

Northwest Educational Service District 189 NWESD 189 Compensated Absences Liability Pool Interlocal Cooperative 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 within their service area 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 local school district superintendents and their Boards of Directors within the Northwest Educational Service District 189 (NWESD 189) service area have also determined that compensated absences pool is desirable and have requested NWESD 189 to form a Compensated Absences Liability Pool Cooperative to help provide this support; and,

WHEREAS, the Board of Directors and Superintendent of NWESD 189 have agreed to coordinate and operate a Compensated Absences Liability Pool Cooperative.

NOW THEREFORE, a Compensated Absences Liability Pool Cooperative is hereby created by and between Northwest Educational Service District 189 (hereinafter referred to as NWESD 189) 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 189 Compensated Absences Liability Pool (hereinafter referred to as Cooperative). The purpose of the Cooperative is to form a pool to reimburse member districts for employee compensated leave payment obligations, including accrued sick and/or annual leave due to annual cash-out, long-term medical leave, termination, retirement, or death of employees.

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.

An Advisory Board is established, consisting of one (1) representative of each member. The duties of the Advisory Board shall include, but not limited to, establishing an Executive Committee, meeting periodically to rule on matters such as Cooperative membership, approval of bylaws, matters of administration, cost control, services to be provided, and assessment rate or fee schedules.

III. BYLAWS

The Executive Committee shall be responsible for modifying the bylaws of the Cooperative. The initial bylaws will be approved by member District execution of the Interlocal Agreement. Bylaw revisions shall be approved by two-thirds (2/3) majority vote of the Advisory Board. Such bylaws shall be part of the Agreement as though set forth herein.

IV. TERM OF AGREEMENT

The initial term of this Agreement shall be from September 1, 2009 through August 31, 2010. The Agreement shall then be automatically renewed from year to year thereafter, unless the District provides written notice to the NWESD 189 of its election to terminate its Agreement on or before the prior March 1st, unless the Agreement is terminated in accordance with Paragraph XI or XII.

V. METHOD OF FINANCING AND BUDGETING

Assessment rates will be calculated annually by each District and become effective September 1 for the ensuing school year. Administrative fees will be limited to the investment earnings on each district's Cooperative deposits, up to \$1,000 annually. Investment earnings in excess of this annual limit shall be credited to each District's account.

All member payments to the Cooperative shall be made on a monthly basis.

Upon joining the Cooperative, member districts may elect to transfer into the Cooperative reserves previously held locally for compensated absence liabilities.

Cooperative interest earnings shall be pro-rated to the District sub-account based on fund balance per district at month-end, before any accruals and interest earning allocations.

The Cooperative finances will be budgeted and accounted for in accordance with acceptable accounting principles.

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

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

Any District which shall become a member after June 30, 2009, shall be eligible to participate as of the first day of any subsequent calendar month. The initial assessment for such members shall be established in the bylaws.

VII. DUTIES OF THE DISTRICT

In accordance with this Agreement, the District will:

- 1) Waive any locally established procurement requirements that are more restrictive than those established by statute for fees/purchases initiated pursuant to this Agreement.
- 2) Not use federal funds for payment of any fees/purchases related to this Agreement, unless it provides prior written notice to the NWESD Assistant Superintendent for

Finance and Compliance (Carol Browder at the time of approval). This will assure the District and NWESD can proactively explore and meet any federal procurement requirements.

- 3) Designate a representative to the Advisory Board.
- 4) Pay to NWESD 189, as the Cooperative's administering entity, its share of program costs. Programs for the purposes of this paragraph mean the total services provided by the NWESD 189 pursuant to this Agreement and all costs associated therewith.
- 5) Provide the NWESD 189 annually with a detailed report setting forth separately for each employee the compensated absences liabilities paid as of August 31, and the total claim for reimbursement from the Cooperative. Said report shall be provided not later than October 31 and not earlier than June 1.
- 6) Be responsible for maintaining backup documentation for all Cooperative claims submitted in order to meet audit requirements.
- 7) Remain ultimately responsible for any liabilities to District employees in the event that sufficient funds are not available in the Cooperative fund.

VIII. DUTIES OF THE NWESD 189

In accordance with this Agreement, the NWESD 189 shall perform the following functions and duties within the constraints of funds made available by the District:

- 1) Prepare an annual management plan and present it to the Advisory Board which shall have the authority to accept, reject, modify, and approve the same.
- 2) Receive all Cooperative payments per Paragraph VII.
- 3) Pay from the Cooperative funds, all costs related to employee compensated absences and Cooperative administration.
- 4) Provide for the receipt and disbursement of funds and maintain adequate financial records in order to properly manage the Cooperative as well as provide financial reports to the Executive Committee, and Advisory Board. In addition, adequate statistical records will be maintained in order to project assessments, fees, use, or other data.
- 5) Assign the NWESD 189 auditing officer to sign all claim vouchers on behalf of the Cooperative.
- 6) Be responsible for employment of any staff and the general administration of the Cooperative.
- 7) Invest surplus funds on behalf of the Cooperative.
- 8) Establish a Cooperative account with the Skagit County Treasurer.

IX. GOVERNANCE

Administration – It is agreed that the coordination, administration, and management of the Cooperative shall be by the NWESD 189. All services provided by the NWESD 189 shall be performed in accord with policies adopted by the NWESD 189 Board, including but not limited to, policies regarding hiring, reduction in force, annual leave, salary, and other personnel policies.

Advisory Board – There shall be an Advisory Board, which shall consist of District superintendents, or their designees. The Advisory Board shall be responsible for recommending the level of support services, the costs of membership in the Cooperative, the types of memberships available to the Districts and other policy decisions regarding the operation of the Cooperative. The Advisory Board shall have the authority to 1) accept, reject, modify, and approve the Annual Management Plan, as shown in Section VIII, and 2) apprise the NWESD 189 of current needs. The Advisory Board shall modify bylaws and rules of governance, as it determines appropriate and necessary. The initial set of bylaws are approved by member District execution of the Interlocal Agreement. The Advisory Board may elect to perform the duties of the Executive Committee in place of electing an Executive Committee until such time that the Advisory Board exceeds ten (10) members.

Executive Committee – The Advisory Board shall elect an Executive Committee, which shall consist of up to four (4) members. The NWESD 189 representative shall serve as a permanent member. The remaining three (3) District members shall be elected by the Advisory Board and shall serve staggered terms of three (3) years. The Executive Committee shall select a Chairperson from among its members annually, and said Chairperson shall also serve as the Advisory Board Chairperson. The NWESD 189 representative shall serve as Secretary of the Executive Committee and the Advisory Board.

Meetings – The Executive Committee shall meet as required, when called by the Chairperson or a majority of its members to conduct the business of the Cooperative; provided that there shall be at least one (1) meeting of said Committee annually between September 1 and August 31.

X. DEFINITIONS

Compensated Absence(s) Liability – For the purpose of this Agreement, Compensated Absence(s) Liability will be limited to accrued sick leave payable at annual cash-out, retirement, or death at the rate of one day for four earned per RCW 28A.400.210; accrued sick leave payable for an individual on medical leave per District policies utilizing in excess of sixty (60) consecutive working days; and annual leave payable at annual cash-out, termination death, or retirement per District policies. Each District will determine its participation level.

Fiscal Year – For purposes of this Agreement, the term Fiscal Year shall mean the twelve (12) month period beginning September 1 and ending August 31.

XI. TERMINATION FOR BREACH

If the NWESD 189 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 189, may terminate NWESD 189 as the Administrator.

If the District fails to comply with the terms and conditions of this Agreement, the Advisory Board shall review the conditions of the breach of the Agreement and upon 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.

XII. DISSOLUTION OF COOPERATIVE

The Cooperative may be dissolved by two-thirds (2/3) majority vote of the Advisory Board with the effective date midnight August 31 of any year. Such action for dissolution shall occur no later than the preceding April 30.

XIII. DISTRIBUTION OF ASSETS UPON DISSOLUTION / TERMINATION

Since NWESD 189, as designated Administrator of this Cooperative, will have title to all property acquired through this Cooperative and is operating other Cooperatives for the various districts within its service area, if this Cooperative dissolves, the title to all remaining property and assets from the Cooperative will remain with the NWESD 189 to be used for NWESD 189 purposes.

Each District shall be entitled to its share of the assets in the Cooperative after all potential liabilities of each District have been incurred and paid.

No distribution of assets shall be made to any District that owes the Cooperative funds until such amounts are paid.

Upon termination or dissolution, the District shall reimburse the Cooperative for any funds disbursed from the Cooperative in excess of the District's share of the assets.

XIV. ASSIGNMENT

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

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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. No alteration or variation of the terms of this Agreement and no oral understanding or agreements not incorporated herein shall be binding unless made in writing and signed by the NWESD 189 and all of the participating Districts. Further, the parties indicate they have the legal authority to obligate their respective entity to the terms and conditions contained herein.

David Burgess 4/28/10
(signature), Supt. Date

David Burgess
(printed name)
Lake Stevens School District

Gerald W. Jenkins 4/30/10
Dr. Gerald W. Jenkins, Supt. Date
Northwest Educational Service District 189

Carol Browder 4/30/10
Carol Browder, CFO Date
Northwest Educational Service District 189

Attach copy of authorizing resolution number 2-10.

**Northwest Educational Service District 189
NWESD 189 Compensated Absences Liability Pool
Bylaws**

I. POWERS

This Cooperative shall have the power to prepare, adopt, amend, and repeal bylaws, rules and regulations and general policy statements for its own organization, government and guidance, provided that action taken with respect thereto is not inconsistent with State Law, the Washington Administrative Code, the authorizing Interlocal Agreement, and the Rules and Regulations of the Board of the NWESD 189.

This Cooperative shall have the power to call meetings of the Advisory Board, the Executive Committee, and other committees as are deemed essential to the accomplishment of its purpose.

II. MANAGEMENT

All actions of the Executive Committee are subject to ratification by the Advisory Board at its next meeting.

A quorum for all meetings of the Advisory Board shall be fifty percent (50%) of the membership.

A quorum for all meetings of the Executive Committee shall be a majority of its members.

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 a quorum of the Advisory Board or by a mail/email ballot conducted by the NWESD 189 representative. Executive Committee members who have been selected to fill a vacancy shall serve the unexpired portion of the term.

The Advisory Board may elect to perform the duties of the Executive Committee in place of electing an Executive Committee until such time that the Advisory Board exceeds ten members.

III. ASSESSMENTS

For new members the rate of assessment for the first year will be prorated for the current Fiscal Year.

Rate of Assessment: The Rate of Assessment will be a ratio, calculated as follows: **THE SUM OF** the District's expected payout for the next fiscal year **PLUS** the District's desired amortization of its unfunded liability for compensated absences, reduced by expected investment earnings **PLUS** the District's share of any administrative fees **DIVIDED BY** the District's expected total gross payroll for the next fiscal year.

This Rate of Assessment may be calculated separately for sick leave and/or annual leave depending on the participation level of the District.

Assessment Calculation: The monthly assessment will be calculated by multiplying the Rate of Assessment times the District's total monthly payroll that is subject to sick leave and/or annual leave depending on the participation level of the District.

Assessments: Assessments shall be due and payable by the 15th of the month for the payroll of the preceding month. Late payments will not be included for purposes of calculating that month's balance used to allocate investment earnings.

Special Assessment: The Cooperative, on a two-thirds (2/3) majority vote of the Advisory Board, may assess a special assessment on all Districts. This special assessment may be assessed when the funds of the Cooperative are depleted or anticipated to be depleted, but such special assessment shall not be limited to such a situation.

IV. CLAIMS

Claims: Payments for accrued sick and/or annual leave shall be made by the District and processed through its payroll. The District shall submit a claim for reimbursement to the NWESD 189 and shall be reimbursed from funds available in the Cooperative once annually. Claims shall be submitted no later than October 31 and not earlier than June 1. Claims must be accompanied by the annual report specified in the authorizing Interlocal Agreement.

Payments of claims for any District shall not exceed the following: The District's contributions via monthly assessments **PLUS** the District's pro-rata share of investment earnings. This allocation will be based on average monthly balance taking into consideration late payments as discussed above **LESS** the District's share of the administrative fees pro-rated by months of membership for the fiscal year **LESS** a minimum balance of \$1,000.

V. DUTIES OF NWESD 189

In accordance with the authorizing Interlocal Agreement, NWESD 189 will act as Cooperative Account trustee and in this regard will:

- 1) Receive all Cooperative payments from the Districts.
- 2) Establish a Cooperative account with the County Treasurer and deposit all payments in this account.
- 3) Invest funds on behalf of the Cooperative, pursuant to normal NWESD 189 procedures.
- 4) Pay annually from the Cooperative funds on deposit with the County Treasurer, all claims from Districts for actual payments made for compensated absence liabilities, as defined in the authorizing Interlocal Agreement, to the extent of available funds. Such payment(s) shall be made when they have been properly approved and presented to NWESD 189 by the Districts with the report due on or before October 31 for the prior school year. All such payments shall be vouchered and approved for payment by the Board of Directors of NWESD 189 at its regular monthly meeting. In the event funds are not sufficient the payment will be limited to available funds.

- 5) Exercise management responsibility, including maintenance of adequate financial records, in order to properly manage the Cooperative as well as provide financing reports to the Advisory Board.
- 6) Exercise general administrative responsibility of the Cooperative.
- 7) Annually provide to member Districts a financial report of the Cooperative detailing for each member the beginning balance, the contributions, the allocated investment earnings, the allocated administrative fee, the claims paid, and the ending balance.

VI. CONFIDENTIALITY

All data or information furnished to NWESD 189, as Cooperative trustee, by the District pursuant to the authorizing Interlocal 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 exception to this will be data or information requested by the Washington State Auditor's Office within the constraints of the Public Disclosure Laws.

VII. PUBLIC DISCLOSURE

No records of the District shall be made available for public inspection or copying by any party without written consent of the District, unless ordered by a court with jurisdiction to the contrary. Requests pursuant to RCW 42.17 for inspection or copying of public records of the District held or maintained by NWESD 189, as trustees shall be referred to the District.

VIII. DISPUTES

Any dispute, claim, or grievance arising out of or relating to the interpretation or application of this agreement shall be submitted first to the Executive Committee of the Cooperative for its recommendation. The final resolution of all disputes shall be made by the Advisory Board, providing such decisions are consistent with the authorizing Interlocal Agreement, statute, and NWESD 189 Board policy/procedures.

IX. BYLAW REVISIONS

These bylaws may be revised pursuant to the authorizing Interlocal Agreement. However, no modification or amendment shall take effect until the bylaws are published and distributed to member Districts with the changes noted.