

SPECIAL EDUCATION MEMORANDUM OF UNDERSTANDING
BETWEEN SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
AND
URBAN CHARTER SCHOOLS COLLECTIVE

This Special Education Memorandum of Understanding (“Agreement”) is entered into as of July 1, 2010, by and between the Board of Trustees of the Sacramento City Unified School District (“District”) and the Urban Charter Schools Collective, a California non-profit public benefit corporation (“Non-Profit”) operating the Yav Pem Suab Academy – Preparing for the Future Charter School (“Charter School”), a public charter school chartered by the District. This Agreement will set forth the responsibilities of the parties with respect to the delivery and financing of special education services to children enrolled in the Charter School. The Charter School and the District are collectively referred to as the “parties.”

I. RECITALS

- A. The District is the granting agency of the Charter School. The District approved the Charter School charter on March 18, 2010, for a term of approximately five (5) years, beginning on July 1, 2010, and expiring June 30, 2015.
- B. The Charter School is operated by Non-Profit, a non-profit public benefit corporation. All obligations imposed hereby on the Charter School are equally imposed on the Non-Profit.
- C. The Charter School shall be categorized as a “public school” within the District in conformity with California Education Code section 47641, subdivision (b) for the purposes of special education. The Charter School’s students will be students of the District for purposes of special education.
- D. The District will serve as the Charter School’s local educational agency (“LEA”) for the purposes of special education, and as such must take steps to ensure that all children with disabilities enrolled in the Charter School receive special education and designated instruction and services in conformity with their individualized education plans (“IEP”) and in compliance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.*), its implementing regulations and all applicable state and federal law. (Ed. Code, § 47646, subd. (a).)
- E. This agreement has the purpose of clarifying the roles and responsibilities of the parties with regard to students who are enrolled and attend the Charter School and are or may be eligible for special education and related services under the IDEA.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, the Charter School and the District do hereby agree as follows. Unless

otherwise stated herein, for the purposes of this Agreement, the terms "Charter School" and "Non-Profit" may be used interchangeably, with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement

II. TERM

The term of this Agreement shall be from July 1, 2010, to June 30, 2015. This Agreement may be amended by mutual written agreement of the parties at any time. This Agreement is subject to termination during the term as permitted by law.

III. DESIGNATED REPRESENTATIVE

The District's designated representative shall be the superintendent and shall have the authority to act on behalf of the District. The Charter School shall designate a representative in writing and this representative shall have the authority to act on behalf of the Charter School, except to the extent action by the Governing Board of the Charter School is legally required.

IV. NONDISCRIMINATION IN ADMISSIONS

All students will have access to the Charter School and no student shall be denied admission due to his or her disability. (20 U.S.C. § 1412(a)(2); 34 C.F.R. § 300.209; Ed. Code, § 47605, subd. (d).)

V. SECTION 504 AND THE ADA

The parties agree that this Agreement is intended to address the responsibilities of the parties with respect to the provision and financing of special education services under the IDEA and does not cover services or accommodations required under Section 504 of the Rehabilitation Act of 1973 ("Section 504"), nor under the Americans with Disabilities Act ("ADA"). The Charter School shall be solely responsible, at its own expense, for compliance with Section 504 and the ADA.

VI. SPECIAL EDUCATION FUNDING

A. Retention of Special Education Funds by the District. The Charter School, which has been deemed a public school of the District, shall participate in state and federal funding in the same manner as any other public school of the District. (Ed. Code, § 47646, subd. (a).) The parties agree that, pursuant to the division of responsibilities set forth in this Agreement, the District has agreed to provide special education services for the Charter School, consistent with the services it provides eligible students at its other public schools. Consistent with this division of responsibility, the District shall retain all state and federal special education funding allocated for Charter School students though the Sacramento City Special

B. Charter School Contribution to Encroachment. The Charter School shall owe the District a pro-rata share of the (encroachment) as estimated in the District’s current Fee Schedule for Services to Charter Schools (“Fee Schedule”) attached hereto as Appendix A. The encroachment amounts set forth in the Fee Schedule are subject to updating when the District’s actual unfunded special education costs become available. At the end of each fiscal year, the District shall calculate the Charter School’s pro-rata share of the District-wide encroachment for that year as calculated by the total unfunded special education costs of the District (including those costs attributable to the Charter School) divided by the total number of District enrollment (including Charter School students) and multiplied by the total number of Charter School enrollment. Charter School enrollment shall include all students, regardless of home district. Payments for encroachment shall be made by the Charter School to the District pursuant to the following schedule:

October 31: 25% of Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

January 31: 25% of Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

April 30: 25% of Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

July 15: 25% of Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

If at any time it is determined by the District that the Charter School has paid more than its actual pro rata share of encroachment, the District will give notice of same within 30 days, and such amounts shall be refunded to the Charter School or, at the sole option of the Charter School, applied to the encroachment of the following school year. If at any time it is determined by the District that the Charter School has paid less than its actual pro rata share of encroachment, the District will give notice of same within 30 days, and such amounts shall be paid by the Charter School or, at the sole option of the District, added to the encroachment of the following school year.

For the 2010- 2011 school year, Charter School’s estimated pro-rata share of encroachment shall be calculated based upon District’s actual 2009-2010 school year encroachment and an estimated Charter School enrollment of 300.

VII. PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES

A. General Provisions

1. **Intent of the Parties.** The Parties intend to jointly ensure that all students with disabilities who attend the Charter School are provided a free appropriate public education (FAPE) in compliance with the IDEA (20 U.S.C. § 1400 *et seq.*) and California Education Code section 56000 *et seq.*
2. **Provision of Services.** A child with disabilities attending the Charter School shall receive special education and related services in the same manner as a child with disabilities who attends another public school of the District. (Ed. Code, § 56145.) A full continuum of special education programs and related services shall be provided to Charter School students as required by an individual student's IEP.
3. **Division and Coordination of Responsibility.** The Parties agree to allocate responsibility for the provision of services, including but not limited to identification, evaluation, IEP development and modification, and educational services, in a manner consistent with their allocation between the District and its local public school sites, and in conformity with applicable state and federal law. Where particular services are generally provided by staff at the local school site level, the Charter School, subject to District approval, may provide staff and programming. Where particular services are provided to the school by the central district office, those services will be made available to the Charter School in a similar fashion.
4. **Days of Service.** Special education services shall be available to the Charter School for the same total number of days each year that such services are available to District students.
5. **Staffing Requirements.** All special education and related services must be provided by qualified personnel meeting state certification, licensing, registration or other applicable requirements. (34 C.F.R. §§ 300.156.)

To the extent that the District and/or SELPA provide training opportunities and/or information regarding special education to site staff, such opportunities and/or information shall be made available to Charter School staff.

6. **Contracts with Non-District Providers.** The Charter School shall not contract with any outside person or agency for the provision of special

education and/or related services to Charter School students without the prior written approval of the District. Moreover, any such contracts may only be entered into with nonpublic schools or agencies properly certified by the state of California.

7. **Student Records.** The Charter School is responsible for obtaining the cumulative files, prior and/or current IEPs and other special education information on any student enrolling from a non-District school. The Charter School shall forward copies of all such information to the District. The District will ensure that the Charter School is provided with notification and relevant files of all students transferring to the Charter School from a District school, who have an existing IEP, in the same manner that ensures the forwarding of such information between District schools. All records and files will be released with the signed permission of the Parent/Guardian.
8. **Notice of Procedural Safeguards.** The Charter School shall provide the Parent/Guardian with a notice of procedural safeguards when: a Parent/Guardian asks for a copy; the first time a child is referred for special education assessment; each time a Parent/Guardian is notified of an IEP meeting; each time a child is reassessed; each time a Parent/Guardian requests mediation; and each time a Parent/Guardian requests a due process hearing. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. §§ 300.504(a) and 300.530(h); Ed. Code, §§ 56301(d)(2), 56321, 56500.1 and 56502.)

B. Enrollment, Identification and Evaluation

1. **Enrollment Information.** The Charter School shall include on its enrollment form(s) a question regarding whether the student seeking to enroll in the Charter School is, or may be, a student eligible for special education and related services. The Charter School shall provide the District with a list of special education students enrolled in the Charter School at the beginning of each school year and shall update the list on a quarterly basis.
2. **Identification and Referral.** The Charter School shall have the same responsibility as any other public school in the District to work cooperatively with the District in identifying and referring students who have or may have exceptional needs that qualify them to receive special education services. The Charter School will develop, maintain, and implement policies and procedures to ensure identification and referral of students who have, or may have, such exceptional needs. These policies and procedures will be in accordance with California law and District

policy. The District shall provide the Charter School with any assistance that it generally provides its other public schools in the identification and referral processes. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and where appropriate utilized. (Ed. Code, § 56303.)

3. **Assessment.** District staff shall conduct all necessary special education assessments of Charter School students, including but not limited to initial assessments, annual assessments and triennial assessments, unless the parties agree otherwise in writing. All such assessments will be conducted by qualified personnel and comply with state and federal law and regulations. (20 U.S.C. 1414(a)-(c); 34 C.F.R. §§ 300.300-305; Ed. Code, § 56320; Cal. Code Regs., tit. 5, § 3023.) The District and the Charter School may not conduct any assessment without first obtaining the written consent of the Parent/Guardian. (20 U.S.C. 1414(a)(1)(D); 34 C.F.R. 300.300; Ed Code, § 56321.)

If a Parent/Guardian refuses to consent to an assessment that the District or the Charter School believes is required to provide a Charter School student with FAPE, the Charter School shall immediately notify the District.

The Charter School shall not refer its students for independent educational evaluations without prior written approval of the District.

4. **Interim Placement.** For students with a current IEP who enroll in the Charter School from a school outside the District, the District shall immediately provide the student with an interim placement not to exceed 30 days. The interim placement must be in conformity with an IEP, unless the Parent/Guardian agrees otherwise. The IEP implemented during the interim placement may be either the student's existing IEP or a new IEP developed in conformity with applicable state and federal law. Before the expiration of the 30 day period, the interim placement shall be reviewed by the IEP team and final recommendations made. (Ed. Code, § 56325.)

The Charter School shall notify the District immediately of students who may fall into this category. The District will provide consultative assistance to the Charter School to help transition such students.

C. Individualized Education Programs (IEPs)

1. **IEP Team Membership.** IEP team membership shall be in compliance with state and federal law and shall include a designated representative of

the Charter School and a designated representative of the District. (20 U.S.C. 1414(d)(1)(B); 34 C.F.R. §300.344; Ed. Code, § 56341, subd. (b).)

2. **IEP Meetings.** Responsibility for arranging necessary IEP meetings shall be allocated in accordance with the District's general practice and procedure and applicable law. The Charter School shall be responsible for having the designated representative of the Charter School in attendance at the IEP meetings in addition to representatives who are knowledgeable about the regular education program at the Charter School. The Parent/Guardian shall be given a copy of the procedural safeguards upon notice of each IEP meeting. (Ed. Code, § 56341.)
3. **IEP Contents.** The Charter School shall use the SELPA forms to complete its IEPs. Each IEP must include, but is not limited to: a statement of the child's present levels of educational performance; measurable annual goals; the special education and related services and supplementary aids and services to be provided to the child; an explanation of the extent, if any, to which a child will not participate with non-disabled children; the dates, frequency, location and duration of services for the child; and a statement of how the child's progress toward his or her annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345.)
4. **Parental Consent to the IEP.** The Parties may not implement an IEP to which a Parent/Guardian does not provide written consent. If a Parent/Guardian consents to only part of an IEP, the District and Charter School must implement the portion of the IEP to which the Parent/Guardian consented. (Ed. Code, § 56346, subd. (e).) Notification of the other party is required any time a Parent/Guardian refuses to consent to any portion of an IEP.

D. Program and Services

1. **Eligibility and Placement.** Decisions regarding eligibility, goals/objectives, program, placement and exit from special education shall be the decision of the IEP team. Services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures and requirements of the District, the SELPA and applicable law. Whenever the Charter School takes, proposes or refuses to initiate or change the identification, evaluation or educational placement of a Charter School student, the Charter School must, in consultation with the District, provide the Parent/Guardian with prior written notice of such action. (34 C.F.R. § 300.503.)

In the event that either party believes that placement in a District program is necessary to provide a student with FAPE, such placement shall only be made by an IEP team comprised of representatives of the Charter School and the District.

2. **Independent Study.** No Charter School student eligible for special education and related services may participate in independent study, unless his or her IEP provides for such participation. The determination regarding the appropriateness of independent study for a particular student shall be made by the IEP team. (Cal. Ed. Code, § 51745, subd. (c).)
3. **Referral to Nonpublic or Private Schools.** The Charter School shall not make referrals for placement at nonpublic schools, private schools or residential placements without consultation with and prior written approval of the District. If a parent unilaterally places a student at a nonpublic school, private school or in a residential placement, the Charter School shall immediately notify the District upon learning such information.
4. **Transition Services.** The District and the Charter School shall jointly ensure the provision of appropriate transition services to Charter School students in the same manner they are provided to other eligible students in the District. (20 U.S.C. 1414(d)(1)(A)(viii); 34 C.F.R. §§ 300.43 and 300.320; Ed. Code, § 56345.1.)
5. **Transportation.** The District shall provide transportation to any Charter School student, if required by that student's IEP. The Charter School shall not provide special education transportation to its students, unless the parties agree otherwise. The Charter School shall pay the Special Education Transportation Encroachment to the District as set forth in Appendix A, per student transported, as calculated in paragraph VI(B), above. All special education transportation shall be provided in the same manner it is provided to other eligible students in the District.

VIII. DISCIPLINE OF SPECIAL EDUCATION STUDENTS

A. Suspension and Expulsion. The Charter School shall have discipline policies that comply with all applicable portions of the California Education Code and 34 C.F.R. §§ 300.530 *et seq.* The Charter School shall provide a copy of such policies to the District. These include, but are not limited to policies regarding suspension, expulsion, conducting functional analysis assessments, drafting and reviewing behavior interventions plans, and conducting manifestation determination reviews. If a Charter School student is suspended for more than 10 days in any school year and/or commits an expellable offense, the Charter School shall immediately notify the District.

IX. COMPLAINTS AND DISPUTE RESOLUTION

- A. Parent Concerns.** The Charter School shall instruct Parents/Guardians to raise concerns regarding special education services, related services and rights to District and/or Charter School staff. Whenever a Parent/Guardian raises a concern regarding special education and/or related services, the Charter School shall immediately inform the District. The District representative in consultation with the Charter School's designated representative shall respond to and address the Parent/Guardian concerns.
- B. Complaints.** In consultation with the Charter School, the District shall address/respond/investigate all complaints received under the Uniform Complaint procedure involving special education. The Charter School shall cooperate fully with reasonable requests from the District for information and documentation related to such complaints.
- C. Due Process Hearings.** In consultation with the Charter School, the District may initiate a due process hearing related to the provision of FAPE to a Charter School student, if the District determines it is legally necessary to meet the District's responsibilities under federal and state law.

The District and Charter School shall work together to defend any due process hearing brought by a student enrolled in the Charter School. If such hearing arises out of or results from Charter School's negligent or wrongful acts or omissions in the performance of this Agreement, Charter School shall indemnify the District to fullest extent pursuant to Section XII of this Agreement. In the event that the District determines that legal counsel representation is needed, the District/Charter School shall be jointly represented by legal counsel selected by the District, unless there is a conflict of interest. In the case separate counsel is needed by the Charter School, the Charter School shall be responsible for the separate costs of its legal counsel, in addition to its responsibilities for costs as set forth in this Agreement.

The Charter School shall cooperate fully with reasonable requests from the District for information and documentation related to due process hearings in which the District and/or the Charter School is a party.

X. SELPA ACTIVITIES AND MEETINGS

The District Superintendent or designee shall represent the Charter School at all SELPA meetings as it represents the need of all schools in the District. Reports to the Charter School regarding SELPA decisions, policies, etc. shall be communicated to the Charter school as they are to all other schools within the District. To the extent that District staff has the opportunity to participate in committee meetings of the SELPA as representatives

of their district, such opportunities shall be made available to Charter School staff.

XI. COST CONTAINMENT EFFORTS

Charter School and District acknowledge the importance of containing the costs of providing special education services to individual students so that these costs do not exceed the amount the District would normally expend if the student being served were attending a District school. Accordingly, Charter School agrees to fully cooperate with the District in order to achieve cost efficiencies to the extent expected of and practiced by other schools in the SELPA.

XII. INDEMNIFICATION OF DISTRICT BY CHARTER SCHOOL

Charter School agrees to defend, indemnify and hold harmless the District from and against any and all claims, demands, losses and expenses (including without limitation any and all attorneys fees and consultant fees) arising out of or resulting from Charter School's negligent or wrongful acts or omissions in the performance of this Agreement.

The District agrees to defend, indemnify and hold harmless the Charter School from and against any and all claims, demands, losses and expenses (including without limitation any and all attorneys fees and consultant fees) arising out of or resulting from District negligent or wrongful acts or omissions in the performance of this Agreement.

XIII. INSURANCE

In furtherance of the indemnification provided under Section XII of this Agreement, the Charter School shall name the District, its officers, agents and employees as additional insured on general liability policies, documentation of which shall be provided no later than August 15, 2010. General liability must be at least five million dollars (\$5,000,000). Certificates of insurance must indicate the coverage cannot be reduced or canceled until 30 days written notice has been furnished by the Charter School to the District.

XIV. MISCELLANEOUS PROVISIONS

- A. Venue.** The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the parties shall be governed by the laws of the state of California, and venue shall lie only in Sacramento County Superior Court.
- B. Modifications.** No modifications, amendments, changes, or variations or any kind to this Agreement are authorized without written consent, evidenced by execution of an amendment by an authorized representative of each Party.
- C. Interpretation.** The language herein shall be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity,

all parties shall be treated as equally responsible for such ambiguity.

- D. Integrated Agreement.** This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms. Each of the Parties acknowledges that no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.
- E. Non-Assignability.** This Agreement may not be assigned by the Parties.
- F. Binding Effect.** This Agreement is binding upon the successors and assigns of the parties, subject to the non-assignability restrictions set forth in subsection E above.
- G. Survival of Covenants.** Notwithstanding termination of the Agreement, the indemnification provisions shall survive and be fully enforceable notwithstanding the termination date of the Agreement.
- H. Notices.** All notices required by this Agreement may be sent by United States mail; postage pre-paid, to the parties as follows:

District:

Superintendent
5735 - 47th Avenue
Sacramento, CA 95824
Facsimile: (916) 643-2190

Charter School:

Dennis M. Mah
President and Lead Petitioner
Urban Charter Schools Collective
P.O. Box 189296
Sacramento, CA 95818
Facsimilie: (916) 691-9858

Any notices required by this Agreement sent by facsimile transmission or electronic mail to the facsimile and electronic mail addresses above shall be considered received on the business day they are sent, provided they are sent during in the receiving party's business hours and provided receipt is confirmed by telephone, facsimile, or electronic mail, and further provided the original is promptly placed into the United States mail, postage pre-paid, and addressed as indicated above.

Each person below warrants and guarantees that s/he is legally authorized to execute this

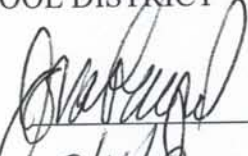
Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement. This Agreement may be signed in counterpart such that the signatures may appear on the separate signature pages. Facsimile or photocopy signatures shall have the same force and effect as original signatures.

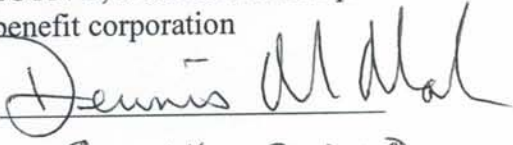
DISTRICT

NON-PROFIT

SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT

URBAN CHARTERS SCHOOL
COLLECTIVE, a California non-profit
public benefit corporation

By: 
Date: 9/16/10

By: 
Date: 9-14-2010