

# **WHATCOM DISCOVERY INTERLOCAL COOPERATIVE AGREEMENT**

## **I. INTRODUCTION**

WHEREAS, legislatively approved staffing ratios preclude the resident districts from generating sufficient staff to meet the needs of students with disabilities;

WHEREAS, cooperative student enrollments provide a more efficient and economical basis for managing and implementing special education programs;

WHEREAS, districts have chosen to avoid unnecessary duplication of unusually expensive programs and rather choose to try to free up resources to provide educational programs not otherwise available;

WHEREAS, Northwest Educational Service District 189 (herein also referred to as "NWESD") has historically provided special education services on a cooperative basis;

WHEREAS, various school districts (hereinafter referred to as "Districts") in Washington have requested that NWESD provide special education services for their students; and

WHEREAS, RCW 39.34, RCW 28A.310.180, RCW 28A.310.010 and RCW 28A.310.340, authorize the school districts and educational service districts to join together to engage in various activities, including having the educational service district provide cooperative special education services.

NOW THEREFORE, a cooperative is hereby created wherein NWESD will provide special education services to the Districts which are signatories to this Interlocal Cooperative Agreement (herein referred to as "Agreement"), according to the terms and conditions contained herein.

## **II. NAME/PURPOSE**

The name given to this cooperative is Whatcom Discovery. The general purpose of this Agreement, as authorized by the aforementioned statutes and/or other applicable laws, is the formation of a cooperative to provide a continuum of services to students whose educational needs cannot be met within the resident district, but who have been screened and meet the established parameters for enrollment in the cooperative.

## **III. MEMBERSHIP**

Membership in this cooperative requires all members to sign this Agreement. "District" shall hereafter refer to districts that have signed the Agreement for the 2013-14 program year and agree to be financially responsible as a cooperative member for the program costs.

## **V. FINANCING/COSTS/RATES**

The students served by this program are residents of their respective District, and

accordingly, it is acknowledged that each District retains the responsibility to provide an appropriate public education for them. Each District participating in this cooperative commits to pay to NWESD an amount sufficient to reimburse NWESD the total cost of operating this cooperative based on the number of FTE student slots identified in Appendix A. This will be done in the following fashion:

- A. By March 15, 2014, and every March 15 thereafter for the following program years, Districts will be asked to identify the number of FTE student slot commitments for the next school year. The program budget will be developed based on this information and will include indirect costs. Such budget will annually be submitted to the Advisory Council.
- B. Member District slot commitments will be established as per Agreement. Districts will be billed a per-student amount to cover basic program costs, based on the number of FTE student slot commitments. The per-slot amount is established at \$36,180 per FTE for the 2013-14 program year, or \$201 per day, based on a total of 38 slots. In addition, each District commits to pay an additional ten (10) percent "late-comer" fee per billable day if this Agreement is signed after May 1st of the program year. Upon signing this Agreement, each District commits to purchase the number of slots listed on Appendix A and agrees to pay the listed amount per slot, whether used or not. At the end of the program year, the estimated per-slot cost will be compared to actual costs, and any difference will be billed or credited as appropriate per Advisory Council agreement. Any individual District may request to release slots to the cooperative, and upon approval of the Advisory Council, may be relieved of their commitment for the school year.
- C. Program slot commitments will be invoiced on a full-time basis for all cooperative students. Less than full-time participation will not constitute a reduction in billing, as it is understood that part-time and/or transition services continue to require an enriched level of cooperative staff involvement.
- D. In the event participation in the program is significantly below projections as identified in paragraph A above, the Advisory Council will be convened by November 10 to consider modifying agreements outlined in paragraph B above.

#### **V. ADVISORY COUNCIL**

An Advisory Council consisting of the superintendent of each participating District, or his/her designee is hereby created. The purpose of such Advisory Council is to monitor the performance of this Agreement, amend this Agreement (with concurrence of all parties affected), and terminate this Agreement as provided in Section X. Additionally, the Advisory Council will be responsible for making recommendations to NWESD regarding

policies unique to the operation of the cooperative and recommending modifications to the program budget should student enrollment fall significantly below projections.

Activities of the Advisory Council shall take place as needed, called by a majority of its members or by the Superintendent of NWESD, or his/her designee. Decisions by the Advisory Council will be made by a vote of greater than fifty percent (50%) of a quorum. A quorum is defined as follows: at least fifty percent (50%) of the representatives appointed to the Advisory Council. Participation may occur via technological participation, including email, providing at least seven calendar days prior notice was provided to each District superintendent or designee.

## **VI. RIGHTS AND OBLIGATIONS OF NWESD**

In accordance with this Agreement, NWESD shall:

- A. Operate a self-contained education program for students with disabilities who manifest severe behavior challenges.
- B. Recruit, employ, and supervise staff required to adequately operate the program. All staff for the cooperative shall be employed by NWESD and shall be subject to the policies and rules and regulations of the Board of Directors of NWESD.
- C. Contract for staff each year according to the total number of students participating Districts have identified prior to March 15, as identified in Section IV A. When the number of students enrolled in the program exceeds the level that can be reasonably accommodated by existing staff, additional staff may be hired as necessary.
- D. Contract or subcontract with any person or entity to provide services needed to operate the cooperative program.
- E. Develop consistent procedures for students entering into and exiting from the cooperative program.
- F. Coordinate interdistrict and interagency services and agreements required to implement educational plans and programs, including an individual education program (IEP).
- G. Coordinate with each District for transportation, related services, and emergency services as needed. Related services for students are to be based upon IEP-designated needs. These services will be provided and paid for by each student's resident District, unless it has been agreed upon by the IEP team that it would be more appropriate to offer these services as part of the Cooperative program. Student-

specific services (e.g., 1:1 instructional aides, OT, PT, and other services) that are provided by the cooperative program will be billed as an additional cost (including indirect charges) to the resident District of the student, unless otherwise agreed in writing.

- H. Coordinate program and resident District personnel in accomplishing assessments, IEPs (to include resident District participation), and a full continuum of services for students.
- I. Coordinate shuttle transportation with each District during the school day between identified learning centers.

#### **VII. RIGHTS AND OBLIGATIONS OF THE DISTRICTS**

Each participating District acknowledges that by entering into this Agreement it is causing financial commitments by other parties, and therefore, agrees not to terminate prior to the expiration date without the consent of NWESD and any other party to this Agreement who would thereby suffer financially. In the event of such unilateral termination without consent, the terminating party agrees to indemnify all other parties from any financial loss that results from such termination.

Additionally:

- A. The District acknowledges that Chapter 28A.155 RCW, Chapter 392-172A WAC, and Public Law 108-446 including all revisions subsequent and currently enforced, impose responsibilities on each resident District and that those responsibilities are not distinguished by delegation, in part or in total, under this Agreement.
- B. To this extent, it is understood and agreed between the parties hereto that the purpose and intent of this Agreement is that NWESD provide cooperative services for the specialized education program being conducted by the resident District for the students within the District who otherwise qualify for such specialized education services. The resident District shall retain the responsibility and/or agrees to:
  - 1. Assure their participating students are receiving an appropriate education;
  - 2. Comply with all provisions as requested by Chapter 28A.155 RCW, Chapter 392-172A WAC, and Public Law 108-446 (IDEA) including provisions of assessment and related services; and,
  - 3. Incorporate Chapter 392-172A WAC and Public Law 108-446 (IDEA) required policies.

- C. The District waives any locally established procurement requirements that are more restrictive than those established by statute for fees/purchases initiated pursuant to this Agreement.
- D. The District, by signing this agreement is acknowledging its intent to utilize, at least in part, federal funds for payment of any fees/purchases related to this Agreement, unless written notice to the contrary is provided to the NWESD Assistant Superintendent for Finance and Compliance (Carol Browder at the time of Agreement execution). Having received such acknowledgement from District, NWESD will proactively explore and meet any federal procurement requirements.
- E. The District may permit NWESD to claim state reimbursement for shuttle transportation services in the event these services are provided by NWESD, and authorized through a predetermined written agreement prior to state claim cut-off date (October 30 at the time of Agreement execution, or any successor date).
- F. The District shall be responsible for pupil transportation to and from school.
- G. The District shall be responsible for verifying and reporting of P-223, P-223H and Federal Child Count to OSPI directly.

#### **VIII. DISPUTE RESOLUTION**

Disputes arising out of this Agreement, excluding indirect and administration costs, shall be resolved in the following fashion:

- A. If the dispute is between participating districts, then the disputing parties will present their arguments first to the Director of Special Programs and Services of NWESD to make a determination. If need be, it may then be referred to the Superintendent of NWESD.
- B. If the dispute is between one or more participating District(s) and NWESD, then each participating District will appoint someone to represent it, NWESD will appoint someone to represent it, and those parties will appoint someone as a neutral representative. This panel's decisions will be limited to the provisions of this Agreement, be determined by a majority vote, and be binding on the parties.

#### **IX. SUSPENSION AND DISBARMENT**

The parties to the Agreement certify, and each relies thereon in execution of this Agreement, that neither their entity nor its Principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded for the award of

contracts by any Federal governmental agency or department. "Principals", for the purposes of this certification, mean officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of subsidiary, division, or business segment; and similar positions). Further, each party agrees to provide the other(s) immediate written notice if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances. Each party's certification via the execution of this Agreement is a material representation of fact upon which each party has relied in entering into this Agreement. Should either party determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, it may terminate this Agreement in accordance with the terms and conditions therein.

#### **X. TERMS OF AGREEMENT/TERMINATION**

For any individual District, this Agreement begins and ends with the 2013-14 school year and may be modified or terminated only upon recommendation by Advisory Council as per Section V, and fully executed by NWESD and each District, specifying conditions and date of modification/termination. The Advisory Council can vote, by a majority of a quorum (defined in Section V), to discontinue operating the cooperative program, with said discontinuance to be effective August 31 of the year of the decision; however, no termination decision can be made later than April 1 before the date of termination.

#### **XI. DISTRIBUTION OF ASSETS ON TERMINATION/DISSOLUTION**

The Cooperative may receive gifts, cash, equipment, or services from any source contingent upon acceptance by the Advisory Council and consistent with NWESD policy and procedures. All assets acquired by NWESD and placed in service during this Agreement shall remain the property of NWESD. Any asset acquired by a resident District and used in the program, because a program component is situated within the resident District, will remain the property of the individual District. Should the program be dissolved, the NWESD shall prepare a list of all assets, including any fund balances, and make recommendations to the superintendents of member districts for disbursement.

#### **XII. ASSIGNMENT/WAIVER/SEVERABILITY**

No rights or responsibilities required or authorized by this Agreement can be assigned by any party hereto unless otherwise allowed in this Agreement.

No provision of this Agreement, or the right to receive reasonable performance or any act called for by its terms, shall be deemed waived by a breach thereof as to a particular transaction or occurrence.

If any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

### XIII. HEADINGS/SIGNATURES/APPROVAL

The headings of each section of this Agreement are only provided for the aid to the reader. If there is any inconsistency between the heading and the context, the context will prevail.

By signing this Agreement, the parties acknowledge that they have read and understand this Agreement, including any supplements or attachments thereto, and do agree thereto in every particular. The parties further agree that this Agreement, together with any appendices, constitutes the entire Agreement between the parties and supersedes all communications, written or oral, heretofore related to the subject matter of this Agreement.

By signing below, each party affirms that this Agreement has been approved by his/her Board of Directors or he/she has been given authority by such Board to enter into this Agreement. If this approval is provided through a resolution, a copy of said resolution will be attached hereto.

*SW*

*[Signature]*  
Superintendent

4/12/13  
Date

Northwest Educational Service District 189

Skagit County, Washington

*[Signature]* 4-12-13  
Superintendent Date

*[Signature]* School District

Whatcom County, Washington

**APPENDIX A**

Attachment for Whatcom Discovery Interlocal Agreement

Slots with projected cost per slot for 2013-14 program year:

<b>Districts</b>	<b>Number of Slots</b>	<b>Cost per Slot</b>	<b>Total for 2012-2013</b>
Bellingham	19	\$36,180	\$687,420
Blaine	3	\$36,180	\$108,540
Ferndale	8	\$36,180	\$289,440
Lynden	3	\$36,180	\$108,540
Meridian	1	\$36,180	\$36,180
Mount Baker	4	\$36,180	\$144,720
<b>Total</b>	<b>38</b>		<b>\$1,374,840</b>

Districts not listed above will be considered late-comers; the 2013-14 daily rate including the 10% surcharge is \$221.10 per student for all students enrolled in "late-comer" districts.