

Mountain BOCES
Operating Agreement
Concerning

Special Education Programs and Processes

THIS OPERATING AGREEMENT (“Agreement”) is entered into with an effective date of _____, by and between the Mountain Board of Cooperative Educational Services (BOCES) and each of the BOCES member school districts including the undersigned.

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

A. Introduction and Parties

1. The BOCES is designated as the administrative unit responsible for implementation and enforcement of the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), and the Colorado Exceptional Children’s Education Act (“ECEA”), throughout the entire geographical area included within its member Districts. The BOCES Special Education Director shall be legally responsible for and have legal authority for the special education functions within the Districts.

2. The following school districts are members of the BOCES:

- Buena Vista School District R-31
- Lake County School District R-1
- Park County School District RE-2
- Salida School District R-32-J

All of the above school districts are collectively designated herein as the “Districts” insofar as any provisions hereof apply to all equally.

3. The BOCES and the Districts are required by the Colorado Department of Education (“CDE”) through ECEA Rule 3.01(5)(a)(i) to enter into

agreements describing the financial commitments of the Districts and agreements concerning special education programs and services.

B. Service Model

The Districts wish to have individual autonomy and control of staff to the extent practicable in the provision of special education services, with the BOCES monitoring compliance and providing consultation. For students in the Districts who are eligible for special education under the IDEA, each of the Districts will provide special education without using BOCES staff or resources except as herein expressly provided, or as may be arranged by separate written agreement. Special education teachers (both mild-moderate and severe), para-educators, and special service providers who work within any District will be the employees of such District. The BOCES Special Education Director will be responsible for compliance monitoring and consultation as necessary and appropriate, as more fully set forth below.

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. The Special Education Director for the BOCES will perform the following services:

- review staff credentials and training,
- review forms, documents, and procedures
- monitor referral processes, evaluations, reevaluations, eligibility determinations,
- monitor placement decisions
- monitor development and implementation of IEPs for students with disabilities
- support and educate the parents of special needs students

- advocate for the needs of the special education students within the Region.

Additionally, if required by a separate written agreement between a member District and the BOCES, the BOCES Special Education Director will do the following:

- provide special education teachers and para-educators with specialized professional development for such District
- hire, schedule, train and supervise special service providers as necessary and appropriate to serve students within such District.

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 Districts will meet to come to agreement. If the disagreement persists, the BOCES interpretation will control.

D. The Districts' Responsibilities and Authority

1. 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 Education Program ("IEP") pertaining to each eligible student enrolled in the respective Districts. The IEPs are BOCES property and will be housed in the BOCES office to only be released by the BOCES office staff.
 - b. Provide to the BOCES any information and documentation upon request that may pertain to any student with an IEP in the District.

- c. Use the BOCES IEP forms and system exclusively, and to use other forms and procedures as instructed by the BOCES Special Education Director.
2. The Districts shall ensure that the Special Education instructional staff and special service providers in each District understand that they are subject to the directives and authority of the BOCES Special Education Director or designee appointed by the said Director in respect to all matters concerning compliance with IDEA and ECEA, and that the District Special Education staff cooperates fully with the BOCES staff in all such matters.
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/or the Americans with Disabilities Act (ADA). The Districts are 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 therefore, but may provide information, advice, and assistance in ADA and 504 matters upon request.
4. Each District shall ensure that all special education staff records will be accessible to BOCES administrative staff at all times.

E. 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. The Districts are responsible for providing sufficient and appropriately licensed and endorsed special education instructional staff and special service providers to provide appropriate services for all children who have been determined to have a disability in each of their buildings.
2. For purposes of this Agreement, the following are considered “special service providers,” which must be provided to students 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. Transition Support Services
 - f. Child Find Coordinator
 - g. Early Childhood Special Education Teacher
 - h. SWAP Coordinator
 - i. Outreach Services
 - j. Gifted and Talented Coordinators
 - k. Sign Language Interpreters
 - l. School Social Worker
 - m. Specialized Teachers

The BOCES will assist in identifying and contacting service providers in the above categories as well as other outside consultation services in special situations, but the BOCES will have no financial responsibility for the costs of engaging such professionals.

3. For purposes of this Agreement, the following are considered “universal service providers,” which may be provided by the BOCES pursuant to a separate written agreement between a member District and the BOCES;
 - a. Vision Specialist
 - b. Deaf/Hard of Hearing Specialist

c. Audiologist

4. Nothing herein shall prevent two or more Districts or one or more Districts and the BOCES from entering into separate agreements for the provision of services to individual students upon terms and conditions acceptable to the parties. It is the goal and intention of the Districts and the BOCES to utilize separate agreements to provide the continuum of services to the fullest extent practicable within the territory of the BOCES.
5. It is recognized that the Districts and BOCES may from time to time encounter students who cannot receive an appropriate education in a traditional public school setting. 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 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. For students who qualify for Extended School Year services, the individual Districts will be responsible for providing such services, and each District will be responsible for any costs incurred based upon the services required. The staff for such services will be employed by the individual District for the term of service.

F. Cost Reimbursement

Each District shall be responsible for its share of the costs of special education services provided by the BOCES in accordance with the 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:

- The BOCES shall receive all special education federal and state funding for eligible students within the Districts, and shall distribute such funds to the Districts in proportion to total student population.
- The administrative costs of the BOCES shall be shared between the member districts in proportion to state and federal funding.
- Special programs established by the BOCES shall be funded on a “subscriber” basis with each participating District’s contribution proportionate to the number of students enrolled in such special program.
- Any overtime costs related to additional administrative duties due to lack of compliance with deadlines for submission of information of paperwork to the BOCES office by District employees will be reimbursed to the BOCES by the District where the costs were incurred.
- Costs arising from defense in a due process hearing or state-level federal complaint will be assessed to Districts separately as the need arises in the manner described in Section G.

G. Responsibility for Defense

In the event of a due process hearing or a state-level federal complaint, the District wherein such matter arose may elect to handle the defense of such claim itself, or may request that the BOCES handle the defense of such claim. If the District elects to handle the defense itself, the District shall be responsible for all costs, including attorney fees, of such defense, and for 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 such District. If the District elects to have the BOCES provide a defense, then 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 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 in proportion to enrollment; and
2. If the BOCES 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 such District shall pay the full amount of such cost; and
3. If the BOCES 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 the BOCES share of such costs. Notwithstanding the forgoing, 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 G. 1. or G. 3. Above shall be allocated proportionately to special education funding for each District using the most recent December 1 special education pupil count.

In the event of such legal proceeding, the district involved shall give its full cooperation to and follow the advice and instructions of the BOCES and assigned defense counsel in the course of the proceeding.

SIGNED BY THE PARTIES on the date above written.

_____ **School District** _____

By: _____
School Board President

By: _____
School Board Secretary

By: _____
Superintendent

Mountain BOCES

By: _____
Mountain BOCES Board President

By: _____
Mountain BOCES Board Secretary

By: _____
Mountain BOCES Executive Director

