

Memorandum of Understanding
Between the Colorado Charter School Institute and SCHOOL
Regarding the Provision and Funding of Special Education Services

Whereas, SCHOOL (the “Charter School”) is a public charter school authorized by the Colorado Charter School Institute (“CSI”);

Whereas, the Charter School intends to serve students with disabilities to the greatest extent possible, and CSI intends to support the Charter School’s efforts to the greatest extent possible;

Whereas, the Charter School and CSI are required under applicable law—including the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Elementary and Secondary Education Act, 20 U.S.C. § 6301, et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; and the Exceptional Children’s Educational Act, C.R.S. § 22-20-101, et seq.—to provide special education and related services to its students;

Whereas, under C.R.S. §§ 22-20-106(b) and 22-30.5-503(3), CSI serves as the Local Educational Agency and Administrative Unit (“LEA”) for the charter schools that it authorizes, and the Charter School is a school within that LEA;

Whereas, under the Charter Contract between the Charter School and CSI, the parties have allocated roles and responsibilities to each other, for meeting this obligation to provide special education services; and

Whereas, the Charter School and CSI wish to provide more clarity about their respective roles and responsibilities for special education at the Charter School, through this Memorandum of Understanding (“MOU”),

NOW, THEREFORE, THE PARTIES DO AGREE AND COVENANT AS FOLLOWS:

1: Definitions

“**Charter Contract**” means the contract between the Charter School and CSI under Article 30.5 of Title 22 of the Colorado Revised Statutes.

“**Charter School**” means the signatory identified in the “Whereas” clauses of this MOU.

“**CSI**” means the signatory identified in the “Whereas” clauses of this MOU.

“CSI Special Education Manual” means the monograph titled *CSI Special Education Manual*, published by CSI and made available to its charter schools, as it may be amended from time to time, or its replacement.

“CSI Guidebook: Special Education Onboarding” means the monograph titled *CSI Guidebook: Special Education Onboarding*, published by CSI and made available to its charter schools, as it may be amended from time to time, or its replacement.

“FAPE” means Free Appropriate Public Education, as defined in 20 U.S.C. § 1401.

“IDEA” means the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

“IEP” means an Individualized Education Program, as defined in 20 U.S.C. § 1401.

“LEA” means Local Education Agency, as defined in 20 U.S.C. § 1401, as well as Administrative Unit, as defined in C.R.S. § 22-20-103.

“LRE” means Least Restrictive Environment, as that term is used in 20 U.S.C. § 1412.

“MOU” means this Memorandum of Understanding.

“Parties” means CSI and the Charter School, collectively.

“Program Plan” means the special education program plan submitted to and approved by CSI at the inception of the Charter School, together with any modifications made in accordance with CSI’s policy for approving such modifications.

“Section 504” means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

2: Charter School and CSI Special Education Responsibilities

CSI and the Charter School agree to the following general duties and obligations.

2(a): CSI shall:

- (1) Allocate state and federal special education funding to the Charter School in accordance with CSI’s established practice—consistent with C.R.S. § 22-30.5-513.5 and other applicable law—including establishing a baseline allocation, deducting CSI’s administrative costs, and dividing that number by the total number of eligible students;
- (2) Make available to Charter School staff such training opportunities or information regarding special education as are made available to other school site staff, including making CSI’s staff available to consult with the Charter School’s staff;

- (3) Participate as needed in IEP team meetings and assist the Charter School with placement determinations;
- (4) Employ and assign the Charter School a Special Education Coordinator, whose duties and obligations are specified in paragraph 2(c)(2);
- (5) Assist the Charter School in applying for additional funding through CDE for qualifying “high-cost” disabilities, in applying for additional funding through the CSI Assistance Fund created in C.R.S. § 22-30.5-515.5, and in exploring other resources that may be available;
- (6) Provide information to the Charter School regarding CSI’s special education decisions, policies, and procedures to the same extent as they are provided to other schools within CSI;
- (7) On an ongoing basis, assess the performance of the Charter School with regard to special education; as with all CSI schools, this assessment includes (but is not limited to) identifying the Charter School by Performance Tiers I, II, or III, according to the CSI “Student Services Screener,” or other established scoring tool utilized by CSI, using a primary screener and (for some schools) a subsequent secondary screener;
- (8) Take remedial steps, in accordance with the school’s Charter Contract and CSI policy, if—in CSI’s sole discretion—CSI finds the Charter School’s performance with regard to special education to be deficient;
- (9) Offer, to the Charter School, Tier I foundational supports in the form of professional development and technical assistance trainings; and, if the Charter School becomes identified as a Tier II or Tier III school, offer to the Charter School additional interventions and supports targeted to address identified areas of need, including but not limited to: on site school quality reviews, school improvement and prioritization planning, and targeted staff and leadership professional development; and
- (10) Provide Tier II or Tier III support until the Charter School has demonstrated necessary progress related to the outcomes of its special education students. In providing these tiers of support or other remedial steps:
 - (i) The interventions and supports will be developed collaboratively with the Charter School and CSI staff, responding to the Charter School’s individual circumstances and potential areas of concern, in light of the Charter School’s unique program.
 - (ii) The information gained from the Screener will help identify any potential areas of concern in the Charter School’s compliance with legal

requirements, and inform the Charter School's Tier of Support. The Tiers of Support are designed to provide targeted support to the Charter School based on the areas of need identified through the Screener. Although the underlying compliance data also factors into the CSI Annual Review of Schools (also known as "CARS"), the Student Services Screener and the Tiers of Support themselves do not directly correlate to renewal or other high stakes decisions.

- (iii) In extreme circumstances, CSI may retain commensurate funds to offset the costs of tiered supports and interventions or other remedial steps. Such circumstances are expected to be highly unusual (and indeed have never yet occurred in CSI's history). In the event CSI exercises this right, a written agreement specifying the services to be provided and their cost will be executed, which agreement shall constitute an amendment to the Charter Contract.

2(b): The Charter School shall:

- (1) Adhere to the applicable provisions of the IDEA; Section 504; the Americans with Disabilities Act; applicable Colorado special education laws and regulations; the terms of the school's Charter Contract; and CSI policies, procedures, and requirements, as they may be amended from time to time;
- (2) Comply with the applicable requirements and mandates of the U.S. Department of Education, its Office for Civil Rights, and the U.S. Department of Justice;
- (3) Notify CSI of any notices, concerns, or complaints received or filed against the Charter School or its employees, administration, or Board members by or with any governmental agency (including but not limited to the U.S. Department of Education, its Office of Civil Rights, and the U.S. Department of Justice, as they relate to special education services at the Charter School);
- (4) Implement the special education Program Plan submitted to and approved by CSI at the inception of the school or as subsequently modified in accordance with CSI's policy for approving such modifications;
- (5) Follow and implement the procedures laid out in the *CSI Special Education Manual*, in consultation with CSI's special education staff as needed;
- (6) Not establish nor carry out any support services, policies, or practices that conflict with the Program Plan or the *CSI Special Education Manual*;
- (7) Be solely responsible for implementing, providing, and subsidizing those specialized instructional and related services required by student IEPs, as well as

the services, modifications, or accommodations required by student Section 504 plans;

- (8) Employ or contract with all requisite special education service providers;
- (9) Assign special education support staff as necessary to meet student needs, which staff shall be appropriately licensed in accordance with Colorado law;
- (10) Bear all costs associated with the special education-related personnel described in the preceding two paragraphs, above;
- (11) Develop, maintain, and review assessments and IEPs in any format required by CSI, in accordance with federal law, state laws, and the Charter Contract;
- (12) Track attendance for each special needs student, to be reported and certified according to applicable state law and regulation;
- (13) Participate in the state quality assurance process for special education (*e.g.*, verification reviews, coordinated compliance self-reviews, complaints monitoring, procedural safeguards, and the local plan, as further described in the *CSI Special Education Manual*);
- (14) Participate in any mandatory special education training offered or provided by CSI; and
- (15) **Compliance with Indemnification and Financial Obligations**
 - (i) In the delivery of special education programming at the Charter School in the manner and to the extent described in the Charter School's Charter Contract, the Charter School shall maintain a special education reserve account as a financial reserve to ensure compliance with the indemnification and financial obligations set forth in this MOU. This reserve shall be classified as an "Assigned Reserve" under Generally Accepted Accounting Principles (GAAP). This classification is defined in GASB Statement No. 54 "Fund Balance Reporting and Governmental Fund Type Definitions".

Such reserve or insurance shall not in any way limit the Charter School's obligation to indemnify CSI pursuant to any provision of this MOU; in the event the reserve or insurance is insufficient to fully pay costs incurred in connection with any claim or claims, the Charter School shall remain fully responsible for any remaining costs. The Charter School shall keep the reserve separate from other funds and shall not utilize it to satisfy any other requirements applicable to the Charter School.

- (ii) In maintaining such reserve, the Charter School should ensure:
- FY 2019-20 Adopted budget includes an assigned fund balance titled “SPED Reserve” in their detailed budget and CDE uniform budget summaries.
 - The amount of the FY20 budgeted SPED reserve requirement will be equal to 1 percent of the Oct 2018 actual funded pupil count times \$10K, but need not exceed \$90K.
 - The amount of the FY20 ACTUAL SPED reserve requirement will be equal to 1 percent of the Oct 2019 actual funded pupil count times \$10K, but need not exceed \$90K.
 - It is expected that in years subsequent to FY19-20, if the SPED reserve is used for unexpected high needs supports, it will be replenished by the end of the following fiscal year.

2(c): Oversight. CSI and the Charter School agree to the following terms of supervision, support, and enforcement.

- (1) CSI will periodically meet with the Charter School’s special education staff in order to familiarize itself with the Charter School’s special education program and to communicate any pertinent information, guidance, or directives to the Charter School. CSI will respond, in good faith and with due consideration, to any issue or concern the Charter School raises as to CSI’s policies and procedures.
- (2) The Special Education Coordinator of the Charter School shall attend to all school-level administrative, compliance, and programmatic tasks with regard to special education, and shall be primarily responsible for ensuring (1) that the special education program of the Charter School is effectively and lawfully carried out and (2) that the needs of students with disabilities and at risk for disabilities are met. The Charter School shall develop and consistently implement a process to ensure that all of its special education personnel or contracted personnel are appropriately credentialed and licensed. The Charter School may rely on its discretion to determine whether or not to contract with outside entities, such as consultants or local districts, for the provision of any mandated special education or related services.
- (3) CSI reserves the right to jointly direct with the Charter School the development and/or modification of any IEP for special education students enrolled at the Charter School. CSI’s Director of Special Education or designee shall maintain the same administrative authority, pursuant C.R.S. § 22-20-106 and regulations thereunder, as in all other CSI schools.

- (4) Upon request by CSI, the Charter School shall provide all appropriate documentation for Charter School personnel and contractors providing special education or related services, including documentation of licensure status, training, and the steps taken by the Charter School to comply with applicable credentialing requirements. The Charter School shall promptly update this information during the course of the school year, whenever the Charter School has changes in its personnel, contractors, or training.
- (5) The Charter School shall adopt and utilize a viable student plan management system for maintaining copies of assessments and IEP materials. Upon request, the Charter School will provide this information to CSI for its review.
- (6) The Charter School will also submit to CSI all required reports—including but not limited to Student October Count, Human Resources, Special Education December Count, Special Education Discipline, Special Education End of Year, SPED HR Forms, and IEPs for review—in a timely manner, allowing a reasonable time for response, as necessary to comply with federal and state law requirements.
- (7) The Charter School is responsible for the appropriate management of its special education budgets, personnel, programs, and services in accordance with state and federal law, which includes the requirement that special education funding received be used only for allowable special education purposes. CSI reserves the right to audit the use of special education funds provided to the Charter School to ensure compliance with program and fiscal requirements.

3: Specific Duties and Obligations

CSI and the Charter School agree to the following specific duties and obligations, which supplement but do not supplant the foregoing general duties and obligations.

3(a): Admission and Transferring of Students

- (1) No student otherwise eligible to enroll in the Charter School shall be denied enrollment on the basis of his or her special education status, unless the IEP Team determines the Charter School cannot provide FAPE consistent with CSI's Enrollment Procedures for Students with Disabilities. CSI's Director of Special Education is part of the IEP Team and will assist schools in making placement determinations. CSI will support its schools in the implementation of this obligation.
- (2) All students with disabilities shall be accorded a FAPE, including assuring special education and related services as part of the regular school day in the LRE appropriate for their needs.

- (3) Every student who is admitted or transferred with an IEP or Section 504 plan from his or her previous school shall be placed directly into a program that meets the requirements of such IEP or Section 504 plan—and the Charter School shall provide the special education and related services required by the IEP or Section 504 plan—unless and until the IEP or Section 504 plan is changed.
- (4) To the extent an IEP or Section 504 plan needs to be changed in order to be implemented by the Charter School, the IEP or Section 504 team will meet promptly to consider such changes as required by applicable law.

3(b): Assessments

- (1) Upon observation, review of accumulated data, and review of records, the Charter School may determine that assessment is necessary to determine possible eligibility for special education programs and related services.
- (2) Upon referral for an assessment, the Charter School will convene a meeting to review and discuss the request, in light of student records, acquired data, and student performance. If the Charter School determines that assessment for special education eligibility is not warranted, then prior written notice must be given to the parent/guardian with a clear rationale for such refusal within 15 days of the request.
- (3) If the Charter School determines that there are suspected disabilities, then the Charter School must develop an assessment plan, utilizing CSI's assessment process as outlined in the CSI Special Education Manual, within the 15-day timeline. The assessment plan shall describe the types of assessments that may be used to determine the eligibility of students for special education instruction and services. Assessments shall be conducted, within legal timelines, after receiving the parents' written consent.
- (4) The referral process shall include team meetings (1) to review prior interventions, accommodations, and modifications and (2) to recommend further interventions, accommodations, and modifications as appropriate. The referral process shall be supported by documented interventions such as the Multi-Tiered Systems of Support model approach, using data to identify student strengths and weaknesses or as otherwise appropriate so long as the approach is consistent with state and federal law.
- (5) For each student assessed, the Charter School shall conduct an IEP team meeting that includes required team members within mandated timelines, to discuss assessment results, determine eligibility, and (if eligible) specify special education instruction and services. The IEP team convened at the Charter School will make

decisions regarding eligibility, goals, program (including staffing and methodology), placement at the school, and exit from special education.

3(c): Alternative Placements

- (1) In the unusual event that, after a student is enrolled in the Charter School, the IEP team of the Charter School determines that the Charter School cannot provide a FAPE in the Charter School, as the LRE appropriate to the student, the Charter School shall contact CSI to discuss placement and service alternatives.
- (2) The IEP team convened at the Charter School shall have the authority to make offers of a FAPE and decisions regarding the staffing and methodology used to provide special education and related services at the Charter School.

3(d): LRE

- (1) The Charter School will support the education of students with disabilities, including students with moderate to severe disabilities, in the LRE appropriate to their needs, increasing as appropriate the interactions of students with disabilities with non-disabled students.
- (2) The Charter School's general program of instruction for students with disabilities shall be responsive to the required sequence of courses and related curricular activities provided for all students in the Charter School. Assessment and standardized testing procedures shall be implemented, including guidelines for modifications and adaptations, to monitor student progress.

3(e): Staffing Requirements

- (1) The Charter School shall ensure that the teachers and other persons who provide services to students with disabilities are knowledgeable of the content of students' IEPs.
- (2) The Charter School shall provide planned staff development activities and participate in available and mandatory CSI trainings to support access by students with disabilities to the general education classroom, general education curriculum, integration of instructional strategies and curriculum adaptations to address the diverse learner, and interaction with non-disabled peers.
- (3) The Charter School shall maintain responsibility for monitoring progress towards IEP goals for students with disabilities. The Charter School shall assess and develop individual transition plans to help students with disabilities transition to adult living in accordance with CSI policies and procedures.

3(f): Student Discipline

- (1) The Charter School will ensure that it complies with state and federal laws, including the IDEA, regarding discipline of students with disabilities.
- (2) The Charter School shall include positive behavioral interventions in its discipline procedures.
- (3) The Charter School will consult with CSI, for any special education student, (1) prior to convening a manifestation determination, (2) prior to recommending expulsion, and (3) prior to the eleventh day of cumulative suspension.
- (4) The Charter School will collect data on the number of special education students suspended or expelled, distinguishing between in-school and out-of-school suspensions. The Charter School will report this data to CSI annually.

3(g): Procedural Safeguards and Due Process Hearings

- (1) If CSI determines that such action is legally necessary to ensure compliance with applicable federal and state special education laws and regulations, CSI may: (1) invoke dispute resolution provisions set out in the charter application, Program Plan, or Charter Contract; (2) initiate due process hearings; and/or (3) utilize other procedures applicable to the Charter School.
- (2) The Charter School may initiate dispute resolution provisions under the Charter Contract or as provided by law.
- (3) CSI and the Charter School shall work together in a good faith attempt to resolve disputes at an early stage (such as through informal settlement or mediation).
- (4) During due process proceedings and any other legal proceedings or actions involving special education, the Charter School will be responsible for its own representation. If the Charter School retains legal representation for a due process proceeding or other legal proceeding or action, the Charter School will be responsible for the cost of such representation.
- (5) The Charter School shall be responsible for satisfying any award by a due process hearing officer, a court, or a settlement, according to the terms of the Charter Contract. This obligation may include, without limitation, any award of (i) prospective special education and related services, (ii) compensatory education, (iii) reimbursement, and/or (iv) attorneys' fees and costs. This obligation may be based on, without limitation, allegations concerning (i) identifying students with disabilities, (ii) assessing students, (iii) conducting IEP team meetings, (iv) developing appropriate IEPs, and/or (v) implementing

IEPs. As provided in Section 2(b)(15) above, the Charter School shall assure that appropriate funds are available to meet such obligations.

- (6) CSI shall jointly participate in the defense of any special education claim based on action by the Charter School Institute that CSI expressly directed the school to take, over the objection of the school. CSI shall be responsible for satisfying an obligation, as described in the preceding paragraph, only according to the terms of the Charter Contract.

3(h): Complaints

- (1) In the event of a complaint involving a student with an IEP or Section 504 plan, the Charter School shall inform the CSI Director of Special Education and shall follow (i) all state and federal rules and (ii) all CSI-approved grievance procedures.
- (2) CSI shall investigate, cooperate with, and respond to all formal special education complaints CSI receives pertaining to the Charter School. CSI shall inform the school in writing of the complaint in accordance with the Charter Contract or prior to any CSI investigation, whichever comes first.
- (3) The Charter School shall cooperate with CSI in any such investigations and shall provide CSI with any and all documentation required to respond to complaints within the timelines imposed by the investigating agency. The Charter School will be solely responsible for any and all costs resulting from, arising out of, or associated with the investigation and implementation of appropriate remedies in a manner consistent with paragraphs 3(g)(5) and 3(g)(6) above.

3(i): LEA

- (1) As the LEA for the charter schools it authorizes, CSI will determine the policies and procedures necessary to ensure that the protections of special education law extend to all public school students at CSI schools.
- (2) CSI will track all schools using the CSI Student Services Screener (or its replacement). CSI may monitor the Charter School's compliance and may direct such changes as necessary to comply with federal or state law or policies, or CSI policies or procedures, concerning the Charter School's: referral processes; evaluations; reevaluations; eligibility determinations; placement decisions; and development and implementation of IEPs.
- (3) In the event of any disagreement between the Charter School and CSI with regard to the duties of the Charter School under this MOU, CSI's reasonable interpretation of those duties and its good faith assessment of the sufficiency of the Charter School's actions in carrying them out shall be binding.

4: Miscellaneous Provisions

4(a): Notices

All notices or the provision of written information shall be given via U.S. mail to the following contacts, unless the Parties expressly agree to a substitute method on a case-by-case basis:

CSI:

Colorado Charter School Institute
1600 N. Broadway, Suite 1250
Denver, CO 80202

Charter School:

SCHOOL

ADDRESS

4(b): Modifications

With the exception of changes to CSI policies and procedures regarding special education, the provisions of this MOU may be modified, supplemented, or terminated only through written agreement of the Parties.

4(c): Integration/Incorporation

This MOU does not supersede any conflicting provisions in the Charter Contract and is not a material revision to the Charter Contract within the meaning of C.R.S. § 22-30.5-508(4). The Parties agree, however, that this MOU reflects their current mutual understanding of how the terms and provisions of the Charter Contract are to be implemented.

4(d): Term

This MOU is effective upon execution and expires August 31st, 2020.

Signatures

For CSI:



Dr. Terry Croy Lewis

Executive Director

Date: June 25th, 2019

For the Charter School:

Name:

SCHOOL School Leader

Date:

Name:

SCHOOL Board Chair

Date: