

JOINT POWERS AGREEMENT

BETWEEN

**THE NEW MEXICO SCHOOL FOR THE BLIND AND
VISUALLY IMPAIRED**

and

GADSDEN INDEPENDENT SCHOOLS

**FOR THE RESIDENTIAL PLACEMENT AND/OR OUTREACH
SERVICES FOR STUDENTS WHO ARE VISUALLY IMPAIRED**

2018-2019

THIS JOINT POWERS AGREEMENT is made and entered into by the Board of Regents for the NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED (NMSBVI), Alamogordo, New Mexico, and the Board of Education for the GADSDEN INDEPENDENT SCHOOLS (DISTRICT), Anthony, New Mexico.

WHEREAS, the DISTRICT and NMSBVI are public agencies authorized by Section 11-1-1 et seq. NMSA 1978 to enter into this Agreement;

WHEREAS, the DISTRICT is a "school district" within the meaning of NMSA 1978, § 22-1-2(R), responsible for providing special education and related services to children with disabilities within its geographical boundaries;

WHEREAS, NMSBVI is a "state-supported educational program" within the meaning of 6.31.2.7(B)(20) NMAC, responsible for providing special education and related services to children who are blind or visually impaired and who are referred to and placed at NMSBVI;

WHEREAS, both the DISTRICT and NMSBVI have responsibilities for the provision of a free appropriate public education (FAPE) to students with disabilities under the Individuals with Disabilities Education Act (IDEA) within their respective educational jurisdictions, this Agreement is intended to allow a joint and coordinated effort to be undertaken by these separate public agencies when a student who is blind or visually impaired within the educational jurisdiction of the DISTRICT may benefit from residential placement and such placement is appropriate; or

WHEREAS, the DISTRICT may seek vision specific assessment from NMSBVI; or,

WHEREAS, the DISTRICT may request a vision-specific consultation or mentorship services from NMSBVI; or,

WHEREAS, the DISTRICT and NMSBVI desire to establish efficient and functional relationships for the provision of FAPE to students whose visual impairments fall within the scope of this Agreement;

NOW, THEREFORE, the DISTRICT and NMSBVI do hereby agree as follows:

I. JURISDICTION

A. Both the DISTRICT and NMSBVI are public agencies within the meaning of 6.31.2.7 NMAC and 34 CFR§300.33.

B. The "educational jurisdiction" of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including Joint Powers Agreements (JPA) or Memoranda of

Understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled. 6.31.2.7(B) (7) NMAC.

C. The educational jurisdiction of the DISTRICT and NMSBVI shall be considered overlapping only when the student is blind or visually impaired; resides within the geographical boundaries of DISTRICT; and has been determined by referral, assessment and a joint IEP as being appropriately in need of visually impaired services that DISTRICT cannot otherwise provide, and/or, where a joint IEP determines that the student meets the criteria for, has been accepted by NMSBVI, and the residential placement constitutes the least restrictive environment for the student. For purposes of this Agreement, the students who are placed in the NMSBVI residential program by the DISTRICT shall be referred to as "Joint Students."

II. DUTIES WITH RESPECT TO JOINT STUDENTS

The DISTRICT and NMSBVI are jointly responsible for ensuring that Joint Students receive a FAPE, and both public agencies shall comply with all applicable laws, rules, and regulations with respect to FAPE. Notwithstanding the foregoing, however, the DISTRICT shall remain the LEA primarily responsible for providing FAPE to the Joint Student. The purpose of Section II of this Agreement is to coordinate the delivery of FAPE to Joint Students. The duties with respect to Joint Students will be coordinated and discharged as follows:

A. CHILD FIND

The DISTRICT and NMSBVI shall each adopt and implement policies and procedures to ensure that all children with disabilities within their educational jurisdictions, regardless of the severity of their disabilities, and who are in need of special education and related services, are located, identified and evaluated in compliance with all applicable requirements of the IDEA, its implementing regulations and New Mexico Public Education Department (hereinafter, "NMPED") rules and standards.

B. REFERRAL FOR RESIDENTIAL PLACEMENT CONSIDERATION

1. Referral Procedures

- a. When the IEP Team of a DISTRICT student determines that the needs of the student could best be met at the present time by a residential placement for intensive services, the IEP Team may refer the student to NMSBVI to determine whether the student is eligible for residential placement and such residential placement is appropriate.
- b. The DISTRICT shall seek parental consent for the mutual exchange between DISTRICT and NMSBVI of confidential information protected by the Family Educational Rights and Privacy Act (FERPA).

- c. The DISTRICT shall provide NMSBVI with a copy of the student's education records following receipt of the signed consent from the parent, and shall continue to provide records and information that it generates or obtains throughout the referral process.
- d. NMSBVI shall provide to the DISTRICT a copy of any education records and information it generates or obtains throughout the referral process.
- e. As part of the referral process to NMSBVI, the DISTRICT and NMSBVI shall jointly participate in any review of existing evaluation data required under 34 C.F.R. Sec. 300.305 and 6.31.2.10(D)(2)(d)(ii) NMAC.
- f. NMSBVI shall provide notice and obtain parental consent for any evaluation it proposes to conduct under the IDEA, its implementing regulations and NMPED rules and standards.
- g. The DISTRICT shall provide notice and obtain parental consent for any evaluation it proposes to conduct under the IDEA, its implementing regulations and NMPED rules and standards.

2. Evaluation/Reevaluation

- a. If the referral assessment by NMSBVI determines that a student is eligible for placement on the NMSBVI residential campus and such placement is appropriate, NMSBVI will, if necessary, assume responsibility for vision specific assessments, including functional vision assessment, learning media assessment and orientation and mobility assessment. The DISTRICT remains responsible for all other diagnostic services prior to placement of the student in the residential program.
- b. When conducting an evaluation or reevaluation, the DISTRICT and NMSBVI shall follow the NMPED guidance as reflected in the New Mexico Technical Evaluation and Assessment Manual ("NM T.E.A.M.") for evaluating and reevaluating a student suspected of having a visual impairment, including blindness. The student shall be evaluated and reevaluated in all areas of his or her disabilities. The Eligibility Determination Team (EDT) shall consist of representatives from both the DISTRICT and NMSBVI. The evaluation or reevaluation process shall begin with a review of existing data by a group that includes the parents, the other members of the student's IEP Team and other professionals, as appropriate, to identify the evaluations and information necessary for determining whether the student continues to be a student with a disability and, if so, to decide

whether residential placement continues to be appropriate. NMSBVI shall evaluate the vision disability and the vision disability-specific core curricula needs including in the following areas: functional vision, learning media assessment, orientation and mobility (O&M), expanded core of blindness skills and other unique specialized needs of visually impaired learners. NMSBVI will conduct complete diagnostic reevaluations, if necessary, during the time the student is currently enrolled in the residential program.

- c. NMSBVI shall ensure timely evaluation by qualified diagnostic personnel licensed or certified by the NMPED's licensure unit to conduct all assessments for which it is responsible as per 34 CFR sec. 300.304 and NMAC 6.31.2.10D(1)(c)(ii).
- d. The DISTRICT shall ensure timely evaluation by qualified diagnostic personnel licensed or certified by the NMPED's licensure unit to conduct all assessments for which it is responsible as per 34 CFR sec. 300.304 and NMAC 6.31.2.10D(1)(c)(ii).
- e. Upon completion of the evaluations, the DISTRICT and NMSBVI shall work cooperatively together to schedule a joint EDT and/or IEP meeting at a time and place that is mutually agreeable to the parents, the DISTRICT and NMSBVI.
- f. The DISTRICT shall be responsible for providing notice of the initial joint EDT and/or IEP meeting. The notice shall reflect that the EDT and/or IEP team will include representatives from both the DISTRICT and NMSBVI.

3. Joint EDT and/or IEP Meeting

- a. The DISTRICT and NMSBVI will jointly participate in developing the IEP for students who have been determined to be eligible for visually impaired services at NMSBVI and for whom a residential placement is appropriate.
- b. The DISTRICT and NMSBVI will jointly ensure that the EDT and/or IEP meet the requirements of the IDEA, its implementing regulations and NMPED rules and standards.
- c. Services shall be clearly delineated in the IEP developed by a joint IEP Team of the DISTRICT and NMSBVI, or in another written agreement between the DISTRICT and NMSBVI, and if appropriate, the parent.

- d. The IEP Team will determine the frequency, location and duration of any special education, related services, and supplementary aids and services set forth in the IEP pursuant to 34 C.F.R. 300.320(a)(7).
- e. When the student is being served by NMSBVI's residential program, NMSBVI shall be responsible for completing the IEP paperwork and for preparing and providing the parents with prior written notice of the proposals and/or refusals of the IEP Team as set forth in 34 C.F.R Sec. 322, NMAC 6.31.2.13(1)(D) and NMPED rules and standards. NMSBVI shall submit a copy of the completed IEP to the DISTRICT within 10 days of the date of the IEP.
- f. The DISTRICT and NMSBVI shall provide the services as set forth in the IEP.
- g. The DISTRICT will be responsible for extended school year services.
- h. The public agency that completes the IEP paperwork is responsible for ensuring timely review and revision of the IEP, including sending notice of the joint IEP meeting at a time and place that is mutually agreeable to the parents, the DISTRICT and NMSBVI. The notice will reflect that the IEP Team will include representatives from both the DISTRICT and NMSBVI.
- i. All IEP meetings shall be joint IEP meetings for as long as the student continues to fall within the educational jurisdiction of both the DISTRICT and NMSBVI.

C. OUTREACH SERVICES

For students who are able to receive FAPE through the DISTRICT, the DISTRICT and NMSBVI jointly agree to support the student in the following ways:

- 1. The DISTRICT agrees to be responsible for parent notification and consent for placement requirements as set forth in NMAC 6.31.2.10.
- 2. The DISTRICT is responsible for diagnostic services as required by NMAC 6.31.2.10(D).
- 3. When requested by the DISTRICT, NMSBVI will assist/consult on the assessment of the vision disability-specific core curricula needs in the following areas: functional vision, learning media assessment, orientation and mobility (O&M), expanded core curriculum skills and other unique specialized needs of visually impaired learners.
- 4. The DISTRICT assumes responsibility for all other assessments.

5. NMSBVI and the DISTRICT will ensure that qualified diagnostic personnel licensed by the Public Education Department's licensure unit conduct all assessments.
6. When a visual impairment is documented by a current eye report, the DISTRICT's IEP Committee shall establish the need for vision services. The DISTRICT's IEP Committee shall initiate and conduct a meeting to develop the IEP in accordance 34 CFR Part 300 and NMAC 6.31.2.11. The DISTRICT hereby acknowledges its final responsibility for insuring the IEP meets the requirements of 34 CFR 300.320-300.325 or any successor regulations.
7. For those DISTRICTS who have chosen to meet the vision-specific needs of their students through the creation of a teaching position and enrollment of a teacher in NMSU's personnel preparation program leading toward licensing as a Teacher of Students with Visual Impairment (TSVI), a mentorship process will be set up to help the pre-licensed TSVI fulfill licensure requirements. NMSBVI Outreach Consultants, selected by NMSU, will meet regularly with pre-licensed TSVIs or student Certified Orientation and Mobility Specialist (COMS) in accordance with the internship requirements established by the NMSU Visual Impairment Program.
8. At the request of the DISTRICT, NMSBVI will send members of its outreach team to the DISTRICT to perform a needs assessment of the DISTRICT's students who are visually impaired in order to help the DISTRICT establish both long-term and short-term solutions for each of the DISTRICT's students with an established visual impairment.
9. The DISTRICT will be responsible for extended school year services.
10. At the request of either party, the DISTRICT and NMSBVI or their designees shall meet to review compliance with the terms of this Agreement or of the services provided by NMSBVI.
11. The parties acknowledge that there will be no charges or fees to the primary caretaker, parent, guardian or person having custody of a student referred to NMSBVI pursuant to this Agreement and in accordance with state and federal requirements for a free appropriate public education (FAPE).
12. The parties acknowledge that there will be no charges to the DISTRICT for Outreach support services.

III. MAINTENANCE OF RECORDS

The DISTRICT and NMSBVI shall maintain any “educational records” (as defined in the FERPA and its implementing regulations) in accordance with the FERPA and its implementing regulations, the IDEA and its implementing regulations, and NMPED rules and standards.

IV. STRICT ACCOUNTABILITY OF FUNDS

The DISTRICT and NMSBVI agree to maintain strict accountability of funds. Each party shall be strictly accountable for all receipts and disbursements under this Agreement.

V. MERGER CLAUSE

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understanding, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

VI. NON-WAIVER

Nothing in this Agreement is intended to increase or decrease any legal protections provided to students with disabilities or any legal obligations owed by the DISTRICT or NMSBVI under applicable state and federal law. Nothing in this Agreement shall constitute a waiver of existing legal rights and remedies in the event of a breach of this Agreement.

VII. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

DISTRICT and NMSBVI shall each assure compliance with applicable state and federal statutes and regulations.

VIII. TERM

This Agreement shall become effective upon approval by the Department of Finance and Administration and shall remain in effect until terminated pursuant to paragraph IX, Termination. The fiscal year of this Agreement is between July 1st and June 30th.

IX. TERMINATION

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination.

The terms of this Agreement are contingent upon sufficient appropriations and authorization for each party for the performance of this Agreement. If sufficient appropriations and authorization

are not made, this Agreement shall terminate upon written notice being given by the terminating party.

X. DISPOSITION, DIVISION OR DISTRIBUTION OF ANY PROPERTY ACQUIRED AS A RESULT OF THIS AGREEMENT

A. Materials may be purchased pursuant to this Agreement. The party purchasing the material(s) shall retain possession of any usable materials upon the termination of this Agreement.

B. Supplies may be purchased pursuant to this Agreement. The party purchasing the supplies shall retain possession of any usable supplies upon termination of this Agreement.

C. Disposition of records generated by performance of this Agreement shall be decided by the parties upon termination of this Agreement.

XI. LIABILITY AND INSURANCE

NMSBVI and the DISTRICT shall each maintain insurance coverage for liability of itself and its "public employees," as defined in the Tort Claims Act, and as required by New Mexico law. The parties agree that, to the extent permitted by law, each party shall include the other as an additional insured on any liability coverage related to the actions or inactions of each party to this Agreement. By this paragraph, neither party shall be deemed to have waived any immunities provided to such party by the laws of New Mexico or the United States Constitution.

XII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties and approved by the Department of Finance and Administration.

XIII. GOVERNING LAW/DISPUTE RESOLUTION

This Agreement shall be governed by the laws of the State of New Mexico. In the event that a dispute arises between the parties regarding the scope of this Agreement or the responsibilities under IDEA with respect to a DISTRICT student enrolled in NMSBVI's residential program, the parties agree to engage in a good faith effort to resolve the dispute amicably. If the parties cannot resolve the dispute by themselves, the parties agree to engage in mediation using a mutually agreed upon mediator who has professional knowledge and experience with special education issues, IDEA, and its regulations. The costs of using a mutually agreed upon mediator shall be split equally between the parties. If the parties cannot mutually agree on a mediator, each party shall choose a mediator of their choice. These two mediators will mutually agree upon an independent third party who will mediate the dispute. This independent mediator also must have professional knowledge and experience regarding special education, IDEA, and its regulations. In the event three mediators are selected, each party shall be responsible for the cost associated with the mediator selected by that party and the parties shall equally bear the cost of the third mediator.

IN WITNESS WHEREOF, the parties have executed this Agreement which becomes effective as of the date of approval by the Department of Finance and Administration.

GADSDEN INDEPENDENT SCHOOLS:

By: _____

_____ **Date**

Title: _____

NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED:

By: _____

_____ **Date**

Title: _____

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

By: _____

_____ **Date**

Title: _____