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WHATCOM COUNTY DETENTION CENTER EDUCATION PROGRAM 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 specialized education program requirements;

WHEREAS, cooperative student programs provide a more efficient and economical basis for managing and implementing special services 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 (hereinafter referred to as "NWESD") has historically provided special services on a cooperative basis;

WHEREAS, the Whatcom County school districts in Washington have requested that the NWESD provide special services for their students;

WHEREAS, Chapter 39.34 RCW, RCW 28A.310.180, 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 service programs; and,

WHEREAS Chapter 28A.190 RCW and WAC 392-122-200 authorize institutional education programs.

NOW THEREFORE, a cooperative service program is hereby created wherein the NWESD will provide education services to the district which is signatory to this Agreement for Cooperative Service Program (herein referred to as “Agreement”), according to the terms and conditions contained herein.

II. NAME/PURPOSE

The name of this cooperative service program is the Whatcom County Detention Center Educational Program (hereinafter referred to as "Program"). The general purpose of the cooperative is to provide educational programs for children and youth confined in Whatcom County Juvenile Detention Center as authorized by RCW 28A.310.180 and/or other applicable laws.

This Agreement supersedes any Agreement prior to September 1, 2026, between the NWESD and the district which is signatory to this Agreement for the operation of a juvenile detention center education program.

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 2026/27 program year, or any successor year, and agree to be financially responsible as a cooperative member for a proportionate share of any annual excess Program costs.

IV. FINANCING

The students served by this Program are residents of one of the Districts, and accordingly, it is acknowledged that each District retains the responsibility to provide an appropriate public education for its students.

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Prior to the start of each year, the NWESD will develop a proposed budget, comparing the amount anticipated to be received as apportionment with planned costs of the Program. The NWESD shall receive indirect costs of nine percent (9%) for administering this Program. Such budget will be provided to each District representative and the Advisory Council members for review.

Any and all program enhancements and associated costs beyond those funded by state apportionment will be proportionately distributed among the Districts. Each District's contribution will be determined by calculating the five-year (5) average percentage of the Program its students represent, based on monthly enrollment reporting, and a proportionate share of students who are non-county residents. Specifically, each District's total number of student FTE will be divided by the total FTE within the Program, and then added to each District's proportionate share of the non-county resident population to calculate the District total proportionate share.

The NWESD will invoice in accordance with the following schedule.

A. Monthly, on or before the 10th of each month commencing with October: the estimated district proportionate contribution of monthly costs based on the prior five-year average, except as noted below.

B. Annually, on or before September 30 of the following school year: In lieu of monthly invoicing for August, the difference between the actual and projected annual cost for the school year attributable to each District, as calculated on actual five-year average proportionate share to date. If the projected shortfall was greater than the actual shortfall, a proportionate share of the overpayment will be credited to each District's future Program obligation.

The NWESD will adjust projected shortfall and, as appropriate, apply this adjustment to proportionate district share during the February and July invoicing cycle. Final settlement will be determined upon the close of all accounts for each program year.

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 IX.

Activities of the Advisory Council shall take place as needed, called by a majority of its members or by the Superintendent of the 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 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 (7) calendar days prior written notice was provided to each District superintendent or designee.

VI. RIGHTS AND OBLIGATIONS OF NWESD

The NWESD Board of Directors and Superintendent agree to provide educational services pursuant to requirements of the Office of the Superintendent of Public Instruction (OSPI). All staff for the Detention Center shall be employed by the NWESD and subject to the policies and rules and regulations of the NWESD, including regulations pertaining to RCW 28A.400.303, RCW 28A.400.322 and RCW 28A.400.330, and teacher certification as required by the State of Washington and Title 1, Part D funding. In accordance with this Agreement, the NWESD shall:

A. Operate an education program as approved by the Advisory Council to meet the unique educational needs of children and youth involved in the juvenile justice system;

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B. Implement institutional programming consistent with State standards as identified by OSPI and the State Board of Education (e.g., Chapter 28A.190 RCW and WAC 392-122-200);

C. Maintain quality educational standards, under the guidance of the Advisory Council, identified in Section V above;

D. Coordinate the exchange of educationally relevant student information between the NWESD, the District, and the student's last known school of attendance to promote learning consistent with each student's learning continuum;

E. Coordinate with last known district of attendance for enhanced educational services to the extent possible within the juvenile justice facility, and pursuant with Section VII.A of this Agreement;

F. Administer the Program, including filing such documents and obtaining such approvals as necessary to receive all appropriate State funding (e.g., monthly reporting of students to OSPI for CEDARS) to the NWESD according to the policies and procedures adopted by the NWESD Board of Directors;

G. Maintain fiscal record-keeping of expenditures to permit verification that federal Title ID funds and state apportionment funds are each used for appropriate purposes and tracked separately;

H. Recruit, employ, and supervise educational staff to adequately operate the Program;

I. Contract or subcontract with other entities to provide needed services to operate this Program including but not limited to GED preparation, pre-employment and vocational preparation, counseling and nursing services, etc.; and,

J. Be entitled to receive the monies necessary to operate the Program, as described in Section IV.

VII. RIGHTS AND OBLIGATIONS OF THE DISTRICT

In exchange for having the NWESD operate the Program described in this Agreement, the District agrees to permit the NWESD to claim funding on behalf of any student served by the Program and to reimburse the NWESD for excess costs in accordance with Section IV.

Nothing in this Agreement precludes any District obligation to provide educational programming for juveniles in adult jails, pursuant to Chapter 28A.194 RCW and WAC 392-122-228, when such adult correctional facility is located within the District service boundaries.

The District acknowledges that by entering into this Agreement they are causing financial commitments by other parties to occur and therefore agree they will not terminate prior to the expiration date without the consent of the NWESD and any other party to this Agreement that would suffer financially thereby. In the event of such unilateral termination without consent, the terminating party agrees to indemnify and pay other parties that have not agreed thereto for any financial loss which results from such termination.

Additionally:

A. The District acknowledges that Chapter 28A.155 RCW, and Chapter 392-172A WAC impose responsibilities and that those responsibilities are not distinguished by delegation, in part or in total, under this Agreement.

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To this extent, it is understood and agreed between the parties hereto that the purpose and intent of this Agreement is that the NWESD provide cooperative services to deliver the specialized services for which students would otherwise qualify in their resident District. The resident District shall retain the responsibility to:

1. Assure their particular students are receiving an appropriate education and timely initial evaluations or re-evaluations of students while they are detained at the county detention center; and,

2. Comply with and incorporate all provisions required by Chapter 28A.155 RCW, and Chapter 392-172A WAC.

B. 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.

C. The District will not use federal funds for payment of any fees/purchases related to the Agreement, unless it provides prior written notice to the NWESD Assistant Superintendent for Finance and Compliance. This will assure the District and the NWESD can proactively explore and meet any federal procurement requirements.

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 the NWESD to make a determination. If need be, it may then be referred to the Superintendent of the NWESD.

B. If the dispute is between one or more participating District(s) and the NWESD, then each participating District will appoint someone to represent it, the 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. TERM OF AGREEMENT/TERMINATION

This Agreement's duration is from September 1, 2026, through August 31, 2027. For a termination to be effective, written notice must be provided to the other party by April 1 prior to the termination date, as provided below.

A. If the Districts wish to terminate the Agreement in its entirety, the Advisory Council shall provide written notice to the NWESD no later than April 1 of the preceding program year (e.g., April 1, 2026, for the 2026/2027 program year).

B. If the NWESD wishes to terminate the Agreement in its entirety, the NWESD shall notify the member Districts no later than April 1 of the preceding program year (e.g., April 1, 2026, for the 2026/2027 program year). This Agreement may be modified only upon recommendation by Advisory Council as per Section V, and fully executed by the NWESD and the Districts, specifying conditions and date of modification.

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X. OWNERSHIP OF ASSETS

All assets acquired by the NWESD and placed in service for the cooperative shall remain the property of the NWESD. Any asset acquired by the District and used in the Program, because the Program component is situated within the District, will remain the property of the District. Works created by the NWESD under this Agreement shall also remain the property of the NWESD (e.g., developed training manuals or other published documents). Should the Program be dissolved, the Advisory Council shall prepare a list of all assets, including any fund balances, and make recommendations to the superintendents of the NWESD and member Districts for disbursement.

XI. CRIMES AGAINST CHILDREN

In accordance with RCW 28A.400.330, employees, agents, and contractors of the NWESD and District are prohibited from working at a public school if they have or may have contact with children at a public school during the course of their employment and have pleaded guilty to or been convicted of the crimes identified in RCW 28A.400.322. Any failure to comply with this section shall be grounds for the District immediately terminating the contract**.**

XII. BACKGROUND CHECKS

By executing this Contract with the Client, the NWESD represents and warrants that each of its employees or agents shall have a record check through the Washington state patrol criminal identification system in compliance with RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the Federal Bureau of Investigation before she, he, or they has unsupervised access to any child. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

XIII. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The NWESD agrees that it may create, have access to, or receive from or on behalf of the Client, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). The NWESD represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by the Client in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which the NWESD protects its own confidential information; and (3) continually monitor its operations and take any action reasonably necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Contract.

XIV. SUSPENSION AND DEBARMENT

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.

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XV. ASSIGNMENT/WAIVER/SEVERABILITY

No rights or responsibilities required or authorized by this Agreement can be assigned by any party hereto unless 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 which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Agreement are declared severable.

XVI. INDEMNITY

The NWESD shall defend, indemnify and hold harmless the District in full for any and all claims against the District or its employees, officials, or contractors which arise from the acts or omissions of the NWESD and its employees, officials, and contractors in the provision of the services under this Agreement. The District shall defend, indemnify, and hold harmless the NWESD in full for any and all claims against the NWESD or its employees, officials, or contractors which arise from the acts or omission of the District or its employees, officials, and contractors in the provision of the services under this Agreement.

XVII. HEADINGS/SIGNATURES/APPROVAL

The headings of each section of this Agreement are only provided for 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/they has been given authority by such board to enter into this Agreement. A copy of authorizing school board minutes or resolution, as appropriate, will be attached hereto.

Board Approval Date: 3/19/2026 Initial [redacted]

OR Resolution number and date of board delegation of authority to sign Interlocal Agreements.

n/a (Resolution Number) and n/a (Date)

[redacted] 3/20/2026

Dr. Ismael Vivanco, Superintendent
Northwest Educational Service District 189
Skagit County, Washington

Date

[redacted] 3/20/2026

Dr. Greg Baker, Superintendent
Bellingham School District
Whatcom County, Washington

Date

NWESD Internal Approvals

Fiscal (Content): [redacted] DS Program Director: [redacted]