



CONTRACT NO: 16140  
REVENUE CODE: 1301 71 0000 640 0000  
Fiscal Year 2015-2016  
through 2025 - 2026

**INTERLOCAL AGREEMENT FOR  
CREATION OF COWLITZ COUNTY  
THERAPEUTIC SCHOOL PROGRAM**

**Between**

**EDUCATIONAL SERVICE DISTRICT 112  
2500 NE 65<sup>th</sup> Avenue  
Vancouver, WA 98661-6812**

**And**

**CASTLE ROCK SCHOOL DISTRICT #401  
600 Huntington Ave. S  
Castle Rock, Washington 98611**

**LONGVIEW SCHOOL DISTRICT #122  
2715 Lilac Street  
Longview, WA 98632**

**KELSO SCHOOL DISTRICT #458  
601 Crawford Street  
Kelso, WA 98626**

**WOODLAND SCHOOL DISTRICT #404  
800 Second Street  
Woodland, WA 98674**

**1. Purpose.**

**1.1 Request for Therapeutic School.** Four school districts in Cowlitz County (Cowlitz Districts), comprised of Castle Rock School District No. 401, Kelso School District No. 458, Longview School District No. 122 and the Woodland School District No. 404, requested Educational Service District No. 112 (ESD 112) to develop and operate a day treatment therapeutic school program (Therapeutic School) to provide special education and related services to students in the Cowlitz Districts that have behavior disorders or comparable conditions that cannot be accommodated in a traditional school setting.

**1.2 Develop, Operate and Provide Direct Services to Students.** The purpose of this Interlocal Agreement for the Creation of the Cowlitz County Therapeutic School (Agreement) is to authorize ESD 112 to develop and operate the Therapeutic School, and to provide direct services to students who are enrolled in the School. The Therapeutic School will have the capacity to serve at least thirty (30) students, with priority being given to students in the Cowlitz Districts and the Toutle, Wahkiakum and Kalama School Districts, which are members of the ESD 112 Special Education ESA (ESA). The Cowlitz Districts and the ESA will pay the costs ESD 112 incurs to develop and operate the Therapeutic School.

**1.3 Legal Authority.** The Cowlitz Districts and ESD 112 are entering into this Agreement in accordance with the Interlocal Cooperation Act, RCW 39.34, and provisions that authorize educational service districts and school districts to contract with each other for services, specifically 28A.310.010, 28A.310.180, 28A.310.200, 28A.320.080 and 28A.320.035. The Cowlitz Districts are contracting with the ESD to acquire property and take actions that are necessary to develop and operate the Therapeutic School. A separate legal entity is not being created.

2. **Term.** This Agreement shall be effective on the earlier of the date it is signed by the Cowlitz Districts and ESD 112, or February 26, 2016 (the date ESD 112 closes on the acquisition and financing for real property), and shall remain in effect until June 30, 2026, unless terminated sooner in accordance with Section 6.

3. **Finance, Budget and Property.**

3.1 ESD 112 will acquire and hold title to real and personal property that is required to operate the Therapeutic School. ESD 112 also will enter into contracts for necessary services, materials and equipment, and will employ and compensate qualified personnel to provide services to students enrolled in the Therapeutic School.

3.2 The Cowlitz Districts and the ESA will pay ESD 112 for their share of the costs the ESD incurs to acquire property, materials, equipment, and for personnel that are necessary to provide services. ESD 112 will invoice the Cowlitz Districts and ESA in the amount that is required to cover the costs incurred to develop and operate the Therapeutic School. The amount each Cowlitz District and the ESA must pay, and the payment terms, will be set forth in a separate agreement for education services.

3.3 The Cowlitz Districts, and the ESA, are committed to paying their share of the cost ESD 112 incurs for the Therapeutic School for the full ten year term of this Agreement, which is necessary to prevent damages to ESD 112 or the remaining Cowlitz Districts. The ten year term, or this obligation for full participation for the full ten year term, may only be amended by mutual written agreement of all the Cowlitz Districts and ESD 112.

3.4 Revenue and expenses for the Therapeutic School will be addressed in the ESD 112 budget. ESD 112 will prepare and present the Therapeutic School Budget to the Superintendents from the Cowlitz Districts annually for review and input.

4. **Parties Obligations.**

4.1 **Responsibilities of ESD 112.** The ESD agrees to:

4.1.1 Acquire real property in Cowlitz County with a facility that, subject to improvements, is suitable for the Therapeutic School.

- 4.1.2** Acquire equipment, supplies and materials that are necessary to operate the Therapeutic School and to provide services to enrolled students.
- 4.1.3** Enter into contracts for services that are required that the Cowlitz Districts or ESD 112 are not able to provide.
- 4.1.4** Employ qualified personnel, certificated and classified, to operate the Therapeutic School and provide special education and related services to students.
- 4.1.5** Provide special education and related services to enrolled students.
- 4.1.6** Prepare and present an annual budget to representatives from the Cowlitz Districts for their review and input.
- 4.1.7** Invoice the Districts and the ESA monthly September through June. The invoice will reflect the budgeted cost per student for each student enrolled in the program during the monthly billing period. An adjustment to per student cost will be made through an amendment to the annual education service agreement during the program year if the actual student FTE is not in alignment with the budgeted FTE. If program enrollment is below an average of 30 students for the program year, the Cowlitz Districts will be billed a prorated share of the operational deficit based on prior year general education enrollment. This additional prorated billback shall account for any additional state and federal special education funding for participating students that was a result of an increased per student cost established through an amendment to the annual education service agreement. If there is capacity in the Cowlitz Therapeutic School to serve students from other school districts, other districts will sign an education service agreement and be invoiced for the costs for the education services.
- 4.1.8** Pay monthly billings from the ESD 112 ESA account to the Cowlitz Therapeutic School account for students that are residents of school districts that are members of the ESD 112 ESA and enrolled in the Therapeutic School, in the amount established in the annual education service agreement.
- 4.1.9** Work cooperative with the Cowlitz Districts to provide a Therapeutic School Program that meets their needs.

**4.2 Responsibilities of Cowlitz Districts.** Each District agrees to:

- 4.2.1 Contribute prorated costs start-up costs that are outlined in the Start-up Therapeutic School Budget that will be reviewed and approved by the Superintendents from the Cowlitz Districts in March 2016.
- 4.2.2 Retain all responsibilities of a resident district for students that reside in the district that are enrolled in the Therapeutic School.
- 4.2.3 Assign a District liaison who will present, prepare, revise and participate in implementation of IEPs and Transition plans.
- 4.2.4 Retain responsibility and liability as the LEA for due process hearings and citizen complaints.
- 4.2.5 Report all required enrollment and student data to OSPI.
- 4.2.6 Assign a District liaison to work with Therapeutic School staff.
- 4.2.7 Pay ESD 112 the amount agreed upon in the annual education service agreement and enter into an education service agreement annually.
- 4.2.8 Provide all necessary student transportation for the District's students.
- 4.2.9 Work cooperatively with ESD 112 to carry out the objectives of delivering quality services to students enrolled in the Therapeutic School, and where necessary, execute mutually agreed upon amendment to this Agreement.

5. **Assignment.** Neither this Agreement nor any interest therein may be assigned by either party without the prior written consent of the other party.

6. **Termination.** This Agreement may be terminated only upon unanimous written agreement of all the parties. If the Agreement is terminated:

- 6.1 ESD 112 will retain ownership of the real and personal property, including materials, equipment and supplies.
- 6.2 The Cowlitz Districts will pay ESD 112 for all work performed and expenses incurred up to the date the Agreement is terminated. The fees owed to ESD 112 upon termination shall be paid within sixty (60) days of receipt of an invoice.
- 6.3 The agreement to terminate must be made on or before April 1, with an effective date of June 30<sup>th</sup> or later, so ESD 112 employees receive timely notice their certificated contracts, or classified employment, is not being renewed.

7. **Unilateral Termination or Breach.** If any party to this Agreement fails to perform the obligations in this Agreement, including unilaterally terminating participation prior to the end of the ten year term, the breaching party shall pay ESD 112 their minimum participating students multiplied by the budgeted cost per student annually. In the event the annual total program enrollment is at least 30 students, there will be no cost to the breaching party.

## 8. General Provisions

8.1 **Employment Representation.** During the term of this Agreement, employees of the Cowlitz Districts and ESD 112 may have contact with school children at a public school. The Cowlitz Districts and ESD 112 are prohibited from employing any person who has plead guilty to, or has been convicted of, a felony crime specified in RCW 28A.400.322. Failure to comply with this section shall be grounds for immediate termination of this contract. Immediate termination may result in damages, which the terminating party is liable for.

### 8.2 Indemnification.

8.2.1. **ESD.** The ESD agrees to protect, defend, indemnify and hold the Cowlitz Districts, their officers, agents and employees harmless from any and all claims and losses for bodily injury, including death, and/or property damage to the extent such claims or losses arise or result from the ESD's negligent performance under this Agreement.

8.2.2. **The Cowlitz Districts.** The Cowlitz Districts agree to protect, defend, indemnify and hold the ESD, its officers, agents and employees harmless from any and all claims and losses for bodily injury, including death, and/or property damage to the extent such claims or losses arise or result from the District's negligent performance under this Agreement.

8.3 **Waiver.** 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 party's failure to enforce the provision or rights to performance in a particular transaction or occurrence. Any and all waivers shall be in writing and signed by the party waiving the provision or its rights to performance. Any waiver that is not in writing shall not be binding or effective.

8.4 **Severability.** If any term of 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 and, to this end, the terms and conditions of this Agreement are declared severable.

- 8.5 Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington and any action or litigation undertaken to enforce the terms of this Agreement shall be conducted in Clark County, Washington.
- 8.6 Whole Agreement.** The parties agree that this Agreement, together with all appendices, if any, constitute the entire agreement between the parties and supersedes all prior or existing written or oral agreements between the parties and may not be amended other than in writing signed by the parties.
- 8.7 Attorneys Fees and Costs.** In the event litigation arises out of this Agreement, each party shall bear its own attorney's fees and costs.
- 8.8 Captions.** Paragraph headings have been included for the convenience of the parties and shall not be considered a part of this Agreement for any purpose relating to construction or interpretation of the terms of this Agreement.
- 8.9 Opportunity Without Discrimination.** Per the requirements of state, local and federal laws, including 13 CFR 145, the Cowlitz Districts and ESD 112 agree not to discriminate on the basis of race, creed, religion, color, national origin, age, families with children, sex, honorably discharged veteran or military status, marital status, sexual orientation including gender expression or identity, or non-job-related physical, sensory, or mental disabilities, or use of a trained guide dog or service animal.
- 8.10 Exclusion, Debarment and Suspension Certification.** Per the requirements of Executive Order 12-549, the Cowlitz Districts and ESD 112 certify that neither they, nor their officers, directors, general managers or persons having primary management or supervisory responsibilities, are on the Excluded Parties List Report (web address: <https://www.sam.gov>) and that they are not presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department. The ESD and the District shall provide immediate written notice to each other if, at any time during the term of this Agreement, including any renewals hereof, they learn that this certification has become erroneous by reason of changed circumstances.
- 8.11 Authority.** The terms and conditions of this Agreement to which the parties agree are being entered into by appropriate resolutions or delegation of authority by the respective boards of directors of the Cowlitz Districts and ESD 112.

**The Cowlitz Districts and ESD 112 have executed this Agreement on the date and year indicated below.**

**ESD 112**

**WOODLAND SCHOOL DISTRICT #404**

**By:** \_\_\_\_\_  
Timothy Merlino, Superintendent

**By:** \_\_\_\_\_  
Michael Green, Superintendent

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CASTLE ROCK SCHOOL DISTRICT #401**

**LONGVIEW SCHOOL DISTRICT #122**

**By:** \_\_\_\_\_  
Susan Barker, Superintendent

**By:** \_\_\_\_\_  
Dan Zorn, Superintendent

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**KELSO SCHOOL DISTRICT #458**

**By:** \_\_\_\_\_  
Glenn Gelbrich, Superintendent

**Date:** \_\_\_\_\_

**PLEASE SIGN, DATE, AND RETURN THIS AGREEMENT TO:**

Internal Accounting  
Educational Service District 112  
2500 NE 65th Avenue  
Vancouver WA 98661-6812

A countersigned copy will be returned to you.