

NORTHWEST COLORADO BOARD OF COOPERATIVE EDUCATIONAL SERVICES

**OPERATING AGREEMENT CONCERNING
SPECIAL EDUCATION PROGRAMS AND PROCESSES**

THIS OPERATING AGREEMENT (“Agreement”) is entered into with an effective date of July 1, 2018, by and between the Northwest Colorado Board of Cooperative Educational Services (“BOCES”), and each of the BOCES member school districts including the undersigned. The term of this Agreement shall be for a period commencing July 1, 2018 and ending June 30, 2019.

IN CONSIDERATION OF the mutual covenants and agreements set forth herein the parties agree as follows:

A. Introduction and Parties

1. The following school districts are members of the BOCES: East Grand 2; Hayden RE-1; North Park R-1; South Routt RE-3; Steamboat Springs RE-2; West Grand 1-JT. The listed member school districts are collectively designated herein as the “Districts” and the provisions hereof apply to all equally.

2. For the geographical area served by the Districts, the BOCES is designated as the administrative unit responsible for implementation and enforcement of the Individuals with Disabilities Education Improvement Act, also referred to as IDEA of 2004 (“IDEA”), and the Colorado Exceptional Children’s Education Act (“ECEA”), and the BOCES Special Education Director is legally responsible for and has legal authority for the special education functions within the Districts.

3. The BOCES and the Districts are required by the Colorado Department of Education (“CDE”) through ECEA Rule 3.01(2)(a) to enter into agreements describing the financial commitments of the Districts and responsibilities concerning special education programs and services.

B. Districts’ Responsibilities

1. For students in the Districts who are eligible for special education under the IDEA, each of the Districts will provide special education and related services without using BOCES staff or resources except as herein expressly provided.

2. The Districts will comply with all BOCES Policies and Regulations, including Special Education procedures, the BOCES Comprehensive Plan, and the requirements of federal and state law and regulations concerning the education of children with disabilities. To help ensure compliance, each of the Districts will do the following.

a. Provide to the BOCES true, complete, and up-to-date copies of each Individual Educational Program (“IEP”) pertaining to each eligible student enrolled in the

respective Districts via the BOCES special education student database or other prescribed method.

b. Use the Colorado State IEP forms exclusively, and use other forms and procedures as instructed by the BOCES Director of Special Education or designee appointed by the Director.

c. Provide assurance of alignment with BOCES policies related to state and local special education spending to ensure compliance with the IDEA's "maintenance of effort" requirements at the administrative unit level pursuant to 20 U.S.C. § 1413(a)(2)(A)(iii) or other applicable law.

d. Report to CDE their special education staff and purchased services data as required for the Special Education December Count in accordance with CDE's published guidelines and adhering to the deadlines set by the BOCES as needed to meet CDE's reporting timeline.

3. It is acknowledged that, in addition to services provided pursuant to IDEA, students who have physical or psychological impairments that substantially limit learning may be entitled to special accommodations under Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act (ADA). The Districts are solely responsible for such accommodations and for all compliance with 504 and ADA, including but not limited to the development and implementation of a formal 504 Plan for any student who needs such a plan, and the BOCES shall have no direct responsibility therefor, but may provide information, advice and assistance in ADA and 504 matters upon request.

4. It is acknowledged that the BOCES is not responsible for Districts' compliance with the Safe Schools Act (CRS 22.32.109.1) or Districts' efforts to conform with Colorado School Safety Resource Center recommendations.

C. **The BOCES' Responsibilities and Authority**

The BOCES is the administrative unit responsible for ensuring that the requirements of federal and state special education law and regulations are met in the Districts. Accordingly, the Director of Special Education for the BOCES will review staff credentials and training, staffing levels, forms, documents, and procedures and will monitor referral processes, evaluations, reevaluations, eligibility determinations, placement decisions, and development and implementation of IEPs for students with disabilities in the Districts. The BOCES will provide a detailed recommendation of staffing levels by school building for the upcoming school year by the end of February. In the event of a disagreement as to the correct interpretation of a particular statute or regulation concerning the education of students with disabilities, representatives of the BOCES and particular District will meet to try to come to agreement. If the disagreement persists, the BOCES interpretation will control.

D. Continuum of Special Education Services

It is recognized that it is not feasible to offer the full “continuum of services” in each of the Districts, or to expect each of the Districts will serve students in every disability category and across a wide spectrum of severity ratings, from mild/moderate to severe/profound. The following provisions describe the manner in which the full continuum of services will be provided within the BOCES:

1. Each of the Districts is responsible for providing, at its own sole cost and expense, at least one licensed and endorsed special education teacher (“Resource Teacher”), and paraprofessionals as appropriate, assigned to serve students in each building in the respective District. Each District shall ensure that the Resource Teacher understands that he/she is subject to the directives and authority of the BOCES Special Education Director or designee appointed by the Director in respect to all matters concerning compliance with IDEA and ECEA, and that the Resource Teacher cooperates fully with the BOCES staff in all such matters.

2. The BOCES is responsible for providing the following “itinerant” services to students in the Districts in accordance with their needs as identified on each student’s IEP:

- a. Speech/Language Pathologist
- b. Occupational Therapist
- c. Physical Therapist
- d. School Psychologist
- e. Teacher of the Deaf and Hard of Hearing
- f. Teacher of the Visually Impaired
- g. Audiologist

Additionally, the BOCES will provide limited-term consultation services in situations where, in the opinion of the BOCES Special Education Director, the IEP team has been unable to resolve educational or behavioral challenges within an acceptable timeframe. Examples may include behavior evaluation by a Board Certified Behavior Analyst and assistive technology evaluation. This does not include threat assessment or violence risk assessment.

3.

4. In relation to 504 Compliance the NW BOCES Executive Director will assist Districts with 504 information, advice and training in 504 matters. The Districts are each required to have their own 504 compliance officer, and are solely responsible for the cost of providing special accommodations to students under 504.

5. It is recognized that the Districts and BOCES may from time to time encounter students who cannot receive an appropriate education in a public school setting of any kind. Examples include students with severe mental or emotional disorders, students such as deaf-and-blind students who may require highly specialized services not provided by any of the Districts or the BOCES, or students who are dangerous or exceptionally disruptive in the school setting. For such students, outside placements such as day treatment centers and other specialized facilities may be appropriate, and the BOCES will provide consultation and assistance in accessing such services. The costs of any out-of-District placement will be borne by the individual District.

6. When the IEP team has determined that a student qualifies for Extended School Year (ESY) services, the BOCES will be responsible for providing a program that meets the student's ESY needs. Any specialized transportation needed will be provided by the District.

7. The Districts are responsible for providing appropriate Transition Services for their 18-21 year old special education students. BOCES will support and advise Districts on Transition Services including how to use community agencies as part of transition, and will provide appropriate training to district secondary-level special education teachers.

8. Certain District special education students may require specialized equipment, aids, services other than those listed in Section D.2. above, assistive technology, and/or specialized transportation in order to receive a free appropriate public education under IDEA and ECEA. For these students, BOCES will provide consultation and assistance to access the needed services and equipment and each District shall generally be responsible for providing these services and equipment at its sole cost and expense. However, the BOCES may decide to purchase equipment that could be used for multiple students via the BOCES media center to the extent that the BOCES budget will allow.

9. The BOCES is responsible for arranging and paying for interpretation and translation services necessary for BOCES employees to perform their job responsibilities. The District is responsible for arranging and paying for interpretation and translation services arising from IEP meetings or otherwise necessary for District employees to perform their job responsibilities.

E. Cost Reimbursement

Each District shall be responsible for its share of the costs of special education services in accordance with BOCES Financial Policies, as the same may be adopted and amended from time to time. As constituted on the date hereof, such Financial Policies require the following:

- Special education service costs described in Section D. 2. and D.6. above will be paid for using special education federal and state funding received by the BOCES. The BOCES receives all special education federal and state funding for eligible students within the Districts.

- Each District shall pay a share of BOCES general fund administrative costs, per BOCES District Assessment Policy (attached).

Costs arising from legal services in any matter where a dispute has arisen between the parents (or other child representative(s)) of a special education student and a District, including consultation, legal research, attendance at staff meetings and attendance at IEP meetings will be paid by the party requesting the legal services unless stated otherwise in this Agreement. Defense costs for due process hearings, state level complaints, and related court proceedings will be allocated in the manner described in Section F.

F. Responsibility for Defense

In the event of a dispute between the parents (or other child representative(s)) of a special education student and the District, and/or if a claim or legal proceeding is mentioned, the District shall inform the BOCES Special Education Director, and provide as much detail as possible concerning the nature of the possible claim or dispute. The BOCES Special Education Director will confer with legal counsel as necessary, and then advise the District on how to proceed. If the District does not follow the advice from the BOCES, the District will not be eligible for any cost-sharing by the BOCES in connection with the resolution of such claim or dispute.

In the event of a due process hearing, state complaint, or special education-related court proceeding, the BOCES will handle the defense of such claim unless the BOCES and District mutually agree that the District should handle the defense. The costs of such defense and the payment of any claims, awards, or damages, including parents' attorneys' fees, resulting from a finding of violation of any applicable law or regulation pertaining to the education of students with disabilities who are enrolled in a District, shall be allocated as follows:

1. If the BOCES Board determines that the defense costs and any award or damages resulted from a decision made by the BOCES or the act or directive of a BOCES employee, then the BOCES will assess member Districts to pay the full amount of such cost; and
2. If the BOCES Board determines that the award or damages resulted from a decision made by the particular District or the act or directive of a District employee, then the District will pay the full amount of such cost; and
3. If the BOCES Board determines that the award or damages resulted from actions of both BOCES and District employees, then the BOCES and the District will share the cost evenly. The BOCES shall assess member Districts to pay the full amount of its share of such cost.

Notwithstanding the foregoing, in the event that the BOCES maintains any policy of insurance that would provide a defense or otherwise cover any special education-related claims against the BOCES or such District, then the BOCES shall do all acts and things necessary to access such coverage for the benefit of the BOCES or such District, including but not limited to participating in the defense of such claim to the extent required by such policy.

4. Any amounts assessed to Districts under Section F.1. or Section F.3. above shall be allocated proportionately to special education pupil counts for each District using the most recent December 1 special education pupil count.
5. In the event of any such legal proceeding, the BOCES and such District and their respective legal counsel will cooperate in the course of such proceeding.
6. In the event of a settlement of any dispute contemplated in this Section F, the BOCES shall contribute evenly to any portion of the settlement sum and BOCES and/or District legal costs that are not paid by the District's or BOCES's insurance carrier, up to a maximum of \$15,000; provided, however, that the BOCES will not contribute to settlement and legal costs if

the BOCES Board determines that the claim resulted from a decision made by the particular District or the act or directive of a District employee. Any contribution paid under this paragraph F.6 shall be assessed to Districts per paragraph F.4. above.

7. In the event of any disagreement on allocation of costs under this Section F, the BOCES Board shall make the final decision by majority vote.

G. **Conflicts Counsel.** In the event that the District and BOCES both use the same attorney or same law firm for legal services, and in the further event that a dispute arises between the District and BOCES concerning the enforcement or interpretation of this Agreement, neither the BOCES nor the District will use or consult such attorney or firm in regard to such dispute, but shall engage separate conflicts counsel for representation as needed in such matter.

SIGNED BY THE PARTIES on the date above written.

_____ **SCHOOL DISTRICT**

NORTHWEST COLORADO BOCES

By: _____
Superintendent

By: _____
Executive Director

By: _____
School Board President

By: _____
Board President

In recognizing the cooperative arrangement of the BOCES, the Board establishes the following method of local district assessment for the BOCES General Fund.

1. A total expenditure figure will be developed by the Executive Director and the Board as part of the budget procedure. This amount is intended to include BOCES central office overhead costs, less any indirect cost amounts transferred to other funds/programs. General fund expenses that have a separate revenue source will not be included, for example cooperative projects between some but not all member districts which would be separately assessed to each cooperating district.
2. This amount will be divided **by two**, into two portions (a) and (b).
3. In recognizing that all districts share equally in some BOCES' services, portion (a) will be divided equally by the number of member districts.
4. In recognizing that districts share unequally in some services because of student enrollment, portion (b) will be divided by the prior fiscal year's full-time equivalent October 1 pupil count of the total BOCES giving an amount equal to a per pupil cost. Each member district's full-time equivalent pupil count will be multiplied by the per pupil amount to obtain the amount per district of portion (b).
5. Portion (a) "District Assessment" will be added to portion (b) "Student Assessment" to determine the total local member district's assessment.
6. Districts will also be assessed for the cost of any other general fund cooperative projects that do not include all member districts, using any equitable basis agreed upon by cooperating districts in advance.