WHATCOM DISCOVERY 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 learning needs;

WHEREAS, cooperative student enrollments provide a more efficient and economical basis for managing and implementing specialized learning 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 specialized learning services on a cooperative basis;

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

WHEREAS, Chapter 39.34 RCW, 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 specialized learning services.

NOW THEREFORE, a Cooperative is hereby created wherein the NWESD will provide specialized learning 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 (hereinafter referred to as “Cooperative” or “Program”). The general purpose of this Agreement, as authorized by the aforementioned statutes and/or other applicable laws, is the formation of a Program to provide a continuum of services to students whose unique educational needs cannot be met within the resident school district, but who have been screened and meet the established parameters for enrollment in the Program.

III. MEMBERSHIP

Membership in this Program requires all member districts to sign this Agreement. “District” shall hereafter refer to districts that have signed the Agreement for the 2020-21 Program year and agree to be financially responsible as a Cooperative member for the Program costs.

IV. 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 Program commits to pay to the NWESD an amount sufficient to reimburse the NWESD the total cost of operating this Program based on the number of student slots identified in Appendix A. This will be done in the following fashion:

A. By March 1, 2020, and every March 1 thereafter for following Program years, Districts will be asked to confirm the number of student slot commitments for the next school year, approve the proposed budget, and review any changes to the Interlocal Agreement. 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 the Agreement. The per-slot amount is established at $70,560 per student slot for the 2020-21 program year, or $392 per day, based on a total of 31 slot commitments by member Districts. 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 1 of the Program year, with the exception of a student within the Program who transfers to a non-Cooperative member District, in which case the “late-comer” fee will be waived. 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.

C. If, after a June 1st fiscal review of the Program budget, it is determined that a shortfall of committed student slots has caused the Program budget to go below the minimal operating budget, then the District responsible for the shortfall will be billed the full amount of the budget shortfall. If more than one District falls short of their commitments and a budget shortfall occurs, then each District would pay a proportionate share of the partially filled slots. This calculation will be based on annual average student enrollment.

D. Districts will be billed a per-student amount at the $392 day rate monthly, (plus any applicable fees as described above), based on the number of students enrolled and any additional supplementary student specific services agreed upon. At Program year-end, the estimated per-slot cost will be compared to actual costs, and any difference (outside the minimum one-twelfth operational reserve required by the NWESD Board Policy 6060), will be billed as appropriate or carried forward as Program reserve for the subsequent year.

E. Any individual District may request to release slots to the Cooperative, and upon approval from the Advisory Council, may be relieved of their commitment for the school year.

F. Program slot commitments will be invoiced on a full-time basis for all students. Less than full-time participation, including the school days following a student’s graduation, 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 Program staff. Mid-year graduation will be considered on a case-by-case basis and determined after the June 1st fiscal review as per Section IV. C.

G. The daily rate will continue to be invoiced for students who are absent for up to twenty (20) consecutive days, with attendance determined by the Program, as per RCW 28A.225.005. On the twenty-first (21st) day of absence, invoicing will be discontinued. If the student is to return to the Program after twenty-one (21) days of absence, the District would provide a new referral form for the student. Should the student not return to the Program, the District retains responsibility for payment as per Section IV.B.

H. If after the first four days at the start of the school year, a student has not shown up to the Program, the District has the right to end the student’s enrollment without being billed for that student. Should the District choose to end the student’s enrollment, the District would need to follow the referral process to enroll the student back into the Program, subject to Section IV.B.

I. 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, recommend amendment(s) to this Agreement (pursuant to Section XI), and to terminate this Agreement (pursuant to Section XI). Additionally, the Advisory Council will be responsible for making recommendations to the NWESD regarding policies unique to the operation of the Program 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 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 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 (7) calendar days prior 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 Program 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. In accordance with this Agreement, the NWESD shall:

A. Operate a self-contained education program for students with specialized learning needs who manifest severe behavior challenges.

B. Recruit, employ, and supervise staff required to adequately operate the Program. All staff for the Program shall be employed by the NWESD and shall be subject to the policies, rules and regulations of the Board of Directors of the NWESD. The NWESD reserves the right to delay or, if necessary, deny placement of any student where staffing capacity at the time of referral is estimated to be insufficient to adequately operate the Program upon student enrollment.

C. Contract for staff each year according to the total number of students participating Districts have identified prior to March 1, 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 Program.

E. Develop consistent procedures for students entering into and exiting from the 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 to support attendance on a full-time basis. 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 Program. Student-specific services (e.g., 1:1 instructional aides, OT, PT, SLP, and other services) that are provided by the 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 the 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. Each 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 the 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 its 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 evaluation procedures, 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. The NWESD will proactively explore and meet any applicable federal regulations.

E. The District may permit the NWESD to claim state reimbursement for shuttle transportation services in the event these services are provided by the NWESD, and authorized through a predetermined written agreement prior to State claim cut-off date.

F. The District shall be responsible for pupil transportation to and from the Program.

G. The District shall be responsible for verifying and reporting of P-223, P-223H, and Federal Child Count to the Office of the Superintendent of Public Instruction (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 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. 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.

X. 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, means 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.

XI. TERMS OF AGREEMENT/TERMINATION

For any individual District, this Agreement begins and ends with the 2020-21 school year and may be modified or terminated only upon recommendation by the Advisory Council as per Section V, and fully executed by the NWESD and each District, specifying conditions and date of modification/termination. The Advisory Council can, by a majority of a quorum (defined in Section V), discontinue operating the

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.

XII. DISTRIBUTION OF ASSETS ON TERMINATION/DISSOLUTION

The Program may receive gifts, cash, equipment, or services from any source contingent upon acceptance by the Advisory Council, consistent with the NWESD policy and procedures. All assets acquired by the NWESD and placed in service for the Program during this Agreement shall remain the property of the 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.

XIII. 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.

XIV. 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.

XV. 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.

_____
Board Approval Date

OR

Resolution number_____ and date _____, of board delegation of authority to sign Interlocal Agreements.

_____	_____
Larry Francois, Superintendent Date	School District Superintendent Date
Northwest Educational Service District 189	_____ School District
Skagit County, Washington	_____ County, Washington

Reviewed by:



APPENDIX A

Attachment for Whatcom Discovery Program Interlocal Agreement

Slots with projected cost per slot for 2020-21 year:

District	Number of Slots	Cost Per Slot	Total for 2020-21
Bellingham	11	$70,560	$776,160
Blaine	4	$70,560	$282,240
Ferndale	8	$70,560	$564,480
Lynden	4	$70,560	$282,240
Meridian	1	$70,560	$70,560
Mount Baker	2	$70,560	$141,120
Mount Vernon	1	$70,560	$70,560
	31		**$2,187,360**

Districts not listed above will be considered “late-comers.” The 2020-21 daily rate, including the 10% surcharge, is $431.20 per student for all students enrolled in “late-comer” districts.