

ANAHEIM UNION HIGH SCHOOL DISTRICT
 501 Crescent Way – P.O. Box 3520
 Anaheim, CA 92803-3520

EDUCATIONAL CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into this:

30 th	day of	October	2008
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by and between

Total Education Solutions

Independent Contractor, hereinafter referred to as "Consultant" and the Anaheim Union High School District, hereinafter referred to as "District."

WHEREAS the District is in need of special services and advice;

WHEREAS such services and advice are not available at no cost from public agencies;

and

WHEREAS Consultant is specially trained, experienced, and competent to provide the special services and advice required; and

WHEREAS such services are needed on a limited basis.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services to be provided by Consultant:

Total Education Solutions, a Supplemental Educational Services (SES) provider, will make available after-school tutoring in reading/English language arts and mathematics, to students who attend Brookhurst, Dale, Orangeview, South, and Sycamore Junior High Schools, and who are also socioeconomically disadvantaged. The tutoring is to be administered by California Department of Education approved SES providers, in accordance with policies prescribed in the No Child Left Behind Act of 2001.

Site/School:	Brookhurst Junior High School Dale Junior High School Orangeview Junior High School South Junior High School Sycamore Junior High School	Funds (Cost Center):	Title 1 (3810)
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2. List of Other Supportive Staff or Consultants:

Special Programs Staff – Susan Stocks, Maria Jarman, and Maribel Chavez

3. Consultant shall commence providing services under this AGREEMENT on:

Date:	November 10, 2008
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and shall diligently perform as specified and complete performance by:

Date:	May 15, 2009
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Consultant shall perform said services as an independent contractor and not as an employee of the District. Consultant shall be under the control of the District as to the result to be accomplished and not as to the means or manner by which such result is to be accomplished.

4. District shall prepare and furnish the following information to Consultant, upon request, such information as is reasonably necessary to the performance of Consultant to this AGREEMENT:

AUHSD provided an information packet, derived from the federal SES non-regulatory guidance, and discussed the information with prospective SES service providers, at the SES service provider's meeting, on August 26, 2008.

5. District shall pay Consultant the maximum amount of

SES tutoring services are available to eligible students, for a maximum of 25 hours and/or \$1,191.08 per student, or the most current state approved cost per student, not to exceed \$25,000.

for services rendered

Total # of people:	One student per tutor.	# hours per day:	1 to 2 hours per session.	#of days:	1 to 3 days per week.
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pursuant to this AGREEMENT. Payment shall be made 15 to 30 days after receipt of invoice. Consultant shall submit an invoice to District.

6. District may at any time for any reason terminate this AGREEMENT. Written notice by the District's superintendent shall be sufficient to stop further performance of services by Consultant. The notice shall be deemed given when received or no later than three (3) days after the day of mailing, whichever is sooner.

7. Consultant agrees to and shall hold harmless and indemnify District, its officers, agents, and employees from every claim or demand and every liability or loss, damage, or expense of any nature whatsoever, which may be incurred by reason of:

- a. Liability for damages for death or bodily injury to person, injury to property, or any other loss, damage, expense sustained by Consultant or any person, firm, or corporation employed by Consultant upon or in connection with the services called for in this AGREEMENT except for liability for damages referred to above which result from the sole negligence or willful misconduct of District, its officers, employees, or agents.

- b. Any injury to or death of persons or damage to property, sustained by any persons, firm, or corporation, including the District, arising out of, or in any way connected with the services covered by this AGREEMENT, whether said injury or damage occurs either on or off school district property, except for liability for damages which result from the sole negligence or willful misconduct of the District, its officers, employees, or agents.

Consultant, at Consultant's expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents, or employees on any such claim, demand, or liability and shall pay or satisfy any judgment/lawsuit reimbursement that may be rendered against the District, its officers, agents, or employees in any action suit, or other proceedings as a result thereof.

- 8. This AGREEMENT is not assignable without written consent of the parties hereto.
- 9. Consultant and assistants shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including Worker's Compensation.
- 10. Consultant, if an employee of another public agency, certifies that Consultant shall not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to the AGREEMENT.
- 11. The following is a brief description of what will be achieved by Consultant as a result of this AGREEMENT:

According to the Supplemental Educational Services Non-Regulatory Guidance [Title I, Section 1116 (e)(A)], Supplemental Educational Services are available to students, who are enrolled at schools that have not made Adequate Yearly Progress for three or more years (Program Improvement years two through five). The services are designed to provide additional academic instruction, in order to increase student academic achievement. The services may include tutoring, small group instruction, and other educational interventions outside of the regular school day, and must utilize high quality, research-based instructional strategies, designed to increase student academic achievement [Section 116(e)(12)(C)].

The SES service provider must adhere to the following assurances per federal guidance:

- a. Assess and diagnose the reading and/or math needs of each student, and develop in consultation, with the parent, specific student achievement goals, and provide a timetable for each student's expected improvement [Section 1116(e)(3)(A)].
- b. Meet for a minimum of two-hours per week, at a site determined by the

parent/guardian and the consultant [SES Guidance Section 1116(e)(3)(A) and (B)].

- c. Use research-based instructional strategies, which are designed to increase student academic achievement, and are consistent with district and state content and achievement standards [SES Guidance Section 1116(e)(12)(C)].
- d. Communicate with the parent/guardian after the initial assessment and at least once per month regarding progress, and also when the student is absent from the program [SES Guidance Section 1116(e)(3)(A) and (B)].
- e. Communicate to the district each student's progress and participation results, by site, at least once per every four weeks of instruction. The district will forward communications to the school [SES Guidance Section 1116(e)(3)(A) and (B)].
- f. Monitor student attendance, and communicate with parents when the student misses an appointment [SES Guidance Section 1116(e)(3)(A) and (B)].
- g. At the conclusion of the contract, prior to the last payment, the SES provider will make available to the Special Programs Office a closing report (sorted by school), containing a list of the students who participated, with the first and last date of participation and pre/post-testing data [SES Guidance Section 1116(e)(3)(A) and (B)].
- h. The SES provider will not disclose to the public the identity of any student eligible for, or receiving supplemental education services, without written permission from the student's parents [SES Guidance Section 1116(e)(3)(E)]; and, the services provided are compliant with applicable health, safety and civil rights laws [SES Guidance Section 1116(e)(5)(C)].
- i. Services are secular, neutral, and non-ideological [Title 5 SES (13075.2(c)(1)-(21))].
- j. Provide proof of a current one million dollar liability insurance policy, and proof of being fiscally sound [Title 5 SES (13075.2(c)(1)-(21))].
- k. Provide evidence of being legally constituted to conduct business within the state of California [Title 5 SES (13075.2(c)(1)-(21))].
- l. Verification that the provider has not been removed from the state SES provider's list [Title 5 SES (13075.2(c)(1)-(21))].
- m. Provider meets all applicable federal, state, and local health and safety laws, in providing a facility for meeting with students [Title 5 SES (13075.2(c)(1)-(21))].
- n. Provider has complied with all applicable federal, state, and local health, safety, and civil rights laws [Title 5 SES (13075.2(c)(1)-(21))].

12. What are the technical reasons Consultant is being hired as an Independent Contractor rather than an employee?

Supplemental Educational Services are a requirement of the No Child Left Behind Act of 2001, for schools that are in years two through five of Program Improvement, and receiving Title I funding.

List any technical support that will need to be supplied by District:

The Special Programs Office annually disseminates information to SES providers regarding which AUHSD schools offer SES, the process for becoming an AUHSD SES provider, and the requirements for providers specified in federal SES non-regulatory guidance. The Special Programs Office also assists with SES invoicing, and assists with the processing of students' SES applications.

**COMMON-LAW FACTORS
(IRS Revenue Rule 87-41)**

Mark all items that are true for the intended Consultant (if completing on-line, double click the box to mark):

- No Instructions:** The consultant will not be required to follow explicit instructions to accomplish the job.
- No Training:** The consultant will not receive training provided by the employer. The consultant will use independent methods to accomplish the work.
- Work Not Essential to the Employer:** The employer's success or continuation does not depend on the services of the consultant.
- Right to Hire Others:** The consultant is being hired to provide a result and will have the right to hire others for actual work, unless otherwise noted.
- Control of Assistants:** Assistants hired at consultant's discretion; consultant responsible for hiring, supervising, paying of assistants.
- Not a Continuing Relationship:** If frequent, will be at irregular intervals, on call, or whenever work is available.
- Own Work Hours:** Consultant will establish work hours for the job.
- Time to Pursue Other Work:** Since specific hours are not required, consultant may work for other employers simultaneously, unless otherwise noted.
- Job Location:** Consultant controls job location, under district discretion, whether on employer's site or not.
- Order of Work:** Consultant, rather than employer, determines order or sequence of steps in performance of work.
- No Interim Reports:** Only specific pre-determined reports defined in the consulting agreement.
- Basis of Payment:** Consultant paid for services rendered, if applicable (see Agreement #4); total compensation set in advance of starting the job.
- Business Expenses:** Consultant is responsible for incidental or special business expenses.
- Tools and Equipment:** Consultant furnishes the identified tools and equipment needed for the job.
- Significant Investment:** Consultant can perform services without using the employer's facilities. Consultant's investment in own trade is real, essential, and adequate.
- Possible Profit or Loss:** Consultant does these (check valid items):
 - Hires, directs, pays assistants
 - Has equipment, facilities
 - Has a continuing and recurring liability
 - Performs specific jobs for prices agreed-upon in advance
 - Lists services in Business Directory
 - Other (explain) _____
- Work for Multiple Employers:** Consultant may perform services for more than one employer simultaneously, unless otherwise noted.
- Services Available to the General Public** (check valid items):
 - Maintains an office
 - Business license
 - Business signs
 - Advertises services
 - Lists services in Business Directory
 - Other (explain) _____
- Limited Right to Discharge:** Consultant not subject to termination as long as contract specifications are met, unless otherwise noted (see Agreement #5 and #11).
- No Compensation for Non-Completion:** Responsible for satisfactory completion of job; no compensation for non-completion.



COMPANY OVERVIEW

Headquartered in South Pasadena, California, Total Education Solutions (TES) is a multi-state, for-profit provider of special education compliance and staffing solutions for public education agencies, including public and charter schools. TES currently provides special education services throughout California, Ohio and Michigan with branch offices in Sacramento, San Diego, and Royal Oak. TES has established itself as one of the market leaders serving the special education needs of charter schools and public school academies, and is recognized as the only "one-stop" provider of special education compliance and staffing solutions in that market.

The essence of TES' business is to provide special education compliance and staffing solutions to public education agencies under contractual arrangements. Including TES' management contract with the Institute for the Redesign of Learning (IRL), TES' state-wide network of 600 employees offer special education consultation, compliance, administration, management and staffing solutions to more than 4,000 eligible special education students enrolled at over 300 public, charter and private school sites, representing 70 school districts and county offices of education, 39 Special Education Local Plan Areas (SELPA) in California; and to 16 public school academies representing four Intermediate School Districts and six charter school authorizers in Michigan.

Although there is a critical shortage of special education personnel nationwide, TES meets the public school demand for qualified special education personnel by aggressively recruiting, training, and obtaining, when necessary, obtaining credentials, certification or licenses for special education professionals in twelve disciplines. TES recruits and places three types of part-time or full-time, temporary or permanent special education personnel in public and charter schools: Service Providers; Administrators/Managers; and Consultants.

The ability to manage a national network of service providers to ensure the delivery of quality special education services as well as remain responsive to children, parents, and clients is essential for TES' future growth. Accordingly, TES has put significant resources into the development of extensive and detailed proprietary productivity tools including written operating and training policies and procedures and web-based candidate tracking and service information management systems to ensure that service delivery remains consistently effective and compliant with the federally mandated IDEA.

TES seeks to become the largest provider of quality outsourced special education compliance and staffing solutions to public education agencies nationwide. The nature of TES' strategic vision provides a compelling service delivery model, and a significant value proposition for children and their parents and for clients and investors.