

INTERAGENCY AGREEMENT
Agreement No. 20160406

between

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Old Capitol Building, P.O. Box 47200
Olympia, WA 98504-7200

and

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
STATE OF WASHINGTON
Behavioral Health Administration
Division of Behavioral Health & Recovery
4500 10th Avenue S.E., P.O. Box 45330
Olympia, WA 98504-5330

THIS AGREEMENT is made and entered into by and between the Department of Social and Health Services (DSHS), Division of Behavioral Health & Recovery, hereinafter referred to as "DBHR," and the Office of Superintendent of Public Instruction, hereinafter referred to as "OSPI."

PURPOSE OF THIS AGREEMENT

OSPI, through Special Education, exercises general supervisory authority over Local Education Agencies (LEAs), which are responsible for the provision of special education and related services to eligible special education students, aged 3—21, who meet eligibility criteria under the Washington State regulations, Chapter 392-172A WAC, implementing the requirements under the Individuals with Disabilities Education Act (IDEA).

DSHS, through DBHR, provides services to children who have behavioral health needs, including mental health and substance use disorders, and meet eligibility requirements established by the Department of Social and Health Services under RCW 71.34 and Title 388 of the Washington Administrative Code (WAC). DBHR contracts with regional Behavioral Health Organizations (BHOs), to administer community behavioral health programs to serve, within available resources, eligible persons. In Fully Integrated Managed Care (FIMC) Regional Service Areas, the Health Care Authority will contract with Apple Health plans for behavioral health services.

This Agreement is necessary for the successful implementation and operation of coordination of activities that promote cross-systems collaboration between local public behavioral health providers and LEAs to provide services and programs for students who are eligible for special education services under IDEA and who are eligible for services through DBHR.

THEREFORE, IT IS MUTUALLY AGREED THAT the terms used in this Agreement shall each have the following definitions:

Special Education: WAC 392-172A-01175 Special education means instruction that is specially designed to meet the unique needs of a special education student and is provided at no cost to the parent or student. Specially designed instruction (SDI) may include instruction conducted in the classroom, in the home, in hospitals, institutions, and in other settings as well as physical education, and vocational education. Special education also includes SDI when it is carried out

as part of speech and language services, physical and occupational therapy, orientation and mobility instruction, behavioral intervention, and audiological services.

Eligible Special Education Student: An eligible special education student is a student with a disability who, through a formal evaluation, is determined to have a disability that adversely affects the student's educational performance and is in need of SDI.

Free Appropriate Public Education (FAPE): FAPE is the special education and related services which are provided at public expense, under local school district or other public agency supervision and direction and without charge to parents, meet the standards of the state educational agency and the State Board of Education to, include preschool, elementary school or secondary school education in the state; and are provided in conformance with individualized education program requirements.

Individualized Education Program (IEP): The IEP is a written document (developed collaboratively by a team comprised of parents, school personnel, and relevant service representatives) that outlines special education programming (including Transition Services) for a student with a disability. The IEP is developed, reviewed annually, and revised by the IEP team.

Related Services: These are developmental, corrective, preventative, and other supportive services as are required to assist a special education student to benefit from special education. Related services include classified staff services, counseling services, early identification and evaluation of disabilities in students, medical services, parent counseling and training, psychological services, recreation, rehabilitation counseling services, school health services, social work services in schools, and transportation.

DBHR: This means the Division of Behavioral Health and Recovery of the Washington State Department of Social and Health Services (DSHS). DSHS has designated DBHR as the state mental health authority to administer the state and Medicaid-funded mental health program authorized by chapter 71.05, 71.24, and 71.34 RCW.

DBHR Eligible Person/Consumer: WAC 388-865-0150 a person is considered a consumer who has applied for, is eligible for or who has received mental health services. For a child under the age of thirteen, or for a child age thirteen or older whose parents or legal guardians are involved in the treatment plan, the definition of consumer includes parents or legal guardians.

Behavioral Health Organization (BHO): Any county authority or group of county authorities or other entity recognized by the Secretary that provides or contracts for mental health services and substance use disorder treatment services within a defined Regional Service Area, using available resources, (with the exception of the Fully Integrated Managed Care region where Managed Care Organizations provide these services). The BHO must ensure services are responsive in an age and culturally competent manner to the behavioral health needs of its community.

STATEMENT OF WORK

OSPI allocates funding to LEAs who provide special education and related services to students eligible for special education and related services.

DBHR, through the BHOs, coordinates appropriate mental health and substance use disorder (behavioral health) treatment services including counseling services, hospitalization, residential treatment, case management, community-based services, and other appropriate behavioral health services. These provisions are not intended to shift the responsibility of services delivery or financial responsibility from one agency to another but rather to create and sustain an environment where the needs of eligible students and their families are met during the time that a student is enrolled in public school.

DBHR and OSPI enter into this Agreement to promote cooperation, coordination, and maximum use of resources at the local level to improve service delivery to children who are eligible for public mental health and special education services.

EXPECTED OUTCOME

A. As a result of this Program Agreement the following outcome is expected:

Eligible special education students who meet the Access to Care Standards and are eligible for services under Title XIX (19) will be eligible to receive services in the public mental health system.

B. To achieve the outcome OSPI and DBHR agree to:

- Work towards developing a system to collect and disseminate information on exemplary practices and Evidence and Research Based Practices (E/RBPs illustrating collaboration between education and public behavioral health in local communities).
- Explore methods to enhance the outcomes for students eligible for special education and public behavioral health services.
- Disseminate information and available training opportunities on state and local roles and responsibilities, federal and state regulations, and exemplary practices.
- Disseminate information cross agency to be included on websites and/ or newsletters.
- Encourage BHO and school district participation to support Youth in Transition
- Work with BHOs, local public behavioral health providers, and LEAs to identify local contact persons to facilitate communication at the local level.
- Publicize state and local training opportunities focusing on emotional and behavior issues and best practices in service delivery.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on April 18, 2016, or date of execution, whichever is later, and be completed on March 31, 2021, unless terminated sooner as provided herein.

FINANCIAL RESPONSIBILITY

For students who are eligible for and receiving special education in a public school system AND are concurrently eligible for public behavioral health services:

- OSPI is responsible through the LEAs for the provision of special education and related services.

- DBHR is responsible for medically-necessary behavioral health services to eligible persons as designated in the BHO contracts and in its successors as contracts are renewed every two years.
- This is a non-financial Agreement. In no event shall either party seek compensation for work performed under this Agreement.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

DBHR certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. DBHR further certifies that they will ensure that potential subcontractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in covered transactions by any federal department or agency. DBHR may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" provided on-line by the General Services Administration, and Washington State vendor debarment list.

CONTRACT MANAGEMENT

The following shall be the contact person for all communications regarding the performance of this Agreement.

DBHR	OSPI
Jessica Bayne Division of Behavioral Health & Recovery PO Box 45330, 4500 10 th Ave. S.E., Olympia, WA 98504-45330 Phone: (360) 725-1291 Fax: (360) 586-0341 Email: Jessica.bayne@dshs.wa.gov	Mary Ellen Parrish Contracts Manager Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200 Phone: (360) 725-6075 Fax: (360) 586-0247 Email: Maryellen.parrish@k12.wa.us

DISPUTES

BETWEEN LEAs, BHOs OR COMMUNITY SERVICE PROVIDERS – OSPI and DSHS/DBHR support existing School community partnerships, and encourage coordination and problem solving at the lowest possible level. To this end, DSHS, DBHR, BHOs, community service providers, OSPI, and the LEAs are encouraged to address issues of coordination, service, and reimbursement at the local level. If an LEA and a BHO or community service provider cannot resolve an issue at this level, the LEA, BHO or community service provider may request intervention from OSPI and DSHS to provide assistance in resolving the dispute. A written request for intervention shall be made to OSPI's Special Education Director or his or her designee and to the DBHR manager or his or her designee. If the matter is not resolved at this level, the process as defined in the Agreement will be followed.

BETWEEN OSPI AND DSHS - In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal statutes and rules
- Statement of work
- Attachments
- Any other provisions of the Agreement, including materials incorporated by reference

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized

by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act or omission of any person, agency, firm, or corporation not a party to this Agreement.

RIGHTS IN DATA

Copyright in all material created by DBHR and paid for by OSPI as part of this Agreement shall be the property of the State of Washington. Both OSPI and DBHR may use these materials, and permit others to use them, for any purpose consistent with their respective missions as agencies of the State of Washington. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Material which DBHR provides and uses to perform this Agreement but which is not created for or paid for by OSPI shall be owned by DBHR or such other party as determined by Copyright Law and/or DBHR's internal policies; however, for any such materials, DBHR hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to OSPI to use the material for OSPI internal purposes.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

TERMINATION

Either party may terminate this Agreement upon thirty (30) calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION DUE TO FUNDING LIMITATIONS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, OSPI may, without advance notice and without liability for damages, terminate this Agreement by providing written notice to DBHR. The termination shall be effective on the date specified in the termination notice.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

TERMINATION PROCEDURE

Upon termination of this Agreement, OSPI, in addition to other rights provided in this Agreement, may require DBHR to deliver to OSPI any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

The rights and remedies of OSPI provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by OSPI, DBHR shall:

- a. Stop work under this Agreement on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- c. Assign to OSPI, in the manner, at the times, and to the extent directed by OSPI, all rights, title, and interest of DBHR under the orders and subcontracts in which case OSPI has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of OSPI to the extent OSPI may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to OSPI and deliver, in the manner, at the times and to the extent as directed by OSPI, any property which, if the Agreement had been completed, would have been required to be furnished to OSPI;
- f. Complete performance of such part of the work not terminated by OSPI; and
- g. Take such action as may be necessary, or as OSPI may direct, for the protection and preservation of the property related to this Agreement which, in is in the possession of DBHR and in which OSPI has or may acquire an interest.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Department of Social and Health Services

Superintendent of Public Instruction
State of Washington

Signature

Title

Sheryl Turner, Contracts Administrator

Print Name

Date

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General