow up activities as directed by the hearing officer or DISTRICT. BHCS shall bill DISTRICT, and DISTRICT shall be responsible for paying all costs.

(2) ***Indemnification***: DISTRICT will indemnify and hold harmless Alameda County, its departments, agencies, board of supervisors, employees and representatives (the "County") from any and all costs incurred by the County in an administrative or civil action brought pursuant to the IDEA against the County as a result of an alleged denial of FAPE arising out of DISTRICT's alleged failure to offer or provide appropriate ERMHS to a student, including but not limited to the County's attorneys' fees and costs of defense, and any administrative or judicial decision requiring the County to provide money, services or a particular placement to the student. This full indemnification shall be limited where the alleged failure to provide

FAPE by a District is caused by the negligence or willful misconduct of the County.

(3) ***Non Party:*** DISTRICT will not seek to have the County added as a party to any administrative or civil action brought by a student pursuant to the IDEA or otherwise related to ERMHS services.

(4) ***Settlement:*** DISTRICT will conduct all settlement negotiations in good faith and in a manner that is not injurious to County's interests. If County is made a party to the action, DISTRICT will conduct all settlement negotiations with the participation of the County.

D. Payment for Services by DISTRICT

(1) ***Payment:*** DISTRICT agrees to pay BHCS for all services provided by or through BHCS and all related costs. The obligation to make full payments pursuant to the terms of this MOU shall continue until full payment has been received from DISTRICT. Payment shall be made for all services and costs provided starting July 1, 2012, even though this MOU may be signed by one or more parties at a later date.

(2) ***Cost***: Wherever costs is referred to in this agreement, it refers to all costs included in the array of ERMHS provided and all associated costs, including clinician salaries and benefits, cost and expenses associated with student's failure to attend appointments, and administrative support costs specifically attributable to the provided services. Administrative costs include, but are not limited to staff time for management of invoicing, billing, reimbursement, payments and program and payment monitoring activities. Costs may be calculated and billed based on a cost per unit that includes all administrative costs.

(3) ***Interim Reimbursement Charges:*** As final actual rates and costs may not immediately be available, BHCS shall invoice for the provisional or interim rate being used at the time and DISTRICT shall pay these amounts to BHCS under this Agreement for all ERMHS. After the final actual rates and costs are known, BHCS will do reconciliation and credit or invoice DISTRICT for the difference in the amount paid by DISTRICT and the actual cost. DISTRICT will promptly pay any amounts owed.

(4) ***Invoicing for ERMHS:*** BHCS will provide DISTRICT with invoices accounting for services, interim reimbursement rates and other costs incurred on a quarterly basis. The invoices will include the student's name, the student's school district of residence, ERMHS provided, the date(s) on which such services were provided, amount of service, costs incurred by BHCS associated with providing the services and breakdown of federal and non-federal funds needed for Medi-Cal match. DISTRICT shall reimburse and pay County the full invoice amount no later than 60 days after receiving each invoice.

(5) ***Settlement:*** BHCS will use its best efforts to calculate settlements for the year promptly. Settlement is accounting and adjustments based on actual costs to BHCS, final reimbursement charges, actual cost of providers plus administrative cost less any revenues (Medi-Cal, Other Health Insurance, etc.) received by BHCS for the service(s) provided. Settlement will be based

on information available to BHCS, however, does not include any adjustment that may be made after review, audit or directions from the State or other auditing or funding agency.

(6) ***Audit by District:*** Invoices may be subject to verification by an independent audit, at DISTRICT's election. Cost for this audit will be borne by DISTRICT.

(7) ***Payment for Student Costs:*** DISTRICT shall be obligated for and make payments for all ERMHS and costs for a student until actual notice from DISTRICT is received by BHCS that services are to stop, including notice that the student is no longer enrolled in the DISTRICT. When the IEP team (as defined in California Education Code Section 56341) has agreed to end ERMHS, the DISTRICT will give BHCS at least 30 days notice to stop services and costs. BHCS will stop (or transfer to serving DISTRICT) services and costs immediately upon receipt of notice for students who have moved out of the DISTRICT. If DISTRICT fails to notify BHCS that student is no longer enrolled, DISTRICT shall pay for services and costs for a student, even if that student was not enrolled in the DISTRICT when services and costs were incurred. BHCS and DISTRICT will use its best efforts to inform each other that a student has moved out of the DISTRICT. The obligations for making payment/reimbursement to BHCS will continue until notice to terminate or revise services is received pursuant to the terms of this MOU, and DISTRICT agrees to pay for one transitional service session provided by BHCS after notice is received.

(8) ***Schools:*** The information for the DISTRICT contact person for all schools is attached to this agreement as Exhibit B. Charter Schools, unless specifically identified on the attached Exhibit, are not part of the DISTRICT for provision of ERMHS services by BHCS.

E. Medi-Cal

(1) ***Medi-Cal Beneficiaries***: Funding for any student from Medi-Cal reimbursements received by BHCS for billed ERMHS services shall offset any amount DISTRICT may be required to pay to BHCS. When requested by DISTRICT, BHCS will contact the family and make inquiries into determining Medi-Cal eligibility However, nothing in this agreement obligates BHCS to apply for Medi-Cal for any student.

(2) ***Amount:*** Medi-Cal reimbursements are considered the actual amounts received from the Medi-Cal state program for that student. Any match funding (see E-5) that may be required are part of actual costs and, pursuant to the terms of this MOU, shall be paid by DISTRICT. The Medi-Cal State Maximum Allowable charges for services may not be the actual cost of services and DISTRICT shall pay actual costs.

(3) ***Change in Eligibility***: The DISTRICT understands that Medi-Cal eligibility may change while a student is in service, and after any reconciliation shall be credited by BHCS or paid to BHCS any difference in costs related to Medi-Cal eligibility, status or reimbursement

(4) ***Reconciliation:*** DISTRICT understands that the Medi-Cal reimbursement process, through no fault of BHCS, can take years to be reconciled by the state and agrees to

make final payments for all amounts due/or owed under the terms of this MOU at the time of reconciliation.

(5) ***Payment of Local Share:*** The DISTRICT understands that payment of any federal share of Medi-Cal, Health Families and other federal public funding is based on the amount of local funding that must be provided by DISTRICT. DISTRICT agrees to timely payment of the local share of cost attributable to the student being served, so as to not jeopardize the federal share match. DISTRICT shall not use any federal funding for payment of the match funding for Medi-Cal students.

G. General Terms and Conditions

(1) ***Confidentiality of Records:*** As the invoices are records that will contain confidential information concerning specific student information, and information that could identify the student, even if the names were redacted, the invoices shall be treated as confidential to the extent allowed by law. These records may contain information and be considered protected health information and/or student records protected under the Education Code.

(2) ***State Reimbursement:*** Nothing in the MOU is intended to, or shall, prevent any party to this MOU from pursuing reimbursement from any state or federal agency or funding source for ERMHS.

(3) ***Finality:*** This MOU is created in part to create predictability and certainty for the providing and funding services for the time period of the MOU. Regardless of any further court determination, including appeals, neither party shall pursue reimbursement from the other except as specifically set forth in this MOU.

(4) ***Termination of MOU***: This MOU may be terminated for the provision of services not yet performed and costs not yet incurred by any Party upon the giving of thirty (30) days prior written notice to the other Parties, however, all other terms and conditions will continue.

(5) ***Informal Resolution:*** If a dispute arises between any of the signatories of this MOU, the Parties involved in the dispute will make a good faith effort to resolve the dispute between them in a timely fashion before seeking an intervention.

(6) ***Term***: **This MOU is effective July 1, 2012 through June 30, 2014.**

(7) ***Provision of Services***: The Parties agree to meet and confer on a regular basis to carry out the terms of this MOU.

(8) ***Days:*** Days shall mean calendar days.

(9) ***Integration:*** This MOU represents the entire understanding of the Parties 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

hereunder. This agreement may not be modified or altered except in writing signed by all Parties hereto.

(10) ***Laws and Venue:*** This MOU contains the complete and final understanding of the Parties' rights, duties and obligations with respect to the transaction discussed in this MOU and supersedes all prior MOUs, contracts, understandings and commitments whether oral or written with respect to the provision of ERMHS for the term of this MOU. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term agreement, the action shall be brought in a state or federal court with the jurisdiction of Alameda County, State of California.

(11) ***Third Party Rights***: Nothing in this agreement shall be construed to give any rights or benefits to anyone other than the Parties to this MOU.

(12) ***Imposition of Obligations:*** Nothing in this MOU is intended to establish or impose upon the County of Alameda, including BHCS, any legal obligation under IDEA or other federal or state law, to provide ERMHS.

(13) ***Severability***: The unenforceability, invalidity or illegality of any provision(s) of this MOU shall not render the other provisions unenforceable, invalid, or illegal. If a court of competent jurisdiction holds any provision of this MOU to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this MOU would be defeated by the loss of the illegal, unenforceable, or invalid provision.

(14) ***Waiver:*** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this MOU shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(15) ***Indemnification by District:*** To the fullest extent permitted by law, DISTRICT shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, to the extent arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except wheresuch Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving DISTRICT of any obligation hereunder.

(17) ***Headings:*** Headings are for convenience of reference only and shall in no way affect interpretation of the MOU.

(18) ***Notices:*** All notices, requests, demands, or other communications under this MOU shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

ALAMEDA COUNTY OFFICE OF EDUCATION:
Sheila Jordan, Superintendent
Alameda County Office of Education
313 W. Winton Avenue
Hayward, CA 94544

BHCS:
Director, Child & Youth Services
Alameda County Behavioral Health Care Services
2000 Embarcadero Cove, Fourth Floor
Oakland, CA 94606

DISTRICT:
David Poeschl, Director, Special Services
San Leandro Unified School District
14735 Juniper Street
San Leandro, CA 94579

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said

notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

(19) ***Authority:*** DISTRICT represents and warrants that it has the legal and actual authority to enter into this MOU, including all terms and conditions, on behalf of each and every school in the DISTRICT.

(20) ***Signatory***: By signing this agreement, signatory warrants and represents that he/she executed this MOU in his/her authorized capacity and that by his/her signature on this MOU, he/she or the entity upon behalf of which he/she acted, executed this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the dates of their signatures.

Alameda County Office of Education

By_____ Date 4/30/13
Sheila Jordan, Superintendent

Alameda County, Behavior Health Care Services:

By_____ Date 4/25/13
Marye L. Thomas, M.D.

San Leandro Unified School District:

By_____ Date 4/1/13
David Poeschl, Director, Special Services

APPROVED AS TO FORM
Alameda Office of the County Counsel

by _____