

**THREE VILLAGE CENTRAL SCHOOL DISTRICT  
STONY BROOK, NEW YORK**

**BOARD OF EDUCATION AGENDA MATERIALS**

**DATE OF BOARD MEETING: August 25, 2021**

**DATE SUBMITTED: August 20, 2021**

**OFFICE OF ORIGIN: Business Services**

**CATEGORY OF ITEM: Action**

**TITLE: APPROVAL OF SPECIAL EDUCATION TUITION CONTRACT**

**Staff Recommendation:**

Upon recommendation of the Superintendent of Schools, be it resolved that the Board of Education approve the contract for instruction/services to be provided by the school listed below to Three Village Central School District students for the 2021-2022 school year.

- Henry Viscardi School

**Background-Rationale:**

This resolution is to authorize payment for special education services for students with disabilities.



**HENRY VISCARDI SCHOOL**  
**§ 4201 SERVICE AGREEMENT**

This Agreement made this 1<sup>st</sup> day of July, 2021 by and between the Henry Viscardi School ("hereinafter Receiving School") having its principal place of business located at 201 I.U. Willets Road, Albertson, NY 11507 and Three Village School District, ("Sending District") having its principal place of business for purposes of this Agreement at 100 Suffolk Avenue, Stony Brook, NY 11790.

**WITNESSETH:**

**WHEREAS**, pursuant to Education Law §4402(2)(b) the Sending District is authorized to contract for special services or programs as the Sending School shall deem reasonable and appropriate for students with disabilities after consideration of the recommendations of the local committee on special education ("CSE"); and

**WHEREAS**, the Henry Viscardi School ("HVS") is chartered by the Board of Regents of the University of the State of New York pursuant to § 4201 of the New York State Education Law and as such is authorized to establish, conduct, operate and maintain an educational program for students with disabilities and provide related services to students with disabilities; and

**WHEREAS**, the Sending District desires for the Receiving School to provide such special education instruction and/or related services to certain students with disabilities residing within the Sending District; and

**WHEREAS**, the Receiving School acknowledges that it has reviewed the Individualized Education Program(s) ("IEP") of the student(s) to be served pursuant to this Agreement and warrants that it is capable of providing and will provide the level of instructional and related services required by each applicable IEP;

**NOW, THEREFORE**, it is mutually agreed by and between the parties as follows:

1. **Term of Agreement:** The term of this Agreement shall be from July 1, 2021 through June 30, 2022 unless terminated earlier as set forth herein.
2. **Services:**
  - a. The Receiving School hereby agrees to furnish instruction and/or services as set forth in Appendix "A" to the students listed in Appendix "A".

- b. The Receiving School shall make appropriate personnel available to participate in Committee on Special Education ("CSE") meetings, as appropriate. In addition, the Receiving School shall provide the District with a copy of any progress reports, testing and/or observation reports, goals and objectives, etc. which are prepared in connection with the services provided pursuant to this Agreement, as well as any other reports or educational records, including but not limited to pupil attendance reports, requested by the District. The Sending District and/or its designated representatives shall have the right to visit the Receiving School during normal business hours upon a reasonable written request.

3. **Payments:**

- a. In full consideration for the educational services to be rendered by the Receiving School to the Sending District for the period of this Agreement, the Sending District will pay to the Receiving School, for each child, a Per Pupil Charge (PPC) set by the Commissioner of the New York State Education Department. If the PPC is not available at the beginning of the school year for the period of this Agreement, the Sending District shall pay the PPC applicable to the previous school year until the new PPC is set, at which time the parties shall adjust future tuition payments so that the Receiving School will be paid in accordance with the rates applicable to the school year set forth in this Agreement. The Sending District shall retroactively pay the Receiving School any underpayment for that current school year in accordance with the new PPC or any overpayments will be reimbursed by the Receiving School to the Sending District for that current school year.
- b. The Sending District shall be responsible for payment of the tuition as provided for in this Agreement as long as the child is enrolled in the Receiving School's program(s) in accordance with the termination provision(s) herein.
- c. Invoice Due On Monthly Basis: The Receiving School will submit an invoice for services rendered on a monthly basis, and payment to the Receiving School shall be made within thirty (30) days from receipt of invoice from the Receiving School. The invoice shall include time sheets and attendance, types of services rendered and fees payable and individuals who received services. Students shall be assigned an identification number which shall be used in place of student names for billing

purposes. The Sending District shall give the Receiving School notice of any invoice dispute within twenty (20) days of receipt of invoice.

- d. The Sending District may add or remove any student at any time during the term of this Agreement subject to the termination provisions herein. Payment for students that are added or removed shall be prorated for the time the services were provided to the student.
- e. No parent or guardian shall be required to make any payment for services on behalf of any child covered by this Agreement.

4. **Termination:**

Either the Sending District or the Receiving School may terminate this Agreement upon thirty (30) days prior written notice to the other party. Such notice shall be given in accordance with the requirements for all notices pursuant to this Agreement set forth below.

The Sending District shall only be responsible for the pro-rated portion of payment for services provided up to the effective date of the termination.

In the event of termination the Receiving School shall cooperate with the Sending District to wind down any activities hereunder and all reports or other materials due to the Sending District from the Receiving School shall be promptly completed.

Nothing in this paragraph "4" shall be construed to limit the Receiving School's right to immediately remove a student(s) from the academic setting in accordance with law, if the student's continued presence poses a danger to the health or safety of students or others. In that event, the Receiving School shall consult with the Sending District, and shall notify the Sending District of the removal in writing.

- 5. **Incidents:** The Receiving School shall notify the Sending District promptly of any problems, situations or incidents that occur during the provision of services. The Receiving School shall make available any incident reports and/or other documentation regarding incidents to the extent permitted by law.
- 6. **SAVE Legislation:** The Receiving School understands and agrees that it is responsible for compliance with all applicable Federal, State, local statutes, rules, and ordinances including the requirements of Project SAVE and the SAFE SCHOOL ACTS ("Project SAVE"), with

respect to any person providing services by or through the Receiving School under the terms of this Agreement. All persons providing services by or through the Receiving School under the terms of this agreement shall have received appropriate fingerprinting clearances required by law prior to providing services to the Sending District. Upon request the Receiving School shall provide a complete roster of all persons who will and/or may be providing services in connection with this Agreement and shall be responsible for immediately providing the Sending District with any modification to that roster throughout the course of the Agreement.

7. **Indemnification and Hold Harmless:** The Receiving School agrees to defend, indemnify and hold harmless the Sending District, its Board of Education, the Board's agents, officers, trustees, attorneys and employees, all in their corporate and individual capacities, from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of this Agreement. This provision shall survive termination of this Agreement. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. This coverage must span the duration of this Agreement and include a modification and/or cancellation notice to the District of at least thirty (30) days. An applicable insurance endorsement, naming the Sending District as an additional insured, shall be provided to the Sending District by the Receiving School upon execution of this Agreement.

The Sending District agrees to defend, indemnify and hold harmless the Receiving School, its School Board, the Board's agents, officers, trustees, attorneys and employees, all in their corporate and individual capacities, from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of this Agreement. This provision shall survive termination of this Agreement. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. This coverage must span the duration of this Agreement and include a modification and/or cancellation notice to the District of at least thirty (30) days. An applicable insurance endorsement, naming the Receiving School as an additional insured, shall be provided to the Receiving School by the Sending District upon execution of this Agreement.

8. **Insurance:**

- a. The Receiving School shall procure and maintain such policies of commercial general liability, malpractice and other insurance as shall be necessary to insure the Receiving School and the Sending District, including the Board of Education, employees and volunteers, as additional insured, against any claim for liability, personal injury, or death occasioned directly or indirectly by the Receiving School in connection with the performance of the Receiving School's responsibilities under this Agreement; each such policy shall provide a minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence subject to an annual aggregate of Three Million Dollars (\$3,000,000.00).
  - b. Upon the execution of this Agreement, the Receiving School agrees to effectuate the naming of the Sending District as an additional insured on the Receiving School's insurance policies, with the exception of worker's compensation and professional liability, and shall provide the Sending District with a Certificate of Insurance in this regard.
9. **Notice of Litigation:** In the event litigation is initiated or a request for an impartial hearing or administrative complaint is filed in connection with the provision of services under this Agreement, the parties shall promptly give written notice to the other party upon receipt of such notice.
10. **HIPAA:** Both parties acknowledge that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and shall comply with said regulations, where applicable. If at any time during the course of this Agreement it is determined by agreement of both parties or an entity with appropriate jurisdiction that either district is considered a "covered entity" as defined by HIPAA, the Sending District and Receiving School agree to enter into a Business Associate Agreement to ensure compliance with the Standards for Privacy of Individually Identifiable Health Information pursuant to HIPAA."
11. **Student Health Services:** Upon parental consent, the Sending District shall receive all medical prescription information from the parent/person in parental relation of any student referred to the Receiving School. The Sending District shall send the Receiving School copies of such prescription information upon its written request.

12. **Compliance with Law:** All services will be provided in accordance with Federal, State, Sending District and local law, rules, regulations, ordinances, policies, procedures, rules and standards.
13. **Licensing:** The Receiving School will ensure that its staff possesses any requisite licenses and qualifications to perform the services contracted for. The Receiving School shall verify the existence and validity of licenses and credentials and in the event the required license and/or certification of any agent, contractor or employee of the Receiving School providing services under this Agreement is revoked, terminated, suspended or otherwise impaired, the Receiving School shall immediately notify the Sending District. The Receiving School shall also verify that all individuals providing services under this Agreement are of good character and are in good professional standing. Where applicable, the Receiving School agrees to submit to the Sending District written proof of certification and/or licensing and forms to document the evaluation of and services provided to Medicaid eligible students.
14. **Assignment:** It is expressly understood that no party may assign their rights, duties and/or obligations under this Agreement without the written consent of the other party.
15. **No Discrimination:** Services provided under this Agreement shall be performed without regard to race, creed, color, sex, sexual orientation, national origin, religion, age, military status, marital status, predisposing genetic characteristics or disability and the parties shall take affirmative action to ensure that such individuals are afforded equal opportunities without discrimination. Furthermore, with respect to disciplinary measures for students with disabilities, the Receiving School shall act in accordance with all applicable Federal, State and local laws, rules and regulations.
16. **Notices:** All notices which are required or permitted under this Agreement shall be in writing and shall be deemed to have been given if delivered in person or sent by registered or certified mail, to the address provided below. The parties may change such address upon written notice as set forth in this paragraph. Notices delivered in person shall be deemed communicated upon actual receipt. Notices delivered by mail shall be deemed communicated two (2) days after mailing:

To the Receiving School:



Henry Viscardi School,  
201 I.U. Willets Road  
Albertson, NY.  
Attn: Sheryl Buchel, CFO

To the Sending District:

Three Village School District  
Pupil Personnel  
100 Suffolk Avenue  
Stony Brook, NY 11790

17. **Audits:** The Receiving School agrees to cooperate with the State and its Agents and provide all information to them as may be required for the State and its Agents to fulfill their auditing or other legal responsibilities. This provision shall include but not be limited to, records in which the State and/or its Agents require in order to determine either party's compliance with any Federal or State statutes or regulations applicable to this Agreement. In the event the Receiving School is required to furnish such information, it shall be furnished at such times as required by the State and/or its Agents.
18. **Commissioner of Education:** The Receiving School agrees that the New York Commissioner of Education and/or his/her designated representatives shall have the right to visit the Receiving School as it reasonably deems necessary.
19. **Independent Contractor:** The relationship of the Receiving School and the Sending District over the course of this Agreement shall at all times be deemed an Independent Contractor. Employees of the Receiving School are solely deemed employees of the Receiving School for purpose of this Agreement and the Receiving School is entirely responsible for their supervision, work, and compensation. The Receiving School, its officers, employees and/or agents shall not hold itself out as employees of the Sending District. Employees of the Receiving School will not be entitled to participate in any of the Sending District's employee benefit programs such as workers' compensation, unemployment insurance, retirement benefits, fringe benefits, disability benefits, or other similar programs. To the extent required by Federal or State requirements, the parties agree to submit a Form 1099 and IT 2102.1 to the Federal Government at year-end for all individuals with a gross income that exceeds \$600, which shall be reported for income tax purposes.
20. **Confidentiality:** The Receiving School, its employees, and/or agents acknowledge and agree that all information obtained, transmitted,

reviewed, generated, requested, provided, maintained and/or otherwise utilized in connection with this Agreement shall be deemed confidential. The parties, their employees, and/or agents acknowledge and agree to comply with all laws, rules, and/or regulations, which shall include but not be limited to the requirements of the Individuals with Disabilities Education Act ("IDEA"), the Family Educational Rights and Privacy Act ("FERPA") and any concurrent Federal and/or State law, rule and/or regulation. The Receiving School, its employees, and/or agents further agree that any information obtained during the course of this Agreement which relates to the personal, financial, or other affairs of the Sending District, its employees, and/or their agents shall be deemed confidential. The Receiving School agrees that it will not disclose confidential information directly or indirectly to third parties except as provided for and necessitated under this Agreement or law. This provision will survive the termination of this Agreement.

21. **Reservation of Rights:** The Receiving School reserves all rights in law or in equity not otherwise expressly provided for in this Agreement.
22. **Enforcement:** Neither parties' course of dealing nor the failure, omission, or delay of either party to enforce any right under this Agreement shall be construed as a waiver nor limitation of that party's right to subsequently enforce every right under this Agreement. Furthermore, no partial or single exercise of any right under this Agreement shall be construed as a waiver or limitation of that party's right to subsequently enforce every right under this Agreement. In order for a waiver to be effective under this Agreement, it shall be expressly stated in writing and signed by the party to be charged with such waiver. No waiver under this Agreement shall constitute a continuing waiver, a waiver with regards to any other or subsequent breach or default of such provision, or a waiver of any other right hereunder, unless it is expressly stated in writing and signed by the party to be charged with such waiver.
23. **Entire Agreement:** This Agreement contains the entire agreement between the parties and shall not be modified, except in writing and signed by both parties.
24. **Severability:** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
25. **Execution:** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same

document as if all parties had executed a single original document. This Agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.

26. **Warranties:** Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered and that the performance of its obligations under this Agreement do not conflict with any order, law, rule or regulation or any Agreement or understanding by which such party is bound.
27. **Record Retention:** Both parties shall comply with all record retention requirements applicable under law to the records pertaining to this Agreement.
28. **Construction:** The language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party. Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement in any way or limiting or amplifying the provisions hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, entity or entities may require.
29. **Conflicts of Interest:** The Receiving School represents that there are no conflicts of interest between the Receiving School and the Sending District and/or that would otherwise limit Sending School's participation in this Agreement.
30. **Governing Law:** This Agreement shall be governed, interpreted and enforced in all respects by the laws of the State of New York, without regard to conflict or choice of law principles. Furthermore, all claims relating to or arising out of this Agreement, or breach thereof, including, but not limited to, claims sounding in contract or tort, shall also be governed, interpreted and enforced in all respects by the laws of the State of New York, without regard to conflict or choice of law principles. Each of the parties agrees to submit to the jurisdiction of the courts of the State of New York, County of Nassau or the Federal Court otherwise having jurisdiction. As such, the parties agree that any action related to this Agreement shall be litigated in such courts and waives any defense it may have with regards to improper venue or *forum non conveniens*,
31. **Authorization for Agreement:** The undersigned parties' representatives warrant and agree that they are duly authorized agents who possess the legal right and authority to enter into this Agreement

and bind each party with respect to its obligations set forth herein.

32. **Survival:** All provisions of this Agreement that would reasonably be expected to survive the termination or expiration of this Agreement shall do so.

By: Sheryl P. Buchel  
**HVS Representative, Sheryl P. Buchel**  
**Chief Financial Officer**

Date: 7/13/21

By: \_\_\_\_\_  
**Sending District, Representative**

Date: \_\_\_\_\_