

MEMORANDUM OF UNDERSTANDING

By and Between

Ute Pass Board Of Cooperative Educational Services and Cripple Creek - Victor School District, Manitou Springs, School District, Woodland Park School District Regarding the Provision and Funding of Special and Gifted Education Services

Legal Status

The Ute Pass Boards of Cooperative Educational Services (herein referred to as the UP BOCES) was initially created and organized under the provisions of the Boards of Cooperative Services Act of 1965; (C.R.S. § 22-5-101 et. seq.) for the purpose of two or more school districts cooperating to furnish services authorized by law and shall maintain all the powers and duties granted by those provisions. The UP BOCES shall be a regional educational service unit designed to provide supporting instructional, administrative, staff services, community and other services contracted by participating member school districts (“Members”).

Whereas, Woodland Park School District (RE-2) is a Colorado public school district and political subdivision of the state of Colorado with its boundaries located within Teller County, CO, (“WPSD”), Manitou Springs School District (D14) is a Colorado public school district and political subdivision of the state of Colorado with its boundaries located within El Paso County, CO, (“MSSD”) and Cripple Creek-Victor School District (RE-1), is a Colorado public school district and political subdivision of the state of Colorado with its boundaries located within Teller County, CO (“CCVSD”) and,

Whereas, WPSD, MSSD and CCVSD are Members of the UP BOCES and,

Whereas, over time a Member may choose to expand its educational options in accordance with state law to include a charter school under the Colorado Charter Schools Act. See C.R.S. § 22-30.5-101 et seq. and as allowed by law and contract, may include such charter school as an additional Member or as an included school of an existing Member, and

Whereas, each Member is required to provide special and gifted education services to its students with disabilities as required by those respective authorities, under applicable law—including the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Exceptional Children’s Educational Act, C.R.S. § 22-20-101, et seq.; the Elementary and Secondary Education Act, 20 U.S.C. § 6301, et seq.; and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.—as well as, any other applicable state policies, and various UP BOCES policies, and

Whereas, under C.R.S. §§ 22-20-106(1)(a) and the corresponding regulations at Colo. Code Regs. 2220-R-301-1 et. seq. (2016), UP BOCES serves as the Administrative Unit (“AU”) for each Member, and

Whereas, each Member is, with regard to special and gifted education and other matters, a district within and a part of that AU; and

Whereas, each Member and UP BOCES wish to further describe their respective duties and obligations regarding the provision and funding of special and gifted education services with each Member through this memorandum of understanding,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED THE PARTIES DO AGREE AND COVENANT AS FOLLOWS:

1. Definitions

“*District Special Education Manual*” means the monograph titled *UP BOCES Special Education Manual*, published by UP BOCES and made available to its members, as it may be amended from time to time, or its replacement.

“*Gifted and Talented Handbook*” means the monograph titled *GT Handbook*, published by UP BOCES and made available to its Member schools, as it may be amended from time to time, or its replacement.

“ALP” means Advanced Learning Plan

“AU” means Administrative Unit

“ECEA” means Exceptional Children’s Education Act

“FAPE” means Free Appropriate Public Education, as defined in 20 U.S.C. § 1401.

“IDEA” means the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

“IEP” means an Individualized Education Program, as defined in 20 U.S.C. § 1401 and 20 U.S.C. § 1414.

“LEA” means Local Education Agency.

“LRE” means Least Restrictive Environment, as that term is used in 20 U.S.C. § 1412.

“MOU” means this Memorandum of Understanding between the Parties.

“Parties” means, collectively, UP BOCES and each Member.

“Program Plan” means the special and gifted education program plan submitted to and approved by UP BOCES , together with any subsequent modifications made in accordance with UP BOCES’s policy for approving such modifications.

“Section 504” means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.”

“SAC” means Superintendent's Advisory Council

2: Members and UP BOCES Special Education Responsibilities

2(a): Each Member shall:

- (1) Adhere to the IDEA; Section 504; the Americans with Disabilities Act; ECEA; applicable Colorado special and gifted education laws and regulations; UP BOCES policies, procedures, and requirements, as they may be amended from time to time
- (2) Assure that its students with disabilities are accorded a FAPE, including assuring special education and related services as part of the regular school day in the LRE appropriate for their needs;
- (3) Ensure that no student otherwise eligible to enroll in each Member will be denied enrollment on the basis of his or her special education status;
- (4) Comply with the applicable requirements and mandates of the U.S. Department of Education, its Office for Civil Rights, and the U.S. Department of Justice;
- (5) Implement the special and gifted education Program Plan as approved by the Colorado Department of Education;
- (6) Follow and implement the procedures in the *UP BOCES Special Education Manual*;
- (7) Not establish nor carry out any support services, policies or practices that conflict with the Program Plan or the *UP BOCES Special Education Manual* without prior written approval of or mutual agreement with the UP BOCES;
- (8) Employ or contract for all requisite special and gifted education personnel (teachers, support staff, and related service providers in collaboration with the UP BOCES and as agreed by the Member Superintendents). Each Member shall develop and consistently implement a process to ensure that all of its special education and gifted education personnel or contracted personnel are appropriately credentialed and licensed. Each Member may rely on its discretion to determine whether or not to look to and contract with outside entities, such as consultants or local districts, for the provision of any mandated as necessary special and

gifted education or related services.

- (9) Use allocated IDEA/ECEA funds to fund and assign special education and gifted education support staff as necessary to meet student needs, which shall be appropriately licensed in accordance with Colorado Law;
- (10) Bear all costs associated with the District special and gifted education-related personnel described in the preceding two paragraphs, above;
- (11) Conduct, develop, maintain, and review evaluations of special education and gifted education personnel and regularly evaluate the quality, delivery and effectiveness of their caseload, and IEPs in any format required by UP BOCES in accordance with federal law, state laws;
- (12) Accurately track attendance for each student, to be reported and certified according to applicable state law and regulation;
- (13) Participate in the state quality assurance process for special education and gifted education (e.g., verification reviews, coordinated compliance self-reviews complaints monitoring, procedural safeguards, and
- (14) Participate in any mandatory special education and gifted education training offered or provided by UP BOCES.
- (15) Upon request by UP BOCES, each Member shall provide all requested or appropriate documentation to demonstrate the licensure status of Member District or Charter School (if applicable) personnel and contractors providing special and gifted education or related services, including documentation of the training received by said personnel and contractors, as well as documentation of the steps taken by each Member to comply with applicable credentialing requirements. Each Member shall promptly provide UP BOCES with documentation that updates this information during the course of the school year, to the extent that each Member has changes in its personnel, contractors, or training.
- (16) Each Member shall utilize the student plan management system selected by UP BOCES for maintaining copies of assessments and IEP materials.
- (17) Each Member will also submit to UP BOCES all required reports in a timely manner, allowing a reasonable time for response, as necessary to comply with federal and applicable state law requirements.
- (18) Each Member is responsible for the appropriate management of its special and gifted education budgets, personnel, programs, and services in accordance with state and federal law, which includes the requirement that special education and gifted education funding received be used only for allowable special and gifted education purposes. UP BOCES reserves the right to audit the use of special and

gifted education funds.

2(b): UP BOCES shall:

- (1) Through its Director, employ and evaluate service providers and other personnel in collaboration with the administrative staff of each Member and the SAC; and
- (2) Contract with a Member District for the Business Services, including Budgeting, payroll, benefits, Human Resources and Technology
- (3) As the Subgrants of the IDEA/ECEA funds, allocate these funds for the provision of services from the UP BOCES personnel to the Members consistent with applicable law. These funds will be allocated as adopted in the UP BOCES budget. The remaining funds will be allocated to each district proportionately based on exceptional student count and reviewed every three years (Special Education: 57% Woodland Park, 29% Manitou, 14% CC-V) Gifted funds will be allocated by total pupil count (Gifted Education: 54% Woodland Park, 37% Manitou, 9% CC-V).
- (4) Offer, to each Member, interventions and supports targeted to address identified areas of need, including but not limited to: on site school quality reviews, school improvement and prioritization planning, and targeted staff and leadership professional development;
- (7) Provide information to each Member regarding UP BOCES' special and gifted education decisions, policies, and procedures; and
- (8) Make available to Member school staff such training opportunities or information regarding special and gifted education.
- (9) Conduct Oversight of Special Education and Gifted Education.

UP BOCES and each Member agree to the following terms of supervision, support, and enforcement of special education and gifted education:

- (a) UP BOCES will meet monthly with each Member's special and gifted education staff and assigned administrative staff in order to familiarize itself with and guide each Member's special and gifted education program and to communicate any pertinent information, guidance, or directives to each Member.
- (b) On an ongoing basis, UP BOCES will assess the performance of each Member

and/or its schools with regard to special education and gifted education. If, in UP BOCES's sole discretion, UP BOCES finds the Members' and/or schools' performance with regard to special and gifted education to be deficient, UP BOCES will develop remedial steps, with the superintendent and building principals. Such steps may include, but will not be limited to establishing an action plan with measurable goals and assigned tasks to address any identified deficiencies, increasing UP BOCES's level of oversight of the Member and/or school and monitoring over time with the appropriate Member administration the action plan and communicating its progress until complete.

- (c) Should UP BOCES determine that any remedial steps are necessary, in accordance with UP BOCES policy, UP BOCES will oversee the development and implementation of the action plan.
- (d) UP BOCES shall provide the applicable support until each Member has demonstrated necessary progress related to the outcomes of its special and gifted education students;
- (e) UP BOCES may retain commensurate state and federal funds for the purpose of providing the support described in the two preceding paragraphs. A written agreement specifying the services to be provided and their cost may be executed, if needed.
- (f) In instances where UP BOCES takes on responsibility for tasks that would otherwise be carried out by each Member under this MOU, UP BOCES may retain commensurate funds. Such circumstances are expected to be highly unusual. A written agreement specifying the services to be provided and their cost will be executed.
- (g) The BOCES Directors and Member Human Resources Directors will ensure that all of its special and gifted education personnel or contracted personnel are appropriately credentialed and licensed.
- (h) UP BOCES reserves the right to direct each Member regarding the development and/or modification of any IEP/ALP for special and gifted education students enrolled in the Member District or Charter School (If applicable). UP BOCES's Director of Special Education or designee shall maintain administrative authority, pursuant C.R.S. § 22-20-106 and regulations thereunder, as in all other UP BOCES schools.

3: Specific Duties and Obligations

UP BOCES and each Member agree to the following specific duties and obligations, which supplement but do not supplant the foregoing general duties and obligations.

3(a): Admission and Transferring of Students

- (1) Every student who is admitted or transferred with an IEP, ALP or Section 504 plan from his or her previous school shall be placed directly into a program that meets the requirements of such IEP, ALP or Section 504 plan—and each Member shall provide the special education and related services required by the IEP, ALP, Section 504 plan—unless and until the IEP, ALP, Section 504 plan is changed.
- (2) To the extent an IEP, ALP or Section 504 Plan needs to be changed in order to be implemented by each Member, the IEP, ALP or Section 504 team will meet promptly to consider such changes as required by applicable law.

3(b) Student Data and Record Sharing

The member districts shall provide access to Student Information System (SIS), student assessment data systems and reporting systems to key members of the BOCES in order to efficiently and effectively administer special and gifted education.

3(c): Alternative Placements

- (1) In the unusual event that, after a student is enrolled in a Member school, the IEP team determines that it cannot provide a FAPE in the school, as the LRE appropriate to the student, the school shall contact UP BOCES to discuss placement and service alternatives.
- (2) The IEP team shall have the authority to make offers of a FAPE to provide special education and related services at each building.

3(d): Staffing Requirements

- (1) Each Member shall ensure that the teachers and other persons who provide services to exceptional students are knowledgeable of the content of students' IEPs/ALPs/504s.
- (2) Each Member shall provide planned staff development activities and participate in available and mandatory UP BOCES trainings to support access by exceptional students to the general education classroom, general education curriculum, integration of instructional strategies and curriculum adaptations to address the diverse learner, and interaction with non-disabled peers.
- (3) Each Member shall maintain responsibility for monitoring progress towards IEP/ALP goals for its exceptional students.
- (4) Each Member shall develop Individual Career and Academic Plans (ICAP) to help transition exceptional students to adult living in accordance with State policies

and procedures.

3(e): Student Discipline

- (1) Each Member will ensure that it complies with state and federal laws, including the IDEA and ECEA regarding discipline of students with disabilities.
- (2) Each Member shall include positive behavioral interventions in its discipline procedures.
- (3) Each Member will consult with UP BOCES, for any exceptional student, (1) prior to convening a manifestation determination, (2) prior to recommending expulsion, and (3) prior to the eleventh day of cumulative suspension.
- (4) Each Member will collect data on the number of special education students suspended or expelled, distinguishing between in-school and out-of school suspensions. Each Member will report this data to UP BOCES annually.

3(f): Due Process Hearings and Complaints

- (1) As the Administrative Unit, if UP BOCES determines that such action is necessary and available under federal and state special education laws and regulations, after consultation with the appropriate Member school district, UP BOCES may: (1) invoke dispute resolution provisions; (2) initiate due process hearings.
- (2) UP BOCES and each Member shall communicate and work together in a good faith attempt to resolve disputes at an early stage (such as through informal settlement or mediation).
- (3) During due process proceedings and any other legal proceedings or actions involving special education, each Member will be responsible for its own representation. If each Member retains legal representation for a due process proceeding or other legal proceeding or action, each Member will be responsible for the cost of such representation.
- (4) Each Member agrees that it shall be responsible for satisfying any award by a due process hearing officer, a court, or a settlement agreement, if such award is based on any allegation of the Complaint that the Member failed to fulfill its duties under state and federal special education laws and regulations. This obligation may include, without limitation, any award of (i) prospective special education and related services, (ii) compensatory education, (iii) reimbursement, and/or (iv) parents' attorneys' fees and costs. This obligation may be based on, without limitation, allegations concerning (i) identifying students with disabilities, (ii) assessing students, (iii) conducting IEP team meetings, (iv) developing

appropriate IEPs, and/or (v) implementing IEPs or other awards allowed for under law. Through insurance, reserve funds, or other reasonable means, each Member shall assure that appropriate funds are reserved and available to meet such obligations.

- (5) In the unlikely event that a parent of a student, placed in another member district for their special education services, files a complaint, the following procedures will occur:
 - a. If the findings conclude the member district of attendance failed its duties under state and federal special education laws and regulations, all remedies, including attorney fees, shall be the responsibility of the district of attendance.
 - b. If the findings conclude that there were no failures of duty under state and federal special education laws and regulations, the member district of residence and the member district of attendance will share the cost of attorney fees equally.
- (6) UP BOCES shall be responsible for satisfying an obligation, as described in the preceding paragraph, only when the award is based on any finding that UP BOCES failed to fulfill its own, independent and non-derivative duties under state and federal special education laws and regulations.
- (7) In the event that a parent or representative files a complaint involving a student with an IEP, ALP or Section 504 Plan under state or federal law, each Member shall inform the UP BOCES Director of Special Education and shall follow (i) all State and Federal rules, and (ii) all UP BOCES-approved grievance procedures. Similarly, if the UP BOCES is notified first of the complaint regarding an IEP, ALP or Section 504 Plan, the UP BOCES Director of Special Education shall notify the respective Member of the complaint and follow appropriate procedures.
- (8) UP BOCES shall provide a lead role in the investigation of, cooperation with, preparation for and response to all formal special and gifted education complaints received pertaining to students of each Member. UP BOCES shall inform the school in writing of the complaint and provide the Member with the Complaint prior to the UP BOCES investigation and response process.
- (9) Each Member shall cooperate with UP BOCES in any such investigations and response processes and shall provide UP BOCES with any and all documentation and information requested or required to respond to complaints within the timelines imposed by the investigating agency. The Member will be solely responsible for any and all costs resulting from, arising out of, or associated with the investigation and response process including attorney fees and any implementation or delivery of appropriate remedies in a manner consistent with any Order or Decision as per the proceedings identified in

paragraphs 3(g)(3) and 3(g)(4) above.

3(g): Administrative Unit (“AU”) for Special Education and Gifted Education

- (1) As the AU for each Member it approves and oversees, UP BOCES will determine the policies and procedures necessary to ensure that the protections of special education and gifted education law extend to all public school students at UP BOCES schools.
- (2) UP BOCES may monitor each Member’s compliance in a matter as it sees fit and may direct such changes as necessary to comply with federal or state law or policies, or UP BOCES policies or procedures, concerning each Member’s: referral processes; evaluations; reevaluations; eligibility determinations; placement decisions; and development and implementation of IEPs/ALPs.
- (3) In the event of any disagreement between each Member and UP BOCES with regard to the duties, responsibilities or activities of each Member under any provision of this MOU, UP BOCES’s reasonable interpretation of those duties, responsibilities or activities and its good faith assessment of the sufficiency of each Member’s actions in carrying them out shall be binding.

3(h): Financial Purchasing for Special Education and Gifted Services

The Member Districts, their individual schools and UP BOCES will provide the financial support necessary to meet the needs of their respective staff and students as outlined in Policy B/DR 4, and according to the following purchasing process:

- (1) Personnel
 - (a) The UP BOCES employees will be compensated according to the approved Salary Schedule. Annual increases for all employees will be calculated as a weighted average of the 3 member districts’ increases for their staff as approved in the annual budgets (ex. Woodland Park approves 3% increase, Manitou Springs approves a 2% increase and Cripple Creek approves a 2% increase, the BOCES employees would receive a 2.57% increase). Any additional stipends or pay increases at the district level, at any point throughout the year, will be allocated to all BOCES employees at that district’s percentage (ex. Cripple Creek gives staff an additional one-time stipend of \$500 in December, BOCES employees would receive 14% of this or \$70.)
- (2) Programming
 - (a) Each Member shall provide Special and Gifted Education programming to meet FAPE needs of students enrolled in its school.
 - (b) Each Member shall fund the tuition costs of placements of students in Center

Based Programming within the Administrative Unit, as well as placements outside of the Administrative Unit.

(3) Materials and Items

- (a) Items, supplies and trainings under \$100 will be purchased by each Member at the building level upon the approval of the building principal.
- (b) Items, supplies and trainings over \$100 for individual students and/or employees of the district will be purchased through Member district funds budgeted for special education upon approval of the UP BOCES special education director(s).
- (c) Items, supplies and trainings over \$100 for the employees of the UP BOCES will be purchased through UP BOCES funds upon approval of the special education director(s).

4: Miscellaneous Provisions

4(a): Notices

All notices or the provision of written information shall be given via U.S. mail to the following contacts, unless the Parties expressly agree to a substitute method on a case-by case basis:

UP BOCES :

Ute Pass BOCES
405 El Monte Place
Manitou Springs, CO 80829

Members:

Cripple Creek School District
410 N B Street
Cripple Creek, CO 80813

Manitou Springs School District
405 El Monte Place
Manitou Springs, CO 80829

Woodland Park School District
155 Panther Way
Woodland Park, CO 80863

4(b): Modifications

1. With the exception of changes to UP BOCES policies and procedures regarding special and gifted education, the provisions of this MOU may be modified, supplemented, or terminated only through written agreement of the Parties.
2. Additions - Should a district or other LEA seek to join the UP BOCES, they will

notify the Executive Director of UP BOCES of their intent to reorganize and request to join the UP BOCES for the following school year by March 1st.

3. The Executive Director will bring this request to the next SAC following notification, and to the third quarter UP BOCES Board Work Session.

4(c): Dissolution

Should a member district(s) seek to form their own Administrative Unit or join another BOCES they will follow the AU Reorganization rules as outlined in ECEA 3.01(3) :

- (1) The Member District will declare the intent to apply for reorganization through Member's Board resolution to the BOCES Board in May, prior to the September deadline.
- (2) The UP BOCES Board will discuss the aforementioned resolution at the third quarter Work Session to seek clarity and understanding to create next steps.

4(d): Term

This MOU is effective upon execution and will be reviewed by the Board as requested, at the third quarter work session.

5: Mutual Indemnification

To the extent allowed by law and not prohibited by the Colorado constitution and Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et. seq.*, as amended, the Parties agree to indemnify and hold harmless each other, their officers, employees, and insurers from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever (including reasonable attorney fees and costs of defense), which arise out of or are in any manner connected with this MOU or activity pursuant to this MOU, to the extent such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the acts or omissions of either of the Parties, or any officer or employee of either of the Parties, or which arise out of any workers compensation claims or any employee of either of the Parties, except to the extent such liability, claim or demand arises through the acts or omissions of the other party or its officers or employees. The Parties agree that the obligations set forth in this Section shall survive expiration or termination of this MOU for any reason. Each of the Parties shall be solely responsible for the actions or omissions of its officers, employees, and agents. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations either Party may have under the Colorado Governmental Immunity Act (Sec. 24-10-101, C.R.S. *et. seq.* as amended) or of any other defenses, immunities, or limitations of liability available to either of the Parties by law.

No term or condition of this MOU shall be construed or interpreted as a violation of Article XI, Section 1 of the Constitution of Colorado or as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended.

None of the terms or conditions of this MOU gives or allows any claim, benefit, or right of action by any third person not a party hereto.

Signatures:

Ute Pass BOCES

Date

Cripple Creek -Victor School District

Date

Manitou Springs School District

Date

Woodland Park School District

Date