

**Intergovernmental Agreement Between
the Arizona Department of Education and Arizona Health Care Cost Containment System
Regarding Dispute Resolution in Residential Treatment Center Placement**

1. PURPOSE OF AGREEMENT

The Arizona Department of Education (ADE) and the Arizona Health Care Cost Containment System (AHCCCS) make this Interagency Services Agreement (Agreement) for the purpose of establishing a mechanism for resolving disputes over the placement of a student with a disability in a residential treatment center (RTC) pursuant to A.R.S. § 15-765(J) if the student's Public Education Agency and AHCCCS, where applicable, cannot mutually agree on the specific residential placement to be made.

2. DEFINITIONS

"Health Care Decision Maker" means an individual who is authorized to make health care treatment decisions for a person, including the parent of a minor or an individual who is authorized pursuant to A.R.S. Title 14, Chapter 5, Article 2 or 3, or A.R.S. §§ 36-3221, 36-3231.

"IEP" means "individualized education program," as that term is defined by 20 U.S.C. § 1401(14) and 34 C.F.R. § 300.320 and A.R.S. § 15-761(11).

"IEP Team" means "individualized education program team" as that term is defined by 20 U.S.C. § 1414, 34 C.F.R. § 300.321, and A.R.S. § 15-761(12).

"Service Plan" means complete written description of all covered behavioral health services and other informal supports that have been identified through the assessment process that will assist the person to meet his/her specific goals. The Service Plan is documented in the comprehensive clinical record and provided to all agencies involved in providing services identified on the Service Plan.

"Least Restrictive Environment," as explained in 34 C.F.R. § 300.114, means an environment in which a school can ensure that a student with disability is educated in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment that is least likely to segregate the student from his or her nondisabled peers.

"Medically Necessary" as defined under A.A.C. R9-22-101(B) means a covered service provided by a physician or other licensed practitioner of the health arts within the scope of practice under State law to prevent disease, disability or other adverse conditions or their progression, or prolong life.

"Mental Health Provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating, or rehabilitating a patient.

"PEA" means "public education agency," as that term is defined by A.A.C. R7-2-401(B)(16).

"Parent" for purposes of educational decision-making, has the definition provided by 34 C.F.R. § 300.30, A.R.S. § 15-761(22), and A.R.S. § 15-1181(6). For the purposes

of this Agreement, "parent" also includes a surrogate parent, as defined by 34 C.F.R. § 300.519 and A.R.S. § 15-761(37).

"Party" or "Parties" means ADE or AHCCCS, the parties to this Agreement.

"Placement Determination" means the determination of an IEP Team that a student needs a residential placement, as defined below. The term shall not refer to the determination of the specific facility in which residential placement is to occur.

"Related services" has the definition provided by 20 U.S.C. §1401(26), 34 C.F.R. § 300.34 and A.R.S. § 15-761(27).

"RBHA" is a "Regional Behavioral Health Authority," an organization under contract with AHCCCS to coordinate the delivery of behavioral health services in a geographically specific service area of the state for certain eligible persons.

"Residential placement" has the definition provided by 34 C.F.R. § 300.104.

"Residential special education placement" has the definition provided by A.R.S. § 15-761(28).

"Special education fund account" is the fund that consists of legislative appropriations to the account for special education institutional vouchers as stated in A.R.S. § 15-1202.

"State placing agency" has the definition provided by A.R.S. § 15-1181(12).

"Student" means a "child with a disability" as that term is defined in 34 C.F.R. § 300.8 and A.R.S. § 15-761(2).

"Surrogate parent" has the definition provided by 34 C.F.R. § 300.519, A.R.S. § 15-761(37).

"Written notice" means a writing delivered to the other party by regular mail or electronic mail.

3. GENERAL TERMS AND CONDITIONS

A. This Agreement provides an informal agreed-to process through which the parties will attempt to resolve any disputes between them concerning the placement of a Student with a disability in a residential treatment center pursuant to A.R.S. § 15-765(J). This Agreement does not provide any additional rights, causes of action, or participation in the placement process to any students, parents, or interested persons beyond those enumerated in federal or state law. There is no requirement in this Agreement that either Party reimburse the other. Nothing in this Agreement affects either Party's statutory financial obligations with respect to the matters addressed herein.

B. This Agreement shall not affect existing procedural safeguards:

- 1) The procedural safeguards guaranteed by the IDEA and its implementing regulations, 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-515, and State statutes and rules, shall be available to the parents of any student with a disability, or any such student with a disability who has reached the age of majority, who disagrees with the student's identification, evaluation,

educational placement, or the provision of a free appropriate public education. These procedural safeguards shall not be affected or diminished by the dispute resolution system developed under Paragraph 9 below.

- 2) The procedural safeguards required by the AHCCCS Policies and Procedures 2.16, A.R.S § 36-1301, § 41-1060 *et seq.*, and the Arizona Administrative Code, Title 9, Chapter 21, Article 1, shall be available to the parents, legal guardians, or the state or a governmental agency that is the legal custodian or has legal authority or jurisdiction for a student under this Agreement.

C. A parent must give written consent to treatment before any State placing agency may place a Student in a RTC placement. A general description of the placement process is contained in Attachment A.

- a. Consistent with A.R.S. § 15-765, the RBHA shall make every reasonable effort to obtain parental consent to treat those Students for whom it is responsible. If the parent of a Student refuses or revokes a consent to treat because the parent has reconsidered the decision to place the student in residential treatment, the placement process stops. In that case, AHCCCS shall require the RBHA to ensure that the IEP Team is promptly notified that the parent has revoked his/her consent to treatment. The IEP team, which includes the parent, shall reconvene as soon as reasonably possible, but no later than two (2) business days after the parent has refused or revoked consent to treat. Additionally, when a parent revokes a consent to treat, the PEA shall notify ADE/ESS (Exceptional Student Services) as soon as possible, but no later than two (2) business days after the parent has refused or revoked consent to treat.

- b. If the parent of a Student refuses placement or revokes a consent to treat at a specific RBHA-contracted residential facility, the PEA and the AHCCCS, through the RBHA, shall confer as soon as reasonably possible, but no later than two working days after the date on which the parent so notifies the RBHA.

- 1) Once a parent has given written consent to treatment at a specific facility, AHCCCS shall require the RHBA to work in good faith to ensure that the Student is placed at the specified facility as soon as reasonably possible.

4. TERMINATION

Except as otherwise provided, this Agreement may be terminated by mutual agreement of the Parties at any time.

5. RENEWAL OF AGREEMENT

The "effective date" of this Agreement is the date on which the last party has signed below (Effective Date). This Agreement shall automatically renew for an additional one (1) year period on the anniversary of the Effective Date unless either party to the Agreement provides Written Notice to the other party no less than thirty (30) days before the date on which this Agreement would automatically renew or its desire to terminate this Agreement at the end of the current term or wishes to renew the Agreement for an alternate period. If the parties desire to extend the term of this agreement for the alternate period, an Amendment acknowledging the same shall be signed by both parties.

In the event that either party wishes to amend this Agreement that party will notify the other party in writing and schedule a meeting at a mutually agreeable time to discuss its proposed amendment(s). Such request must be made no less than sixty (60) days before the anniversary of the Effective Date in order for those revisions to be timely made if agreed upon, to be effective the following year. If any revisions or modifications are agreed to they will be reduced to writing in the form of an amendment to this ISA and signed by all parties.

6. SCOPE OF SERVICES

The parties agree to perform the obligations set forth herein in good faith, including to participate in the dispute resolution process set forth in Paragraph 9 below.

7. FINANCING

- A. AHCCCS, through the RBHA, is responsible for funding the room and board and other behavioral health components of the RTC placement as identified in the student's IEP, where appropriate under State and Federal law. This provision is not intended to alter or reallocate financial responsibility from any State agency or other person or persons to AHCCCS, but is subject to any and all applicable laws and agreements and the limitations therein.
- B. ADE, through the Special Education Fund Account, is responsible for funding the educational costs identified within an IEP.
- C. AHCCCS shall notify ADE if projections indicate a potential shortage of funds that impact applicable RTC placements.
 - 1) Within thirty (30) days of notification, the Parties shall establish a joint plan of action.
 - 2) In the event that funds are exhausted for services for these students, the Parties agree to cooperate in seeking additional funds for the identified residential placements.
- D. If a funding dispute arises, the Parties shall notify each other of the existence of a dispute and shall activate the dispute resolution process outlined below in Paragraph 9.

8. MODIFICATIONS

Any modifications within the scope of this Agreement shall be made only as set forth in Paragraph 5. No agent, employee or other representative of either Party is empowered to alter any of the terms of the Agreement unless done in writing and signed by the

authorized representative for each of the respective Parties. Neither Party is obligated to fund any changes not properly approved in advance.

Either Party shall give written notice to the other Party of any non-material alteration that affects the provisions of this Agreement. Non-material alterations that do not require a written amendment are as follows:

- 1) Change of telephone number.
- 2) Change of authorized signatory.
- 3) Change in the name and/or address of the person to whom notices are to be sent.

9. DISPUTE RESOLUTION

- A. This dispute resolution process shall be used by the Parties in the following circumstances: (1) when a dispute arises between an IEP Team and a RBHA regarding whether an RTC is the appropriate placement for a Student, and/or (2) when a dispute arises between an IEP team and a RBHA as to whether the RTC identified by the RBHA is capable of implementing the Student's IEP.
- B. If a dispute as defined above in paragraph 9(A) arises, the Parties agree to utilize and follow the dispute resolution process outlined below:
 - 1) The Parties agree to resolve disputes, if at all possible, informally and at the lowest possible level.
 - a. This informal process shall include contact between the PEA and the RBHA Medical Director or designee.
 - b. The Parties shall provide the following information to each other to help facilitate resolution of the dispute:
 1. The PEA shall provide the following information to the RBHA Medical Director or designee regarding the Student: the current evaluation, current IEP, any prior written notices relevant to the IEP team's decision to place in an RTC, information about the ability of the proposed facility to implement the IEP, and any other information that PEA believes will be useful in attempting to resolve the dispute.
 2. The RBHA Medical Director or designee shall provide the following information to the PEA regarding the Student: all relevant psychiatric evaluations, the intake assessment, information about the ability of the proposed facility to meet the identified mental health needs, and any other information that the RBHA believes will be useful in attempting to resolve the dispute.
 3. Either of the Parties may bring such additional persons to the dispute resolution meeting if it is believed they would be helpful or necessary to resolve the dispute.

4. Regarding efforts to resolve a dispute under this Agreement, the PEA and the RBHA shall communicate directly with one another by first attempting to meet in person. If, after a good faith effort to meet in-person has been made by both parties, they are unable to arrange an in-person meeting then the Parties shall meet and confer by videoconference. Only after these good faith efforts have been made shall the parties be permitted to meet via telephone conference.
 - c. If the dispute cannot be resolved between the PEA representative and the RBHA Medical Director or designee, the dispute may be elevated to the Medical Director of AHCCCS or designee and the Superintendent of Public Instruction or designee for final resolution. The Parties shall ensure that the Medical Director of AHCCCS and the Superintendent receive all of the information obtained by and exchanged between the Parties to the dispute as well as a concise statement as to the nature of the dispute and reasons that the Parties have been unable to resolve it informally.
- 2) If the processes described in paragraph 9(B) above does not resolve the dispute, the Parties agree to utilize mediation services.
 - a. The Parties may select a mediator from a list of mediators with substantial experience in special education matters that is prepared and maintained by ADE.
 - b. Participants in the mediation process must have authority to act on behalf of their respective agency.
 - c. ADE shall fund the cost of mediation.

10. BREACH

This agreement may be terminated by either party if the other party fails to fulfill its obligations.

11. GOVERNING LAW

This Agreement shall be governed and interpreted by the laws of the State of Arizona, and to the extent applicable, the Arizona Procurement Code (A.R.S. § 41-2501, *et seq.*) and the administrative rules promulgated thereunder (A.A.C. R2-7-101 *et seq.*).

12. NON-AVAILABILITY OF FUNDS

Payment and service obligations under this Agreement are conditioned upon the availability of funds appropriated or allocated for the payment or support of such obligation. If funds are not allocated and available for the continuance of this Agreement, the Agreement may be terminated consistent with Paragraphs 5 and 6 above. No liability shall accrue to the terminating party in the event this specific provision is exercised, and neither party shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

13. CANCELLATION FOR CONFLICT OF INTEREST

This agreement is subject to cancellation under A.R.S. § 38-511.

14. NON-DISCRIMINATION

Both Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the American with Disabilities Act. Both parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin, or disability.

15. RECORDS

Pursuant to A.R.S. §§ 35-214 and 35-215, both parties shall retain and shall contractually require each of its contractors or subcontractors to retain all data, books and other records ("Records") relating to this Agreement for a period of five years after completion of the Agreement. All Records shall be subject to inspection and audit by the State at reasonable times. Upon request, the parties shall produce the original of any or all such Records.

16. CONFIDENTIALITY

The Parties warrant that each understands that some information that is shared for purposes of this Agreement may be protected as confidential by the federal Family Educational Rights and Privacy Act of 1974 and/or the federal Health Insurance and Portability and Accountability Act of 1996. Each Party warrants that it will comply at all times with these and any other applicable relevant federal and state law protecting the confidentiality of such information. Such information shall be referred to as "Confidential Information." The Parties each warrant that they will, to the greatest extent practicable, limit disclosure of Confidential Information for purposes of this Agreement to each other. Any Confidential Information disclosed to the other Party for purposes of this Agreement shall be marked as "Confidential" and shall only be transmitted by secure means designed to protect the confidentiality of such information. The Parties shall not disclose to unauthorized third parties any Confidential Information of the other Party. The Parties will use such Confidential Information only for the purposes related to this Agreement. Provided that the receiving Party's obligations hereunder shall not apply to information that: A) is already in the receiving Party's possession at the time of disclosure; or, B) is or later becomes party of the public domain through no fault of the receiving Party; or, C) is received from a third party with no duty of confidentiality to the disclosing party; or, D) was developed independently by the receiving party prior to the disclosure; or, E) is required to be disclosed by law or regulation.

17. PROPERTY OF THE STATE

Title and exclusive copyright to all reports, information, data, curricula, materials, and software prepared by Parties in performance of this Agreement shall vest in the State of Arizona.

18. PUBLIC RECORD

Both Parties recognize that documents not protected by law as confidential may be public records.

19. NOTICES

All written communications shall be addressed and mailed or personally served as follows:

To the AHCCCS:

Sara Salek, M.D.
Chief Medical Officer
Arizona Health Care Cost Containment System
801 East Jefferson, MD 4100
Phoenix, AZ 85034
Phone Number: 602-417-4466
Email: sara.salek@azahcccs.gov

To ADE:

Alissa Trollinger
Deputy Associate Superintendent
Exceptional Student Services
Arizona Department of Education
1535 W. Jefferson St., Bin #24
Phoenix, AZ 85007
602-364-4004

Agreed To:

Signature: _____



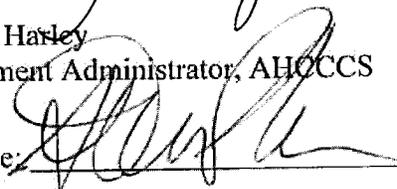
Date: _____

11/28/2017

Meggan Harley

Procurement Administrator, AHCCCS

Signature: _____



Date: _____

11/27/17

Steven Paulson

Chief Procurement Officer /Arizona Department of Education

Attachment A

Further Description of Process to Promote Collaboration

1. ADE and AHCCCS agree that they will work with each other and other state placing agencies to ensure that residential placements are not delayed for the students who are eligible for services from more than one agency. ADE and AHCCCS will cooperatively case-manage such students and resolve any funding or treatment issues without denying or delaying placement for any student.
2. When necessary, ADE and AHCCCS may conduct joint training sessions regarding procedures for placing students in RTCs for AHCCCS, the RBHAs and PEAs and will effort to do so at least annually and upon reasonable request.
 - a. Joint AHCCCS and ADE training sessions shall be held whenever possible.
 - b. ADE's training shall focus on all federal and state legal requirements for providing all students with disabilities with a free appropriate public education, including the requirements for properly identifying, evaluating, referring and placing students who need residential placement, and the timelines for ensuring compliance with such requirements.
 - c. AHCCCS training shall include training to PEA personnel regarding the referral process and the continuum of care with emphasis on the community-based, family preservation concept.
3. When an IEP team believes that placement in an RTC is one of the placements on the continuum of alternative placements that should be considered for a child receiving mental health services through AHCCCS, it must invite the mental health provider and/or RBHA representative to participate in IEP team meetings.
 - a. Should the PEA or parent request the presence of the mental health provider or RBHA at an IEP meeting, the PEA shall provide reasonable notice for the mental health provider or RBHA to participate in any IEP Team meetings.
 - b. Upon receiving reasonable notice, a mental health provider or RBHA shall participate in any IEP Team meetings where its presence is requested.
 - c. The mental health provider or RBHA shall provide the PEA with information regarding behavioral health treatment alternatives to support the educational needs of the student.
4. PEAs shall ensure that before any residential placement is made, a full continuum of alternative placements is available and that the proposed placement is the least restrictive environment in which appropriate educational services can be provided to the child.
5. AHCCCS, through the appropriate RBHA and mental health provider, shall assist the PEA in evaluating the child and exploring alternate treatment options to support the educational and mental health needs of the student.
6. Once a decision is made to place a child at an RTC, the RBHA, in consultation with the mental health provider, shall be responsible for selecting an appropriate RTC capable of providing the educational and related services identified in the IEP and meeting the mental health needs of the student. RBHAs should work cooperatively and in

collaboration with the IEP team to the greatest extent possible when selecting an appropriate RTC.

- a. The RBHA shall place the student at a RBHA-contracted and ADE-approved RTC that meets the educational needs of the student, as set forth in the student's IEP, within fifteen (15) calendar days or as soon thereafter as circumstances allow.
 - b. If placement is not made within fifteen (15) calendar days, the RBHA shall notify the PEA, the IEP team, and ADE in writing and describe the specific reasons why the placement has not been made, for the purpose of facilitating prompt placement.
 - c. Upon an inquiry from the PEA, the IEP team, or ADE regarding the placement of the student, the RBHA shall provide a status update within one (1) business day to the inquiring entity or individual.
 - d. The above-referenced timeframes shall be tolled if the student is placed in detention or is AWOL.
7. Once an appropriate RTC has been identified, the RBHA or mental health provider shall notify the IEP team and the parents of the specific provider that it has chosen.
- a. The RBHA must consider the recommendations of the IEP team in selecting a specific RTC, to the extent those recommendations relate to the student's special education needs.
 - b. The IEP team may dispute the selection of a specific residential facility or service provider only if the dispute concerns the capability of a specific residential facility or service provider to provide the special education and related services identified in the IEP and for no other reason.
 - c. If the RTC identified by the RBHA is not an ADE-approved provider, the provider may request assistance from ADE in becoming approved by ADE. Upon request, ADE shall promptly assist the RTC in obtaining approval from ADE.
 - d. If the RTC identified by the RBHA is not an AHCCCS-approved provider, the provider may request assistance from AHCCCS to become approved by AHCCCS. Upon request, AHCCCS shall promptly assist the RTC in obtaining approval from AHCCCS.
8. After a specific RTC has been identified and the parent has given consent to treat as specified in paragraph 3(C) of the Agreement, the home school district as defined in A.R.S. § 15-761(9) must submit the following documentation to ADE:
- a. A residential special education voucher application, signed by AHCCCS or its designated representative and the home school district.
 - b. An explanation of the educational reasons for recommending the residential special education placement; a copy of the student's most recent evaluation, which shall include a description of the instructional and behavioral interventions that were previously attempted; and documentation that the nature or severity of

the disability is such that education in a less restrictive environment is not appropriate.

- c. Appropriate, measurable exit criteria that must be met in order for the student to transition back into the community. The RBHA and/or mental health provider should assist the PEA in developing these exit criteria to ensure that, as nearly as possible, they align with and support the mental health discharge plan.
 - d. A reintegration plan that complies with all applicable laws and judicial proceedings. The RBHA and/or mental health provider should assist the PEA in development of the reintegration plan.
 - e. A copy of the prior written notice documenting the change of placement to a residential treatment center.
9. ADE shall process all residential special education voucher applications in a timely manner.
 10. For all students with a current IEP who are residing at an RTC, the mental health provider or RBHA shall provide the PEA with reasonable notice of case staffing, treatment reviews, and placement decisions for students with a current IEP. Similarly, the IEP team shall provide the mental health provider or RBHA with timely notice of all multidisciplinary evaluation team meetings and all IEP meetings. Additionally, the IEP team shall provide the mental health provider or RBHA with copies of the student's evaluation, IEP and any amendments, and prior written notices.