

The Mendocino Unified School District

Special Education Program

SUMMARY

Based on multiple citizen complaints the 2021-22 Mendocino County Grand Jury (GJ) voted to investigate allegations of denial of special education (SpEd) services within the Mendocino Unified School District (MUSD). The GJ found that the school district failed to properly identify and provide mandated SpEd services to several students, that resulted in California Office of Administrative Hearings lawsuits compelling the district to offer additional student services to correct their practices. The GJ found a lack of awareness or particular concern about the special education settlement agreements by the school Superintendent and the K-8 school Principal.

Several families testified to the GJ that they had to sue the district to receive the SpEd services necessary for compliance with their students' Individual Education Plan (IEP). The MUSD was compelled by legal settlement agreements to pay for SpEd services and associated travel expenses, professional educational consultants, and legal fees in the amount of \$56,765 for the period January 2021 to June 2022. No cash settlements were paid to parents.

All parents in these MUSD settlements were required to sign a non-disclosure agreement (NDA). The countywide practice of non-disclosure agreements makes it difficult to obtain testimony from other families, raising concerns about other districts having similar practices to MUSD, in failing to abide by agreed-upon IEPs that provide federal and state mandated protections.

The GJ recommends that the Special Education Local Plan Area (SELPA) Executive Director should track trends, identify strategies and challenges, and develop a plan to identify school districts with extraordinary legal settlement carve-offs. The GJ recommends that the SELPA in conjunction with the county school districts, develop a method of budget transparency which informs the parents and taxpayers about SpEd parental rights and total taxpayer costs contained in their legal settlement fund. The GJ recommends that the SELPA provide incentives to the parent representative position to the SELPA governing board.

BACKGROUND

In their complaints to the GJ, several families claimed that MUSD administrators had intentionally avoided testing to prevent identification of student academic needs. Parents stated that they eventually paid for testing of their children and then sought legal help. Based on these complaints the GJ interviewed the SELPA Executive Director and Mendocino Unified School District staff and administration to better understand the procedures and policies of providing special education services to children in school districts in this county. The GJ also requested budget information to see if the costs of educational lawsuits were identified in district budgets.

METHODOLOGY

The GJ interviewed the Mendocino County Superintendent of Schools, staff from the Mendocino County Office of Education (MCOE)¹, the Superintendent and the K-8 Principal of Mendocino Unified School District, (MUSD)², local school district and MCOE business managers, the Executive Director of the Special Education Local Plan Area, (SELPA)³, members of the MUSD school board, parents of MUSD students with Individualized Education Plans (IEPs)⁴, and legal counsel(s). The GJ reviewed county and district school budgets, recent legislation, the California School Accounting Manual, the California Department of Education Special Education Governance and Accountability Study⁵, information from the SELPA Administrators of California⁶, and the MUSD Local Control Accountability Plan (LCAP).

DISCUSSION

Special Education Local Plan Area (SELPA)

The local multi-district SELPA was created by California legislation, the *Master Plan for Education* in 1978, which spelled out performance objectives, governance structures and funding mechanisms for Special Education (SpEd) services in local school districts.

The local SELPA governing board that meets monthly, allocates SpEd funding countywide and is comprised of the school district superintendents throughout Mendocino County. The MCOE designate is also a member on the SELPA governing board.

¹ <https://www.mcoe.us/District/Portal/who-we-are>

² <https://www.mendocinoused.org/>

³ <https://mendoselpa.us/>

⁴ IEP - an individualized educational road map for children with disabilities

⁵ <https://www.cde.ca.gov/sp/se/ac/documents/segalegreport.pdf>

⁶ <https://selpa.info>

Every SELPA is required to have a countywide Community Advisory Committee (CAC) comprised of the parents of SpEd students and special education professionals. Each district can nominate their own CAC representative to the county CAC board, which meets quarterly. The SELPA governing board also approves one CAC parent representative member to sit as a voting member on the SELPA governing board. SELPA personnel are aware of the lack of parental involvement in the CAC. However, the vacant, voting member, parent position on the SELPA governing board has remained vacant for years.

The MCOE and the SELPA budgets are separate. Beginning this school year two key budget positions are staffed by separate individuals in order to better segregate fiscal controls and improve transparency and monitoring over operations of the separate organizations.

State and federally mandated special education service costs are never fully funded and always encroach on a school district's general funds. All school districts must therefore supplement the cost of SpEd service delivery with the use of general funds. Each school district within Mendocino County allocates the entirety of their Special Education funding to the local SELPA. This shared combination of all school district's SpEd funding streams comprises the SELPA budget.

Many programs offered to students and staff by the MCOE are funded by the SELPA. The local SELPA employs specific cost pool set-aside accounts which allocate pooled SpEd district funds off-the-top before other funds are divided up on a per pupil or other basis and distributed to county school districts. These off-the-top SELPA budget set asides, commonly referred to as carve-offs, include a regional SpEd transportation cost pool, a summer school cost pool, a new regional social/emotional learning program cost pool and an extraordinary legal expenses cost pool. The extraordinary legal expenses cost pool allows for school districts to request funds to offset the unbudgeted costs of legal fees incurred by the district. This cost pool does not allow the districts to bill for the actual services or other costs associated with a legal settlement agreement. Those additional and avoidable legal settlement costs are borne by the districts' general fund.

Once the various cost pools are taken off-the-top of the overall SELPA budget, then each school district is provided with their annual SpEd budget from the pooled county SELPA funds, based on the total student population of the district and the recommendations of the SELPA governing board.

When a school district Superintendent fails to ensure delivery of SpEd services and a lawsuit is brought against the district, a prevalent MUSD school response has been to settle with the parents to avoid an expensive judgement. The SELPA essentially holds the district financially harmless by reimbursing district unbudgeted funds for attorney fees from

the SELPA legal fund set aside. However, the SELPA legal fund cost pool does not reimburse the district for the unbudgeted extra cost of the special service named as a remedy in the settlement agreement. The SELPA legal fund set aside pool has distributed \$94,190 in lawyer fees reimbursements to Ukiah Unified and Mendocino Unified School Districts and the County Office of Education since the beginning of school year 2020-21.

	Ukiah Unified	Mendocino Unified	Mendocino County Office
2020	\$27,000	---	---
2021	\$28,852	\$17,000	\$1,588
2022	\$10,000	\$9,750	---
total	\$65,852	\$26,750	\$1,588

Legal settlements are not reported to the Commission on Teacher Credentialing, the agency responsible for California educator licensing, credentialing, enforcement of professional practices, and standards for educator preparation and discipline of credential holders.

Early intervention strategies improve student academic outcomes and are as effective to preventing extraordinary unbudgeted legal costs to school budgets as they are to providing optimum academic outcomes for students. The GJ noted that IEPs are becoming more commonly written for dyslexia and autism. These disabilities are not unusual and are the services that become more expensive to school districts if left unaddressed as students age.

Mendocino Unified School District

The MUSD is a *Basic Aid District*. District funding is based on a percentage of property taxes not on the average daily attendance (ADA) of students in the district. Because of this funding formula, a *Basic Aid District* may suffer less consequence to their annual budget if families, especially those with high SpEd costs, leave the district, because district general fund revenues remain constant. A parent reported a recent successful negotiation whereby their student will attend a neighboring school district and receive SpEd services designated by the IEP and paid for by MUSD.

The MUSD administrators report approximately 60 students who have an IEP in the district. The district is required to distribute a copy of the parent's rights and information about the CAC at the beginning of every IEP meeting. A free regional diagnostic center service is

available to the students in the district. It is unclear to the GJ how well these parental rights or district diagnostic services are explained or understood.

Parents who were denied services informed the GJ that it was so difficult to get services that they had to resort to legal action to compel the MUSD to honor the IEP agreement. These parents paid for and were successful in legal actions against MUSD to obtain compensatory services. Families never received cash settlements – they finally received the mandated educational services they should have received via the IEP agreement. Even after prevailing in their legal actions against the district, all families reported that they subsequently removed their students from the MUSD and enrolled their students in other school districts based on MUSD's inadequate delivery of federally mandated special education services.

After agreeing to settle legal disputes with the district, the parents were required to sign a non-disclosure agreement (NDA) with MUSD which the GJ later found to be a requirement of all SpEd legal settlements in this county. The MUSD School Board Trustees and the District Business Manager stated that the hidden legal costs and settlements were to protect the identity of students and their families per California law.

Parents reported bullying and shunning of their children which they felt was unaddressed by the MUSD. Besides the negative school district budget repercussions which decrease the general funds available to the classrooms in the district, the personal repercussions to the student are immeasurable when a student is not provided the mandated services mutually agreed upon in the IEP.

The MUSD Superintendent contends it is cheaper to settle legal suits than contest them in court, and that the MUSD Board may be re-thinking this strategy.

When questioned about future staff training plans for special education best practices, the MUSD Superintendent said that there is now \$40,000 per year in revenue for the next five years, earmarked for staff development uses. The Superintendent however, failed to discuss the specific special education training plans mentioned in the Local Control Area Plan (LCAP) to address SpEd training needs. The LCAP is a state mandated report and plan that has been annually reviewed, revised, and adopted by the MUSD board of Trustees.

The GJ noted a high special education staff turnover rate in the past few years which caused the MUSD Superintendent to assume the additional role of Special Education Director for the first six months of the 2021-22 School year.

FINDINGS

- F1. The SELPA cost pools used to defray legal costs effectively hold school districts harmless because unbudgeted legal costs are back-filled from these SELPA carve-offs.
- F2. The GJ could find no evidence that the policies and procedures of the SELPA effectively monitor or analyze how well their legal settlement cost pool policies positively or negatively affect the learning outcomes of the students in our county school districts.
- F3. The SELPA governing board pays attention to budgets but there are no apparent professional repercussions or consequences for school district superintendents who overuse SELPA legal fee cost-pool set aside funds.
- F4. There is no CAC parental representative on the SELPA Governing Board, as required in the SELPA bylaws. The SELPA has failed to fill this vital role for the past two years.
- F5. The MUSD parents had to seek and pay for their students' special education evaluations and accommodations and then sue the district to force compliance with federal special education law. The MUSD paid \$55,576 in reimbursement, travel, professional consultant, and legal fees from January 2021 to June 2022 to satisfy settlement agreements. The \$55,576 was paid out of the MUSD general fund which reduced the funds available for general education.
- F6. The IEP provides early interventions and are key to long term educational success and social-emotional development, and yet MUSD's IEP practices were indefensible in the Office of Administrative Hearings.
- F7. The MUSD does not adequately inform parents of the availability of diagnostic methods such as the free North Coast Diagnostic Center clinical service, that are available to all students at the parents' request.
- F8. Neither the MUSD Principal nor the Superintendent demonstrated any deep understanding, knowledge, or perceived concern of the ramifications of special education classroom delivery or the legal cost encroachments to the district budget.
- F9. When there is a settlement for violation of the IEP contract there is no public reporting mechanism so that the residents of the school district could easily discern the level of SpEd compliance at the school district, or the actual associated legal costs to the taxpayers.
- F10. Confidential settlement agreements contain non-disclosure clauses and make it very difficult to trace legal costs in the school district budget. The MUSD managers state that the reason for obscure budget line items is due to the legal requirement to maintain the family's rights to confidentiality. These line items could be shown in the

school district budget with names redacted. Due to use of NDAs the GJ could not ascertain whether or not similar problems existed in other school districts in this county.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. the SELPA shall analyze its legal fee cost-pool policy to make sure that it is not inadvertently causing districts to exercise policies and practices not in accordance with state or federal laws, or best academic practices. (F1-F3)

R2. the SELPA shall annually track trends, identify strategies and challenges, and develop a plan to identify school districts with extraordinary legal settlement carve-offs. Those districts shall then receive extra SELPA training, attention, and support to decrease the need for legal actions of any kind related to special education. (F1-F3)

R3. the SELPA shall immediately offer a per diem, mileage reimbursements and health benefits to an eligible CAC parent to fill the vacant parent position on the SELPA governing board. (F4)

R4. the MUSD shall present a plan in the first quarter of the 2022-23 school year that uses the \$40,000 annual revenues earmarked for professional development for the next five years to reduce the number of parent legal actions to zero and provide training for all staff, administrators and district trustees that improve all practices, including campuswide harassment, related to the delivery of special education services to all applicable students. Administrators and Trustees shall train with a focus on special education legal requirements, budget implications and the importance of early educational interventions. (F5-F8)

R5. the MUSD shall make a more concerted effort to help parents understand their parental rights by holding local monthly parent CAC meetings via zoom and in person, on the topics related to special education rights and support systems for families. (F7)

R6. the MUSD shall develop a more transparent budget by the 2023-24 school year which clearly outlines special education service costs, legal costs defrayed by SELPA, unbudgeted legal costs that encroach on the district's general fund, and staff development costs associated with special education training. The Superintendent shall make an annual report to the Board of Trustees on these associated special education budget items. (F5-F10)

RESPONSES

Pursuant to Penal Code § 933.05, responses are required from the following board:

The Mendocino Unified School Board of Trustees, (F5-F10, R4-R6)

Pursuant to Penal Code §933.05, responses are requested from the following board:

SELPA Governing Board, (F1-F4, R1-R3)

Pursuant to Penal Code §933.05, responses are requested from the following individuals:

SELPA Executive Director (F1-F4, R1-R3)

MUSD Superintendent, (F 5-F10, R 4-R6)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury
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