INTERAGENCY SERVICE AGREEMENT (ISA)

ISA No: 14-14-ED

Effective Date: Shall begin on the date of last signature

This Interagency Service Agreement is entered into, pursuant to Arizona Revised Statutes (A.R.S.) § 35-148 et seq, between the Arizona Department of Education (ADE), as a State budget unit, and Arizona Department of Health Services ("ADHS") as a State budget unit.

The parties agree to perform the services defined in this Agreement and Work Statement. Any modifications (Amendments) signed by both parties are adopted by reference and become part of this Agreement as of the effective date of the Amendment.

For clarification contact:
Name: Christine Ruth
Phone: 602-542-1040
Email: Christine.ruth@azdhs.gov

Signature of Person Authorized to Sign
Date
Tracey Thomas

Printed Name
Title
Sr. Procurement Specialist

This Agreement shall henceforth be referred to as ISA No 14-14-ED

Awarded this day of January, 2014

Procurement Officer

Contractor Name:
1740 West Adams, Suite 410
Address
Phoenix AZ 85007
City State Zip Code

Revised 2/8/2008
1. Purpose of Agreement

ADE and ADHS agree that they will act in good faith and use their best efforts at all times to carry out their mutual duties and responsibilities under this ISA, state laws, and federal laws to ensure that students with disabilities receive appropriate educational services in the least restrictive environment, as specified on the student's individualized education plan, after considering the full range of educational placement options.

This ISA establishes a mechanism for avoiding and resolving any inter-agency disputes related to residential placement as required by A.R.S. § 15-765(J).

2. DEFINITIONS

"IEP" means "individualized education program," as that term is defined by 20 U.S.C. 1401(a)(20) and 34 C.F.R. 300.340-350 and A.R.S. § 15-761(10).

"IEP Team" means "individualized education program team" as that term is defined by 34 C.F.R. 300.344, A.R.S. § 15-761(11) and A.A.C. R7-2-401(F)(3).

"FEA" means "public education agency," as that term is defined by A.A.C. RY-2-401 (B)(23).

"Least Restrictive Environment" is the least restrictive and least intrusive setting in which the child's educational needs can be safely and adequately met, including the treatment of the child's qualifying diagnosis or behavioral health disorder.

"Parent" has the definition as provided by 34 C.F.R. 300.30, A.R.S. § 15-761(21), and A.R.S. § 15-1181. For the purposes of this ISA, "parent" also includes a surrogate parent, as defined by A.R.S. § 15-783.

"Party" or "Parties" means ADE or ADHS, the parties to this ISA.

"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 34 C.F.R. 300.24.

"RBHA" is a "Regional Behavioral Health Authority," an organization under contract with ADHS 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. 300.302.

"Special Education Voucher Fund for Private Placement" is the fund that provides monies for the education of a student requires placement or who has been placed in a residential facility by a state placing agency. A.R.S. §15-761 (26)

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

"Student" means a "person with disabilities" pursuant to 34 C.F.R. 300.7, who is between the ages of three and twenty-two who has not received a regular high school diploma.

"Surrogate parent" has the definition provided by 34 C.F.R. 300.20(a)(4) and A.R.S. § 15-783.01.

"Treatment Plan" has the definition provided by A.A.C. R9-20-101(156).

3. GENERAL TERMS AND CONDITIONS

1. This ISA shall not be construed to 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.
2. This ISA shall not affect existing procedural safeguards:

   a) The procedural safeguards required by the IDEA, 20 U.S.C. § 1415 and 34 C.F.R. 300.500-515, and State statutes and regulations shall be available to the parents of any student with a disability, or any such student with a disability 18 through 21 years of age, who disagrees with the educational evaluation, placement or implementation of the child's IEP. This process shall not be affected or diminished by the dispute resolution system developed under Section V above.

   b) The procedural safeguards required by the ADHS/DBHS Policies and Procedures 2.16, A.R.S. § 35-113, § 12-901 et seq., § 41-1060 et seq, A.R.S. § 36-5, 36-9, A.R.S. § 36-34 and the Arizona Administrative Code, Title 9, Chapter 21, Article I 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 receiving services under this ISA.

3. A parent must give consent to treatment before any State placing agency may place the student.

   a) The RBHA shall obtain parental consent to place or treat those students with a disability for whom it is responsible pursuant to A.R.S. § 15-765 and 766.

      (1) If the parent of a student with a disability refuses or revokes a consent to treat because the parent has reconsidered the decision to place the student in residential treatment per se, then the placement process stops on that date and the IEP team, which includes the parent, shall reconvene as soon as reasonably possible, but no later than two (2) working days after the parent has refused or revoked consent to treat. Additionally, when a parent revokes a consent to treat, ADHS shall notify ADE-ESS as soon as possible, but no later than two (2) working days after the parent has refused or revoked consent to treat.

      (2) If the parent of a student with a disability refuses or revokes a consent to treat at a specific RBHA-contracted residential facility, the LEA and the ADHS, through the RBHA, shall confer as soon as reasonably possible, but no later than two (2) working days after the date on which consent to treat is refused or revoked by the parent. If the LEA and the ADHS fail to identify an alternative facility, then the LEA shall recommend mediation with the parents, or if necessary, file for an accelerated due process hearing with the ADE.

   b) If a parent has given consent to placement or treatment, the student shall be placed, regardless of whether the student's parent has initiated a dispute resolution process unless the parent who initially agreed to placement and treatment withdraws consent to the placement. On the date that the parent revokes consent to placement or treatment, the placement process stops.
4. Term of Agreement

This Agreement shall begin on the date of last signature and shall automatically renew for the State's next fiscal year unless the Parties call for a meeting to amend or cancel this ISA. A meeting to amend or cancel this ISA shall be called on or before April 30.

5. Renewal of Agreement

This Agreement shall automatically renew for an additional one (1) year period at the annual anniversary of the effective date unless either party to the Agreement notifies the other party by providing written notice within thirty (30) days of the renewal date that the notifying party wishes to terminate the 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 shall be signed by both parties to modify the termination date of the contract.

6. Scope of Services

The Parties shall perform the obligations agreed to by each as set forth in Attachment "A," attached hereto and incorporated herein by this reference.

7. Financing

A. ADHS, through the RBHA, is responsible for funding the room and board and other behavioral health components of the residential placement as identified in the student's Treatment Plan. This provision is not intended to alter or reallocate financial responsibility from any State agency or other person or persons to ADHS, but is subject to any and all applicable laws and agreements and the limitations therein.

B. ADE, through the Special Education Voucher Fund for Private Placement, is responsible for funding the educational costs identified within an IEP.

C. ADHS shall notify ADE if projections indicate a potential shortage of funds

1. Within 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 Section VI.

8. Compliance with A.R.S. § 35-148

ADE shall reimburse for services performed or advance funds for services to be performed. If funds are advanced, ADHS shall make an accounting of expenditures and return any unused funds to ADE at the termination of this Agreement.
9. Modifications:

Modifications within the scope of this ISA shall be made by mutual consent of all Parties, by the issuance of written modification, signed and dated by all Parties, prior to any changes being performed. Except where otherwise specified, revisions or amendments are fully executed upon signing by both Parties to this ISA. No agent, employee or other representative of either Party is empowered to alter any of the terms of the ISA, unless done in writing and signed by the authorized representative 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 ISA. Non-material alterations that do not require a written amendment are as follows:

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

10. Dispute Resolution

A. A disagreement between the Parties regarding: (1) the need to place a student in a residential facility, (2) the specific facility where the student will be placed, (3) the allocation of financial responsibility, or (4) any other matter regarding the placement of a student is considered a dispute for the purposes of this ISA.

B. If a dispute arises between any of the Parties to this ISA, the Parties shall utilize 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) The informal process shall include contact between the PEA, the RBHA Executive Director or designee.
   b) If the dispute cannot be resolved between the PEA representative and the RBHA Executive Director or designee, the dispute may be elevated to the Director of ADHS or designee or the Superintendent of Public Instruction or designee for final resolution.

2. If the informal process of resolution does not resolve the dispute, the disputing Parties or their representatives 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) ADE shall fund the cost of mediation.
11. Breach

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

12. Termination

Except as otherwise provided, this ISA may be terminated by mutual agreement of the Parties at any time during the term of this ISA. Any Party to this ISA may terminate the ISA by providing written notice of termination 30 days prior to termination.

13. 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 R2-7-901 et seq.)

14. Non-Availability of Funds

Payment and service obligations 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 by either party at the end of the period for which funds are available. No liability shall accrue to the terminating party in the event this 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.

15. Cancellation for Conflict of Interest

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

16. Non-Discrimination

Both parties shall comply with Executive Order 09-09, which mandates that all persons regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The 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, political affiliation or disability.

17. Records

Pursuant to A R S §§ 35-214 and 35-215, both parties shall retain and shall contractually require each subcontractor 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.

18. Confidentiality

ADE and ADHS may choose, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other (Confidential Information). All such disclosures must be in writing and marked as Confidential Information. The Parties shall not disclose to unauthorized third parties any Confidential Information of the other Party and will use such information only for the purposes of this Agreement, and for three (3) years after the termination of 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 part 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 disclosure; or, E. is required to be disclosed by law or regulation.

Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure. ADHS shall retain the right to refuse acceptance of such Confidential Information that is not required for the purposes of this agreement.

Both parties agree to comply with the federal Family Educational Rights and Privacy Act of 1974. This applies to all provisions of this Agreement which involve identifiable individual student data.

19. Capital Equipment/Software

Disposition of property acquired for the purpose of this Agreement, either by ADE or with funds provided by ADE, shall be determined by ADE upon termination or completion of the Agreement. Upon termination or completion of this Agreement, ADHS shall provide ADE with a listing of all such property, and shall make arrangement to return or dispose of this property as directed by ADE. ADHS shall provide ADE with an inventory for this property within 90 days of this Agreement becoming effective, and annually thereafter.

20. 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.

21. Public Record

Both parties recognize that work product developed under this Agreement become public information, except as limited by section 18, “Confidentiality.”
22. Notices

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

To the CONTRACTOR:
Steven Dingle, M.S, M.D
Chief Medical Officer
ADHS/ Division of Behavioral Health Services
150 North 18th Ave
Suite 200
Phoenix, AZ 85007
Telephone: 602-364-4753

To ADE:
Saretha Jones
Procurement, Bin # 37
Arizona Department of Education
1535 West Jefferson
Phoenix, AZ 85007
Telephone: (602) 364-2517
Email saretha.jones@azed.gov

Technical Contact: Melissa DeVries
Director of State Initiatives
Arizona Department of Education
Telephone: (928) 679-8108
Email: Melissa.devries@azed.gov
1. **Description of Project:**

   ADE and ADHS agree that they will work with each other and other state placing agencies to ensure that residential placements are not delayed for students who are eligible for services from more than one agency. ADE and ADHS will cooperatively case-manage such students and resolve any funding or treatment issues without denying or delaying placement for any student.

2. **Responsibilities:**

   A. PEAs are responsible for determining whether a student requires residential special education placement, monitoring educational progress, and maintaining a reintegration plan.

   1. The PEAs are responsible for identifying the need for residential special education placement.

      a. PEAs must assess a student’s educational progress by establishing measurable IEP goals.

         (1) The need for an IEP is a PEA decision.

         (2) The contents of an IEP are an IEP team decision.

         (3) The need for and content of an IEP cannot be disputed by ADHS or the RBHAs.

      b. If a student’s disability begins to interfere with educational progress, the PEA should consider involving the appropriate RBHA as soon as possible.

         i. If the student is not involved with a RBHA and other appropriate services are not available, the PEA should make a referral to a RBHA using the Behavioral Health Services Referral Form.

         ii. If a student is already involved with the RBHA, the PEA is encouraged, as appropriate, to invite a RBHA representative to attend all IEP meetings.

   2. ADHS, through the appropriate RBHA, may assist the PEA in exploring alternate treatment options to support the educational needs of the student.

      a. Should the PEA or parent request the presence of the RBHA at an IEP meeting, the PEA shall provide reasonable notice for the RBHA to participate in any IEP Team meetings.

      b. Upon receiving reasonable notice, a RBHA shall participate in any IEP Team meetings where its presence is requested.

      c. The RBHA shall provide the PEA with information regarding behavioral health treatment alternatives to support the educational needs of the student.

   3. PEAs are responsible for developing appropriate exit criteria to initiate the transition of the student back into the community at the time it makes the placement decision.

      a. These exit criteria may require revision at a future time.

      b. The exit criteria must comply with all applicable laws.

      c. The RBHAs may assist the PEAs in developing exit criteria that comply with all applicable laws and judicial proceedings.
4 The PEAAs are responsible for creating a reintegration plan and ensuring that the reintegration plan complies with all applicable laws and judicial proceedings.

B RBHA Responsibilities:

The RBHAAs are responsible for selecting the appropriate residential facility capable of providing the educational and related services identified in the IEP.

1 The RBHA shall use its best efforts to place the student at a RBHA-contracted and ADE approved residential facility which meets the educational needs of the student, as set forth in the student's IEP within 15 calendar days.

   a. If placement is not made within 15 calendar-days, the RBHA shall notify the PEA, the IEP team, and ADE and describe the specific reasons why the placement has not been made in order to facilitate prompt placement.

   b. 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 business day to the inquiring entity or individual.

   c. The above-referenced time-frames shall be tolled if the student is placed in detention or is AWOL.

2 Once the appropriate facility has been identified, the RBHA 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 RBHA-contracted residential facility.

   b. The IEP team may not dispute the selection of a specific residential facility or service provider unless 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.

   c. If the facility identified by the RBHA is not an ADE approved provider, the provider shall request assistance from ADE in the approval process. Upon request, ADE shall promptly assist the RBHA and the facility in obtaining the necessary approval.

3 The RBHA shall provide the PEA with reasonable notice of case staffing, treatment reviews, and placement decisions for students with a current IEP.

C ADE Responsibilities:

ADE is responsible for training, supporting, and monitoring the PEAAs.

1 ADE shall support the PEAAs in the placement process and impart information and training to the PEAAs so that the PEAAs notify the appropriate RBHA when behavioral health services are a possibility for students with disabilities for whom ADHS is responsible under A.R.S. § 15-765.

2 ADE shall conduct training sessions for ADHS and the RBHAAs at least annually and upon reasonable request.

   a. Joint ADHS and ADE training sessions shall be held whenever possible.
b. Training sessions 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. ADE shall also provide training on procedures for appropriate appointment of surrogate parents.

D ADHS Responsibilities:

ADHS is responsible for training, supporting, and monitoring the RBHAs.

1. ADHS shall ensure that the RBHAs understand their responsibility by providing appropriate training in applicable state and federal laws.

2. ADHS, through the RBHAs, shall provide training to PEA personnel regarding the referral process and the continuum of care with emphasis on the community-based, family preservation concept.

3. ADHS shall ensure that the appropriate RBHA places a student according to his or her IEP.