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Dr. Roger Rice, Deputy Superintendent
Ventura County Office of Education
5189 Verdugo Way
Camarillo, CA 93012

RE: Ventura County Office of Education's Independent Study Program

Dear Superintendent Rice,

The purpose of this letter is to advise you of several issues we have identified with respect to the Independent Study Program (ISP) administered by the Ventura County Office of Education (VCOE). These findings are based on the individual experiences of students enrolled in VCOE programs, including our clients Ramon A., Kevin C., and Gabriel C., as well as our analysis of the public records produced by VCOE in response to our Public Record Act request dated July 3, 2013.

We ask that VCOE take immediate corrective action to address the following violations of state and federal law:

1. VCOE's ISP fails to comply with the statutory and regulatory requirements governing independent study programs.

The Education Code provisions governing independent study and its implementing regulations establish basic requirements for independent study programs. VCOE's ISP fails to comply with a number of those requirements including, but not limited to, the following:

a. Independent study assignments must be voluntary. Educ. Code. § 51747; 5 C.C.R. 11700(d)(2)

Education Code § 51747(c)(7) provides that all independent study placements be based on voluntary written agreements which must include, among other things, an express statement that "independent study is an optional educational alternative in which no pupil may be required to participate."



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The implementing regulations at 5 C.C.R. § 11700(d)(2) provides further meaning to the prohibition against requiring students to participate in independent student by stating that a student's "choice to commence, or to continue in, independent study must not be coerced. . ."

Both the Code and its implementing regulatory provisions further provide that, with respect to independent study, for students who are referred pursuant to Education Code sections 48915 or 48917, "instruction may be provided to the pupil through independent study only if the pupil is offered the alternative of classroom instruction." Education Code § 51747(c)(7). See also, 5 C.C.R. § 11700(d)(2)(B).

The California Department of Education (CDE) emphasizes this basic requirement that independent study be voluntary in its guidelines to districts and county offices of education regarding independent study: "[s]tudents must have the option of a classroom setting for a full program (not just one period or part of a day) at the time independent study is made available. This option must be continuously available (not just at the time independent study is chosen) should the student decide to transfer from independent study."¹

Our clients Ramon A., Kevin C., and Gabriel C. were each referred to VCOE based on stipulated expulsions and subsequently placed involuntarily into VCOE's ISP or independent study characterized as home study. These students and their parents did not voluntarily opt into independent study. Rather, independent study was the only option made available to them. In effect, parents were led to believe that it was independent study or nothing. None of these students were provided a continuous option of a classroom setting while they were participating in independent study. While the District's English only form agreements for placement in independent study parrot the language of the statute regarding voluntary placement and alternative options, none of these students were actually offered the option of a classroom setting as an alternative to independent study. The specific facts for our clients are as follows:

Ramon A. was placed on independent study involuntarily on grounds that there was not a space available for him at Gateway Community School. He and his mother were led to believe that it was either independent study or nothing. They were not offered the continuing option of classroom instruction. Had Ramon and his mother

¹ "Independent Study Operations Manual" (2000 Edition) Education Supports Division, California Department of Education, <http://www.cde.ca.gov/sp/eo/is/isoperationsmanual.asp>, Chapter 1, "Introduction to Independent Study", p. 1-4.



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been properly advised by VCOE that participation in ISP must be voluntary, they would have opted for classroom instruction.

Kevin C. is an English Learner and special education student, who almost immediately after enrolling at Gateway Community School, was placed by VCOE on independent study characterized as home/hospital instruction due to alleged behavior and safety concerns. Home/hospital instruction was the only program offered to Kevin and his mother, who is a non-English speaker. Kevin and his mother were not provided the option of classroom instruction during his participation in home/hospital instruction. It wasn't until Kevin's mother obtained a note from Kevin's psychologist describing independent study and home hospital teaching as "the worst possible placements for Kevin...such placements could negatively impact his health" that Kevin was permitted to return to a full day program at Gateway. Had Kevin and his mother been properly advised by VCOE that participation in ISP must be voluntary, they would have opted for classroom instruction.

Gabriel C. is a special education student. Like Kevin, Gabriel was involuntarily placed by VCOE on independent study due to behavior and safety concerns. ISP was the only program offered by VCOE to Gabriel and his mother. During his participation in ISP, Gabriel was not afforded the continuing option of classroom instruction. Had Gabriel and his mother been properly advised by VCOE that participation in ISP must be voluntary, they would have opted for classroom instruction.

Each of these students' placements in independent study hindered their education and was inappropriate based on their specific circumstances. Ramon A. and Kevin C. were court involved youth and would have benefitted from a more structured program with more oversight and guidance. Placement of students who have special education needs in independent study raises serious concerns about whether and how those needs will be addressed in such a setting.

b. VCOE fails to properly assess the appropriateness of an independent study setting for individual students. Educ. Code § 51746(b)(1).

Our investigation has revealed that a good number of students on ISP are youth who have come into contact with the juvenile justice system and/or are probation supervised. It is highly questionable to what extent VCOE has seriously assessed



whether full-time independent study is an appropriate alternative for these youth or whether it is in their best to interest to remain on independent study once enrolled.

According to the CDE, “[a]district may not accept a student on independent study who will not do as well in independent study as in a classroom.”² The CDE also states that, “[i]t is important to screen and assess potential independent study students to determine that the students have the basic skills, maturity, and motivation to make independent study work. Equally important is that programs use safeguards against involuntary or inappropriate referrals of students to independent study.”³

Our client Kevin C. is a long-term English Learner⁴ and special education student. He was placed on independent study characterized as home/hospital instruction almost immediately after he enrolled at Gateway Community School. Independent study was not an appropriate educational placement for him as it failed to address his language and special education needs.

c. VCOE must ensure that students in ISP have the same access to all existing services and resources as is available to all other students at school. Educ. Code § 51746; 5 C.C.R. § 11701.5.

No student waives his or her right to existing services and resources because of participation in independent study.⁵

Independent study is to be substantially equivalent in quality and in quantity to classroom instruction so that a student who engages in independent study is able to complete the adopted course of study within the customary time frame for completion. 5 C.C.R. § 11701.5. Students on independent study are to have the same access to existing services and resources as other students of the school in which the independent study student is enrolled. Educ. Code § 11701.5. They are also to have equality of rights and privileges with the students who choose to continue in the regular school program. 5 C.C.R. § 11701.5.

² “Independent Study Operations Manual” Chapter 6, “Ongoing Operations” p. 6-5.

³ “Independent Study Operations Manual” Chapter 6, “Ongoing Operations” p. 6-4.

⁴ Kevin C. has been classified as an English Learner for several years without obtaining proficiency in the English language. See, Educ. Code § 303.1.

⁵ “Independent Study Operations Manual” Chapter 5, “Implementation or Expansion of Independent Study” p. 5-6.



Our clients Ramon, Kevin, and Gabriel were denied equality of rights and access to existing services and resources during their participation in ISP. These students were not provided the option of classroom instruction. Each student participated in independent study because it was the only option made available to them. While participating in independent study, these students were not afforded any opportunity to use existing services such as the school library, computer labs, or physical education program at Gateway. In fact, Kevin and Gabriel were expressly prohibited from going to school while they were participating in independent study due to alleged behavior and safety issues. The only times that Kevin and Gabriel were permitted to go to Gateway were for pre-scheduled Individualized Education Program (IEP) meetings.

d. VCOE must maintain certain records regarding its ISP. 5 C.C.R § 11703.

County offices of education are required to maintain records regarding independent study pursuant to 5 C.C.R. § 11703 that must, in relevant part, include:

(b)(2) A separate listing of the pupils and adult education students, by grade level, program and school, who have engaged in independent study, identifying units of the curriculum undertaken and units of the curriculum completed by each of those pupils in kindergarten and grades 1 to 8, inclusive, and identifying course credits attempted by and awarded to each of those pupils in grades 9 to 12 inclusive and each of those students in adult education, as specified in their written agreements.

Based on VCOE's response to our Public Record Act request dated July 3, 2013, it appears that VCOE is out of compliance with the record keeping requirements for independent study programs. We specifically requested⁶ the separate listing maintained by VCOE as required by 5 C.C.R. § 11703, but VCOE responded that "no such list exists as described."⁷ We requested the separate listing again in our follow-up letter dated September 18, 2013, but VCOE simply referred us to the individual Master Agreements without producing a separate listing as is required to be maintained by the County.

⁶ CRLA PRA Request to VCOE dated July 3, 2013, Item No. 12 at p. 3.

⁷ Response to PRA Request from Superintendent Rice, dated July 24, 2013, at p 3.



- e. **VCOE must receive written permission from the parent or guardian of the pupil prior to commencing independent study in order to receive apportionments for any pupil on independent study. Educ. Code § 46300.7.**

Educ. Code § 46300.7 provides that “no school district or county office of education shall receive apportionments for any pupil in independent study unless that entity receives written permission from the parent or guardian of the pupil prior to the commencement of independent study by that pupil.”

VCOE fails to comply with basic notice and other requirements relating to independent study including the duty to translate documents for non-English speaking parents and the requirement that assignments to independent study be voluntary. VCOE should not receive apportionments for any pupils who participate in independent study as the result of a forced placement in ISP or without proper notice regarding the basic requirements and rights of students on ISP.

2. VCOE’s ISP Fails to Address the Needs of Students with Disabilities.

VCOE asserted in its response dated December 11, 2013 that “[f]or the special education department there are zero (0) students on independent study.”⁸ However, our review of the records produced by VCOE strongly suggests students enrolled in the ISP were identified as special needs students.⁹ In addition, two of our three clients, Kevin C. and Gabriel C., are special education students who participated in ISP or independent study characterized as home/hospital instruction during their enrollment at Gateway.

State law prohibits the participation of special education students in independent study unless the student’s independent education program specifically provides for that participation. Educ. Code § 51745(c). With respect to home/hospital instruction, the law requires a recommendation from the student’s IEP team and a physician/psychologist’s report stating the diagnosed condition necessitating home/hospital instruction and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. 5 C.C.R. § 3051.4. The report must include a projected calendar date for the pupil’s return to school and the IEP team must meet to reconsider the IEP prior to the projected calendar date for the

⁸ Response to PRA Request from Superintendent Rice, dated September 11, 2013, at p. 3.

⁹ Follow-up letter to Superintendent Rice, dated February 28, 2013, at p. 2.



pupil's return. *Id.* These basic requirements were not met in the cases of our clients Kevin C. and Gabriel C.

As mentioned above, both Kevin C. and Gabriel C. were involuntarily placed on independent study or home/hospital instruction due to alleged safety and behavioral issues. Their participation in independent study was not the result of an IEP meeting nor was their participation in home/hospital supported by a report from their treating psychologists. Rather their forced participation was a disciplinary measure that was taken without due process of law and in violation of state requirements governing participation in independent study and home/hospital instruction.

3. VCOE administers ISP in a manner that discriminates against English Learner students and parents who are limited in their ability to speak English or are non-English speakers.

VCOE has an affirmative obligation to combat discrimination and ensure equal access to its educational programs and institutions. 20 U.S.C. §§1701-1720; Gov. Code § 11135. VCOE presently administers its ISP in a manner that fails to ensure that English Learner students and their parents have effective access and equal opportunities to participate in its educational programs and services.

a. VCOE fails to adequately notify parents who are limited English or non-English speaking of information that is provided to other parents who enroll their children in ISP.

VCOE asserts that Gateway Community School is the only school that offers and is responsible for administering the ISP.¹⁰ According to CDE data, approximately 49% of all students enrolled in Gateway Community School come from homes where Spanish is the primary language.¹¹

¹⁰ Response to PRA Request from Superintendent Rice, dated December 11, 2013, at p. 2.

¹¹ See Dataquest Report, "Gateway Community School Language Group Data to Determine '15 Percent and Above' Translation Needs for 2013-14". <http://data1.cde.ca.gov/dataquest/lc/SchoolLC.aspx?Level=School&cYear=2013-14&cSelect=Gateway+Community--5610561-5630397>. During the 2012-13 school year, 76% of all students enrolled in Gateway came from homes where Spanish was the primary language. See Dataquest Report, "Gateway Community School Language Group Data to Determine '15 Percent and Above' Translation Needs for 2012-13". <http://data1.cde.ca.gov/dataquest/lc/SchoolLC.aspx?Level=School&cSelect=GATEWAY%5ECOMMUNITY%2D%2DVENTURA%5E%2D%2D5610561%2D5630397&cYear=2012-13>



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State law provides that where 15 percent or more of the pupils enrolled in a public school speak a primary language other than English, all notices, reports, statements, or records sent to the parent or guardian of any such pupil by the school shall, in addition to being written in English, be written in the primary language. Educ. Code § 48985. VCOE concedes that its Master Agreements for ISP are written in English only and have not been translated into any other languages.¹² The failure to translate these documents for Spanish speaking parents violates Educ. Code § 48985 and profoundly impairs the ability of limited or non-English speaking parents to effectively participate in decisions affecting the education of their children.

County Offices of Education are also required under federal law to ensure that limited and non-English speaking parents are provided and receive important information provided to other parents in a language they can understand. Title VI of the Civil Rights Act of 1964, 20 U.S.C. § 2000d and its implementing regulations at 34 C.F.R. 100.3(a). See also, the Equal Educational Opportunities Act, 20 U.S.C. §§ 1701-1720.

Pursuant to state law, all Independent Study Agreements must be in writing and must include key provisions that inform parents about the duration of the program, the resources that will be made available to their child should they participate in the program and, most importantly, that the program is voluntary. As noted above, the VCOE readily admitted that the ISP agreement is only available in written form in English but asserted that “staff will interpret for those who do not understand.”¹³ This is not an acceptable excuse for the failure to comply with both state and federal civil rights statutes addressing the rights of LEP parents.

Although in some limited instances, a school district may legitimately assert that the translation of such an important document could not practicably or feasibly be translated because of the limited number of students within a certain isolated language group, such an argument cannot, in any way, be accepted here. For 2012-13, Spanish is the only EL language group identified at Gateway. We know of very few counties in California where it would be impracticable or unfeasible to translate such a document into Spanish and that is certainly not the case in Ventura County. As noted above, during the 2013-14 school year 49% of all students enrolled at Gateway came from homes where Spanish, not English, is the primary language.

¹² Response to PRA Request from Superintendent Rice, dated December 11, 2013, at p. 3.

¹³ Response to PRA Request from Superintendent Rice, dated December 11, 2013, at p. 3.



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During the 2012-13 school year, an astonishing 76% of all students enrolled at Gateway came from homes where Spanish was the primary language.¹⁴

Our clients Ramon A. and Kevin C. each come from households where English is not the primary language. We believe that there are many students, including our clients, who are placed in ISP or similar programs without adequate notice of the program. Since the Master Agreements are provided in English-only, limited English and non-English speaking parents are not receiving the same information about ISP that is provided to other parents who choose to enroll their children in the program in clear violation of both state and federal law.

b. VCOE disproportionately enrolls Latino students and students from limited/non-English speaking households into ISP.

VCOE's ISP policies disproportionately impact Latino students and students from non-English speaking households. VCOE reports that in 2011-2012 Gateway Community School enrolled a total of 111 students including 91 Latino students. That year, more than one-third of students at Gateway enrolled in ISP. Of the 38 students who enrolled in ISP, 35 of them were Latino. In 2011-2012, Latino students comprised 82% of total student enrollment at Gateway, but over 92% enrollment in ISP.

Enrollment in ISP more than doubled the following year in 2012-2013. VCOE reports that Gateway Community School enrolled a total of 101 students, including 82 Latino students. That year, over 72% of students at Gateway enrolled in ISP. Of the 80 students who enrolled in ISP, 69 were Latino. In 2012-2013, Latino students comprised 81% of total student enrollment at Gateway, but over 86% of total enrollment in ISP.

As demonstrated above, these issues are systemic and our clients seek relief for themselves and changes to the VCOE policies and procedures that will effectuate the statutory protections afforded them and other students. We hope to secure a commitment from VCOE to take all actions necessary to immediately rectify these issues and come into compliance including, but not limited to, the following:

- Translate all notices and relevant documents for parents who are limited in their ability to speak English or are non-English speaking including, but not limited to, the master agreements for ISP and any VCOE policies and procedures governing ISP.



- Review and revise VCOE's policies and procedures regarding ISP to ensure compliance with state law including the requirement that participation in ISP be voluntary, students have equal access to existing resources and are provided the continuous option of classroom instruction.
- Review and revise VCOE's policies and procedures regarding home/hospital instruction for students with disabilities to ensure compliance with state law including the requirement that it be recommended by the student's IEP team and supported by a physician/psychologist's report certifying that the severity of the student's condition prevents the pupil from attending a less restrictive placement.
- Review and revise VCOE's policies and procedures regarding student discipline and school safety to ensure that ISP is not imposed upon students to effectuate forced participation in ISP or as a means of unlawfully removing a student from school without due process of law.
- Provide immediate notice to all VCOE parents and students who have participated in ISP within the last 2 years that independent study must be completely voluntary, which means they cannot be forced to participate.
- Review and revise VCOE's policies and procedures regarding student discipline and school safety to ensure that ISP is not imposed upon students to effectuate forced participation in ISP or as a means of unlawfully removing a student from school without due process of law.
- Provide immediate notice to all VCOE parents and students who have participated in ISP within the last 2 years that independent study must be completely voluntary, which means they cannot be forced to participate.
- Provide immediate notice to all parents and students who are currently participating in ISP and inform them that independent study must be completely voluntary and that they have the immediate option of attending a regular classroom program.
- Develop policies and procedures, in collaboration with the County Juvenile Probation Department and the Public Defender's Office, that address the transition needs of youth involved in the juvenile justice system. Such policies shall ensure that all educational placements for these youth are made in their best educational interests and that no juvenile justice youth shall be forced to attend an alternative school solely because of their involvement in the juvenile justice system.
- Identify all students who have participated in ISP or home/hospital instruction within the last 2 years and determine to what extent students have suffered any educational deficits due to ISP such as credit loss and course failure and whether any remedial services are necessary.



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- Provide all-staff training within ninety (90) days regarding VCOE's obligations to maintain its educational institutions free of discrimination and ensure equal access for students and parents who are limited in their ability to speak English or are non-English speakers;
- Provide all-staff training within ninety (90) days regarding the new or revised VCOE policies and procedures regarding ISP, home/hospital instruction, school discipline and school safety.
- Maintain and review records and statistical data regarding independent study in conformity with state law including the requirement to maintain a separate listing of the pupils participating in independent study that identifies the course credits attempted by and awarded to each pupil.

Additionally, there are specific remediation services that should be offered to our clients, Ramon A., Kevin C. and Gabriel C. that we would like to discuss in detail. We ask that you review this letter and contact us with a proposal for addressing these issues. We would like to meet with your staff, and review that proposal during the week of July 28, 2014. If we are not able to enter into meaningful discussions regarding this issues within this timeframe, we will advise our clients to pursue litigation. I will be out of the office until July 21. Therefore, please contact Cynthia L. Rice, with any questions and to set up a date for our initial meeting. She can be reached at (415) 777 3752, ext. 323, email: crice@crla.org.

We look forward to your timely attention to this matter.
Sincerely,

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Franchesca S. Gonzalez
Cynthia L. Rice

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