



Northwest Educational Service District 189

Together We Can

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Dr. Gerald W. Jenkins, *Superintendent*

Unemployment Compensation Pool Cooperative Interlocal Agreement

WHEREAS, RCW 39.34 and RCW 28A.320.080 together authorize the local school districts within the State of Washington to join together to form cooperatives for the purpose of providing services for the participating school districts;

WHEREAS, RCW 28A.310.180 directs educational service districts to establish cooperative service programs for school districts which will hopefully economize for the local school districts by providing services that would otherwise be more expensive if the cooperative were not formed or which will provide services that could not otherwise be efficiently acquired including services provided directly to their students;

WHEREAS, several school district superintendents and their Boards of Directors have previously determined that an unemployment compensation coverage pool is desirable and requested Northwest Educational Service District 189 to form an Unemployment Compensation Pool Cooperative to help provide this support;

WHEREAS, the Board of Directors and Superintendent of NWESD previously agreed to coordinate and operate an Unemployment Compensation Pool Cooperative; and,

WHEREAS, the school district superintendents and their Boards of Directors have determined it prudent to update and clarify the previously adopted *Unemployment Compensation Pool Cooperative Interlocal Agreement* and *Bylaws*.

NOW THEREFORE, the Unemployment Compensation Pool Cooperative (hereinafter referred to as Cooperative) is hereby modified by and between Northwest Educational Service District 189 (hereinafter referred to as NWESD) and various school and educational service districts (the signatory district to this Agreement is hereinafter referred to as District) according to the below described terms and conditions.

I. NAME AND PURPOSE

This Cooperative shall be known as the NWESD Unemployment Compensation Pool Cooperative (hereinafter referred to as Cooperative). The purpose of the Cooperative is to form a pool to reimburse the Washington State Department of Employment Security for unemployment compensation obligations of member districts.

II. ORGANIZATION

Membership in the Cooperative will be limited to member school and educational service districts that execute a copy of this Agreement. All membership applications require submission of two appropriately completed copies of this Agreement, signed by its superintendent. Membership shall entitle the District to designate a representative to the Advisory Board.

An Advisory Board consisting of the superintendent, or designee, of each district is established. This Board's purpose shall be to 1) establish an Executive Committee, 2) monitor the performance of this

Agreement, 3) adopt and amend By laws, 4) ensure the Cooperative is operated consistent with those By laws, and 5) meet periodically to rule on matters such as Cooperative membership and assessment rate/fee schedules. A quorum of the Advisory Board shall require representatives from more than fifty percent (50%) of the member districts. Participation may occur via electronic medium/vehicle.

The Advisory Board shall elect an Executive Committee, which shall 1) provide the NWESD advice related to the Cooperative's management, 2) maintain the Cooperative's By laws, including amendment recommendations to the Advisory Board, and 3) other duties as may be assigned by the Advisory Board. Membership requirements for the Executive Committee shall be established by the By laws. A quorum of the Executive Committee shall require representatives from more than fifty (50%) of the members. Participation may occur via electronic medium/vehicle.

The NWESD shall administer this Agreement and will solicit the advice of the Executive Committee on matters relating to this Agreement and shall schedule meetings of the Advisory Board as required for this purpose. Except as otherwise provided herein, management of the Cooperative is delegated to the Executive Committee.

Meetings of the Executive Committee may be called by 1) its chair, 2) the NWESD Superintendent, or designee, or 3) a majority of its members. Meetings of the Advisory Board may be called by the NWESD Superintendent or Chair of the Executive Committee.

III. BY LAWS

The initial revised By laws are appended to this Agreement and will be approved by member district execution. The Executive Committee shall be responsible for recommending By law amendments to the Advisory Board. By law revisions shall be approved by two-thirds (2/3) majority vote of the Advisory Board.

IV. TERM OF AGREEMENT

The initial term of this revised Agreement shall become effective the date of the execution of the member District and the NWESD and shall automatically be extended in force and effect for successive calendar years, except as terminated pursuant to this Section or Section X.

Any district may terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of any year by providing written notice of its intent to terminate to each Cooperative member no later than September 30 of the same year.

Should a district provide appropriate written notices:

- 1) Any other district may then terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of the same year by providing written notice of its intent to terminate to each of the remaining Cooperative members no later than October 15 of the same year.
- 2) The NWESD may terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of any year by providing written notice of its intent to terminate to each Cooperative member no later than November 1 of the same year.

Discontinuing participation in this Agreement does not relieve any district of any obligations owed to the Cooperative by the departing district. If decided by a majority vote of a quorum of the Advisory Board, any departing district shall reimburse the Cooperative for any amounts owed to the Cooperative.

V. MEMBERSHIP IN THE COOPERATIVE, NEW MEMBERS, AND EFFECTIVE MEMBERSHIP DATE

The District shall become a full member of the Cooperative and shall designate a representative to serve on the Advisory Board.

Any district who shall become a member of the Cooperative subsequent to December 31, 2014, shall only be eligible on a quarterly basis of any subsequent year, consistent with the Washington State Department of Employment Security billing cycle. In such cases, the Executive Committee shall recommend 1) which quarterly option is practical in order to provide appropriate notices, and 2) the District's assessment rate, including an initial capital contribution; which will be approved by the Advisory Board, as delineated in Section VI.2.

VI. DUTIES OF THE DISTRICT

In accordance with this Agreement, the District will:

- 1) Meet as needed, through its designated representative to the Advisory Board, to take action related to Cooperative membership, assessment rates, Executive Committee membership, and other matters it deems appropriate.
- 2) Make timely payments to the Cooperative, care of the NWESD Cooperative Administrator, based on the Annual Rate of Assessment. Said rate(s) will vary by district and will be established in accordance with the adopted By laws and approved by the Advisory Board.
Assessments shall be due and payable within twenty (20) calendar days of the District's normal monthly payroll processing date and will be considered delinquent on the 21st calendar day of the succeeding month. A penalty shall be assessed at the rate of one percent (1%) per month of the amount due on any delinquent payment(s).
- 3) Support cost containment through diligent use of the Cooperative identified and selected Third-Party Administrator (TPA) for control of unemployment compensation costs. Each District will secure this service separate and apart from the Cooperative; however, the charge for such service will be paid by the Cooperative.
- 4) Along with other member districts, rely on the Cooperative Account to compensate the Cooperative administrator for management costs, pursuant to Section VII, paragraph 7.
- 5) Along with other member districts, maintain responsibility for making required payments to the Employment Security Department in the event that funds are not available in the Cooperative.
- 6) Maintain responsibility for any fees required by the Employment Security Department as a consequence for untimely report filing.
- 7) Maintain responsibility for making any required report(s) to the Employment Security Department.
- 8) Be responsible for any obligations payable to the Cooperative, should it elect to terminate membership pursuant to Sections IV and/or X.
- 9) Consider and meet all federal compliance requirements related to any fund distribution.

VII. DUTIES OF THE NWESD

In accordance with this Agreement, the NWESD shall perform the following functions and duties, within the constraints of funds made available by the Cooperative, as the Cooperative Account Administrator:

- 1) Receive all Cooperative payments from the District per Section VI.2.
- 2) Establish and maintain a Cooperative Pool Account with the Skagit County Treasurer, and deposit all payments in this Fund.
- 3) Invest funds on behalf of the Cooperative Account.
- 4) Assign the NWESD auditing officer, or designee, to sign all claim vouchers on behalf of the Cooperative.
- 5) Pay on behalf of the district(s) to the extent of available Cooperative funds all Department of Employment Security unemployment claims for actual benefit liabilities paid. Such payment(s) shall be made when they have been properly approved and presented to NWESD by the District(s) and/or its agent.

In the event the Cooperative as a whole does not have funds available to pay the claims, the claims will be paid with funding available on a prorata basis. Such proration shall be on the balance of claims to be paid for each district as a portion of the total balance of claims. In such event, the Executive Committee shall meet and determine the means of assessment sufficient to pay all outstanding claims.

- 6) Monitor member districts' actual experience for potential retrospective (experience) ratings and notify the Executive Committee if it recommends any member's assessment should be modified due to actual experience significantly exceeding expectations.
- 7) Pay from the Cooperative Account Fund all appropriate expenses including, but not limited to a) Washington State Auditor's Office (SAO) fees, b) Third Party Administrator (TPA) fees, c) Actuary fees for services related to the Unemployment Pool Account, and d) NWESD management fee, which is to be reviewed annually by the Executive Committee.
- 8) Maintain adequate financial records in order to properly manage the Cooperative as well as provide financial reports and information for risk assessments to the Executive Committee and Advisory Board.
- 9) Be responsible for employment of any staff and the general administration of the Cooperative.

VIII. CONFIDENTIALITY/PUBLIC DISCLOSURE

All data or information furnished to NWESD as Cooperative Account Administrator by the District pursuant to this Agreement shall remain the property of the District and shall not be disclosed to third parties except by written consent of the District. The only exceptions to this will be data or information 1) requested by the Washington State Department of Employment Security, 2) requested by the Washington State Auditor's Office within the constraints of the Public Disclosure Laws, and/or 3) ordered to be provided by a Court with jurisdiction.

No records of the District shall be made available for public inspection or copying by any party except as set forth in Section VII without written consent of the District. Requests pursuant to RCW 42.17 for inspection or copying of public records of the District held or maintained by NWESD as Administrator, shall be referred to the District.

IX. DISPUTE RESOLUTION/VENUE STIPULATION

Any dispute, claim or grievance arising out of or relating to the interpretation of application of this Agreement shall be submitted to the Executive Committee for its determination. Any Executive Committee decision may be appealed to the Advisory Board for final resolution by majority vote. Decisions of the Advisory Board shall be final and binding on all parties.

This Agreement has been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that it shall be governed by the laws of the State of Washington.

X. TERMINATION FOR BREACH

If the NWESD fails to comply with the terms and conditions of this Agreement, the Cooperative, by two-thirds (2/3) majority vote of the total Advisory Board, upon thirty (30) days prior written notice to NWESD, may terminate NWESD as the Administrator.

If the District fails to comply with the terms and conditions of this Agreement, the Executive Committee shall review the conditions of the breach of the Agreement and make a recommendation to the Advisory Board. Whereupon a two-thirds (2/3) majority vote of the Advisory Board, upon thirty (30) days prior written notice to the District, may terminate this Agreement with the District. In this regard, all decisions of the Advisory Board are final.

XI. DISSOLUTION OF COOPERATIVE

The Cooperative may be dissolved as of midnight, December 31, of any year by a two-thirds (2/3) vote of the Advisory Board. Such action for dissolution shall occur no later than November 1 of such year.

XII. DISTRIBUTION OF ASSETS UPON DISSOLUTION/TERMINATION

Upon dissolution of the Cooperative or termination of the Agreement with the District hereto, the following provisions shall apply:

- 1) If, for any reason, the Cooperative is dissolved, each district shall be entitled to a share of the assets of the Cooperative Account on the date of dissolution. Pro-rata share shall be computed based upon each member's experience in the Cooperative Pool.
- 2) If a district's membership in the Cooperative is terminated, under Section IV or X, the Executive Committee shall consider and recommend to the Advisory Board whether such district should be entitled to a favorable actual experience distribution as noted in paragraph 5 below. Such determination shall be made by a majority vote of the Advisory Board, however, not until all payments or obligations have been made on the district's behalf by the Pool.
- 3) No distribution of funds to any district shall be made if assets of the Cooperative Account are less than its liabilities, including amounts owed to the Department of Employment Security.
- 4) No distribution of assets shall be made to any district owing the Cooperative funds until such amounts are paid in full and all outstanding obligations have been met.
- 5) By majority vote the Advisory Board may choose to approve an Executive Committee recommendation to make experience refund payments to a district based on the district's actual favorable experience. Member districts understand and accept that adherence to federal compliance requirements remains a district responsibility for such payments.

XIII. ASSIGNMENT

This Agreement may not be assigned by either party without prior written consent of the parties.

XIV. WAIVER AND SEVERABILITY

No provision of this Agreement, or the right to receive reasonable performance of 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 the Agreement, which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of the Agreement are declared severable.

XV. NONDISCRIMINATION

No person shall, on the grounds of race, creed, color, national origin, gender, marital status or the presence of any sensory, mental or physical handicaps, be excluded from participation in or be denied the benefit of, or otherwise be subjected to discrimination with regard to any activity pursuant to this Agreement.

XVI. SUSPENSION AND DISBARMENT ASSURANCES

The parties to this Agreement certify, and each relies thereon in execution of this Agreement, that their entity nor its Principals are presently debarred, suspended, proposed for debarment, or 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.

XVII. AGREEMENT

The parties acknowledge that they have read and understand this Agreement, including any supplements or attachments, and agree 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, related to the subject matter of this Agreement. This Agreement may be modified only by a written resolution approved by a two-thirds (2/3) majority of the Advisory Board.

Further, the parties indicate they have the legal authority to obligate their respective entity to the terms and conditions contained herein.

NWESD Unemployment Compensation Pool Cooperative
2014 Revised Agreement; Page 7 of 7

Agreeing on behalf of:

Lake Stevens School District

Northwest Educational Service District 189

ABCook 4/23/14
(signature), Supt. Date

Dr. Gerald W. Jenkins 6/12/14
Superintendent Date

Amy Beth Cook
(printed name)

Attach copy of authorizing school board resolution number 1-14.

**Northwest Educational Service District 189
NWESD Unemployment Compensation Pool Cooperative**

Bylaws

I. NAME

This organization shall be known as the Northwest Educational Service District 189 (hereinafter referred to as "NWESD") Unemployment Compensation Pool Cooperative (hereinafter referred to as "Cooperative").

II. PURPOSE

The purpose of this Cooperative shall be to provide member local school districts with a cost-effective means to comply with the unemployment compensation law.

III. POWERS

This Cooperative shall have the power to prepare and adopt, amend and repeal bylaws, rules and regulations, and general policy statements for its own organization, government and guidance, provided action taken with respect thereto is consistent with state law, the Washington Administrative Code, the Rules and Regulations of the State Board of Education, the Rules and Regulations of the State Superintendent of Public Instruction, and the Rules and Regulations of the Governing Board of NWESD.

The Cooperative shall have the power to call meetings of the Executive Committee, the Advisory Board, and other committees as are deemed essential to the accomplishment of its purposes. It shall fix the annual membership charge and any other assessment that may be required based upon risk determination factors. It shall advise NWESD on the management of the Cooperative.

IV. RATE-MAKING FORMULA

The rate-making formula is the method of calculating the annual assessment for each member district and how those assessments will be paid. All rates must be affirmed by majority vote of the Advisory Board.

- A. Annual Assessment for Each District: The Executive Committee will review annually the participation by each member and determine if there should be an assessment against any individual member or all members. As a risk-sharing pool, variables used to consider the assessment will include, but are not restricted to: each district's experience of unemployment claims, expected future claims, actuarially projected program costs, program funding objectives, FTE staffing, etc.
- B. How Assessment Will be Calculated: It is the intention of the Cooperative to have payments into the Cooperative executed on a basis similar to that of the State system. Accordingly, payments will be based on taxable wages set by the Executive Committee. (Taxable wages are that portion of each employee's wage against which a percentage assessment is made.)

Using the prior year's total employee Full Time Equivalent (FTE), an estimate will be made of the necessary taxable wage level and annual assessment based on individual member risk for each district. The intent is to set both at an amount necessary to cause payment of the annual assessment. Each district will be advised of the rate and taxable wage required, with the amounts to be effective each January 1.

- C. Excess Contributions: The governing school board of any member district may decide to pay more into the Cooperative Pool than the amount required by A and B above if the individual district finds unusual circumstances will result in claims related costs that will

otherwise result in a premium deficiency for that district. It shall be the District's responsibility to maintain documentation supporting any such determination to increase its rate.

- D A member with an unfavorable experience rating or premium deficiency may have an additional assessment imposed by the Executive Committee that is immediately payable based upon the Executive Committee's consideration of variables in effect at that time.
- E Deficit Pool Balance: In the highly unlikely event that member district(s) incur claims that result in the Cooperative Account operating with a deficit balance, the Executive Committee shall take prompt action to determine a method for immediate assessment payable based upon the Executive Committee's consideration of variables in effect at that time.

V. MEMBERS

The membership of the Cooperative shall consist of the member school and educational service districts that execute a copy of this Agreement, including the required school board authorizing resolution.

Districts applying for membership after December 31, 2014, shall be offered membership only upon majority vote approval of member-district representatives at an Advisory Board meeting; provided, that the local school district applying for membership shall first have on file with NWESD their local school district's board resolution authorizing membership in the Cooperative. New members may be requested to provide records demonstrating prior unemployment benefit claims experience to aid the Executive Committee in determining their assessment. In addition, the Executive Committee may request an upfront capital contribution to cover claims incurred during the first year of membership. The District may request return of a capital contribution upon the Executive Committee's subsequent determination of sufficient favorable experience by the District. Refund of any part of the contribution will be by majority vote of the Advisory Board on the Executive Committee's recommendation.

VI. GOVERNANCE AND MANAGEMENT

The powers of the Cooperative shall rest with the Advisory Board, consisting of one representative of each member district, each having an equal vote in all deliberations of the Cooperative.

Between meetings of the Advisory Board, the powers of the Cooperative shall be exercised by an eight-member Executive Committee, selected by the Advisory Board for staggered four-year terms, with consideration being given to district size and geography in selection. Representation on the Executive Committee shall be:

- ☞ Snohomish County -3
- ☞ Skagit County -2
- ☞ Whatcom, Island and San Juan Counties -1 each
- ☞ NWESD -1 (who will only vote when necessary to establish a quorum or to break tie votes)

Representatives elected to the Executive Committee will be considered district appointments, with each elected member district responsible for appointing its representative of choice. The actions of the Executive Committee shall be final, except for those specifically requiring Advisory Board ratification or action by the governing *Interlocal Agreement*. Any member district may request, via written request copied to all Cooperative members, for Advisory Board review of any Executive Committee action at the next meeting of the Advisory Board.

The Executive Committee shall annually elect a Chair from among its membership. The Chair of the Executive Committee shall assist in the preparation of meeting agenda and materials and will facilitate those meetings. If the Chair is unavailable another member of the Executive Committee may fulfill this role.

The NWESD Superintendent, or his/her designee, shall serve as Secretary for the Cooperative, Executive Committee, and Advisory Board.

Management of the Cooperative shall rest with NWESD and will conform to the policies, rules and regulations of the NWESD and its governing board.

VII. VACANCIES

Vacancies which occur in the membership of the Advisory Board shall be filled by the affected member district.

Vacancies on the Executive Committee shall be filled by the member district from which the representative vacancy occurred for the unexpired portion of the term he/she is assuming.

VIII. MEETINGS

The Executive Committee shall meet as required to conduct the Cooperative's business, except that there shall be at least one (1) meeting between September 1 and August 31. Meetings of the Executive Committee may be called by 1) its Chair, 2) the NWESD Superintendent, or designee, or 3) a majority of its members. A quorum of the Executive Committee shall require representatives from more than fifty (50%) of the members. Participation may occur via electronic medium/vehicle.

The Advisory Board shall meet as required to conduct the Cooperative's business, except that there shall be at least one (1) meeting of said Board between each September 1 and August 31. Additional meetings of the Advisory Board may be called by the NWESD Superintendent or Chair of the Executive Committee. A quorum of the Advisory Board shall require representatives from more than fifty (50%) of the member districts. Participation may occur via electronic medium/vehicle.

IX. OTHER COMMITTEES

The Chair may appoint such ad hoc committees as are deemed necessary from time to time to advise the Executive Committee and/or Advisory Board.

X. FINANCIAL OBLIGATIONS

Expenditures incurred in the operation of the Cooperative must be in accordance with its management plan and must be authorized by the governing board of NWESD.

XI. PARLIAMENTARY PROCEDURES

All questions of parliamentary procedure shall be governed in accordance with Robert's Rules of Order (Revised).

XII. AMENDMENTS

These bylaws may be amended at any meeting of the Advisory Board by a favorable two-thirds (2/3) vote of all members, provided that notice, in writing, has been sent to all designated member District representatives to the Cooperative not less than ten (10) days in advance of the meeting and absentee ballots are furnished. Electronic balloting may be used.

Adopted on _____, 2014

Advisory Board
Unemployment Compensation Pool Cooperative
Northwest Educational Service District 189