

MEMORANDUM OF AGREEMENT

FY 2023 – 2024

MEMORANDUM OF AGREEMENT FOR SPECIAL EDUCATION SERVICES BETWEEN BEREAN ACADEMY NUMBER 040063203105 AND COCHISE COUNTY

This Memorandum of Agreement for Special Education Services (hereinafter referred to as this “MOA”) is made and entered into by and between BEREAN ACADEMY NUMBER 040063203105 (hereinafter referred to as “SCHOOL”) and Cochise County through the Cochise County School Superintendent also known as Cochise County Education Service Agency (hereinafter referred to as “CochisESA”). SCHOOL and CochisESA may each be referred to individually as a “Party” or “party” and collectively as the “Parties” or “parties.”

RECITALS

WHEREAS, the CochisESA is designated as a local education agency for the purpose of serving as an education service agency that is eligible to receive and spend local, state, and federal monies to provide programs and services to school districts, charter schools, county free library districts, and municipal libraries within that county pursuant to A.R.S. § 15-301; and

WHEREAS, CochisESA may provide discretionary programs to SCHOOL pursuant to A.R.S. § 15-302(B); and

WHEREAS, CochisESA may establish service programs and SCHOOL may participate in service programs established pursuant to A.R.S. § 15-365; and

WHEREAS, each party is authorized to provide special education and related services for all children with disabilities and make such programs and services available to all eligible children with disabilities who are at least three years but less than twenty-two years of age pursuant to A.R.S. § 15-764; and

WHEREAS, the parties are authorized and wish to enter into this MOA for joint or cooperative action for the CochisESA to provide support to SCHOOL for special education services for all children with disabilities who are enrolled at SCHOOL.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SCHOOL and CochisESA, intending to become legally bound, agree as follows:

- 1. Duration/Term.** This MOA's term is for one (1) year and shall be effective for Fiscal Year 2023-2024 (hereinafter referred to as "FY 2023-24") from July 1, 2023 through June 30, 2024.
- 2. Termination.** The parties may terminate this MOA with thirty (30) days prior written notice to the other party specifying the termination date. Any termination of this IGA shall not relieve the parties of responsibility for their costs incurred prior to the effective date of the termination.
- 3. Cancellation for Conflict of Interest.** This MOA is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this MOA by reference.
- 4. Scope of Services.** CochisESA agrees to provide the following services to SCHOOL, as provided for in Exhibit A, to support the special education services SCHOOL provides to its students with disabilities during the term of this MOA for FY 2023-24.
- 5. Payment and Consideration.** CochisESA shall invoice SCHOOL for special education services provided pursuant to this MOA. SCHOOL is responsible for and shall pay all charges assessed by CochisESA in accordance with this MOA within thirty (30) days of the date on which an invoice is received by SCHOOL from CochisESA.
- 6. Confidentiality of Student Records; Privacy of Records.** The parties shall keep confidential all student records and all student's personally identifiable information in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and regulations adopted thereunder, including 34 CFR part 99; the Reauthorization of the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S. Code § 1400, and regulations adopted thereunder;

the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations adopted thereunder; the Privacy Act of 1974, 5 U.S.C. § 552a, and regulations adopted thereunder; State and Federal law; and SCHOOL and school board policies. For the purposes of the services provided pursuant to this MOA, SCHOOL has designated CochisESA as a “school official” under FERPA.

- 7. Retention and Inspection of Records.** Each party shall make, and shall contractually require each subcontractor to make, all books, accounts, reports, files, and other records relating to the performance of this MOA open to inspection and audit at reasonable times during regular business hours. Each party shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files, and other records relating to the performance of this MOA for a period of five (5) years after termination of this MOA.
- 8. Non-appropriation of funds.** The parties recognize and acknowledge that SCHOOL and CochisESA are governmental entities and this MOA’s validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of SCHOOL’s or CochisESA’s obligations under this MOA, then SCHOOL or CochisESA, as appropriate, shall notify the other party in writing of any such non-allocation of funds at the earliest possible date, and this MOA shall automatically expire without penalty to SCHOOL or CochisESA, except that the parties are still responsible for their costs incurred prior to any expiration of this MOA. If SCHOOL’s or CochisESA’s allocation of funds are reduced, then the scope of this MOA may be reduced, if appropriate, or this MOA may be cancelled without further duty or obligation, except that the parties are still responsible for their costs incurred prior to any cancellation of this MOA.
- 9. Property Disposition Clause.** The Parties do not anticipate the joint acquisition of property attributable to the exercise of each Party’s duties and obligations pursuant to this MOA. Any property acquired during the term of this MOA shall be returned to the purchasing Party no more than thirty (30) days from the effective date of termination of this MOA.
- 10. Insurance.** Each party shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.
- 11. Mutual Indemnification.** To the maximum extent permitted by law, each Party (as “Indemnitor”) agrees to indemnify, defend and hold harmless the other

Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of actions taken in performance of this MOA to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

- 12. Notices.** All notices required or permitted to be given under the terms of this MOA shall be in writing, and shall be effective upon hand delivery, deposit with a reputable overnight courier such as FedEx for overnight delivery or three (3) business days after deposit with the U.S. Mail via certified or registered mail, postage prepaid, return receipt requested as follows:

If to SCHOOL to:

BEREAN ACADEMY NUMBER 040063203105
Attn: Frank Yanez
1169 Colombo Ave.
Sierra Vista, AZ 85635

If to CochisESA to:

Cochise County School Superintendent
Attn: Jacqui Clay
4001 Foothills, Suite 1
Sierra Vista, AZ 85615

The parties shall have the right from time to time to change the place notice is to be given in accordance with this paragraph by written notice thereof to the other parties.

- 13. Relationship of Parties.** Nothing contained in this MOA shall be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. The parties' employees shall not be considered employees of the other party, and neither party's personnel will, by virtue of this MOA, be entitled or eligible, by reason of this MOA, to participate in any benefits or privileges given or extended by the other party to its employees.
- 14. Third Parties.** Nothing contained in this MOA shall create a contractual relationship with or a cause of action in favor of a third party against SCHOOL or CochisESA. This MOA is not intended to benefit any third party.

- 15. Assignment.** No party to this MOA may assign any of its rights or responsibilities under this MOA, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other parties. No party may delegate any performance under this MOA, except with the prior written consent of the other parties. Any purported assignment of rights or delegation of performance in violation of this section is void.
- 16. Compliance with Law.** The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this MOA, including environmental laws.
- 17. Fingerprint and E-verify.** If required, and only to the extent required, the parties shall comply with the fingerprinting provisions in A.R.S. § 15-512(H) and the e-verify provisions in A.R.S. § 41-4401.
- 18. Non-discrimination.** The parties shall comply with State Executive Order 2009-09, the pertinent provisions of which are incorporated into this MOA by reference, and which mandate, in part, 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, or disability.
- 19. Legal Arizona Workers Act Compliance.** The Parties hereby warrant that they will at all times during the term of this MOA comply with all federal immigration laws applicable to their employment of their employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the “State and Federal Immigration Laws”). A breach of the foregoing warranty shall be deemed a material breach, and the parties shall have the right to terminate this MOA for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor or subcontractor employee who performs work pursuant to this MOA to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.
- 20. Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this MOA shall be resolved through the use of arbitration when the case or

lawsuit is subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.

- 21. Governing Law.** This MOA shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Arizona. The parties agree to bring any legal proceedings arising under this MOA in a state or federal court of competent jurisdiction within Cochise County, Arizona. Any changes in governing laws, rules, and regulations that do not materially affect this MOA will apply during the term of this MOA and will not require an amendment.
- 22. Material Change in Law or Regulation.** In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this MOA or the relationship among the parties hereto, either party may propose amendments to this MOA to bring this MOA into conformity with such laws. If SCHOOL and CochisESA are unable to reach agreement on the renegotiation of this MOA within thirty (30) days of the initiation of negotiations, then either party may terminate this MOA upon written notice to the other party.
- 23. Implied Contract Terms.** Each provision of law and any terms required by law to be in this MOA are a part of this MOA as if fully stated herein.
- 24. Severability/Unenforceable Provisions.** In the event that any of the provisions of this MOA are held to be unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected, and effect shall be given to the intent manifested by the provisions held enforceable and valid. If any of the provisions of this MOA are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.
- 25. Waiver.** A party's failure or neglect to enforce any term, covenant, condition, right, or duty in this MOA does not constitute a waiver of any term, covenant condition, right, or duty, nor is it deemed to be a waiver of that party's rights or remedies under this MOA. A waiver or extension is only effective if it is in writing and signed by the party granting it. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right, or duty in this MOA shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right, or duty.

- 26. Headings and Construction of Agreement.** In construing this MOA, all headings and titles are for the convenience of the parties and for organizational purposes only and shall not be considered in interpreting the meaning of any provision in this MOA or considered a part of this MOA. Whenever required by the context, each number shall include the plural, each gender shall include all genders, and unless the context otherwise requires, the word "person" shall include corporation, firm or association. This MOA shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.
- 27. Parol Evidence.** This MOA is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this MOA.
- 28. Entire Agreement.** This MOA contains the entire, integrated agreement of the parties and there are no oral agreements, understandings, or representations relied upon by the parties. This IGA supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this MOA must be in writing and signed by all parties.
- 29. Execution in Counterparts.** This MOA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto. Each of the parties may sign any number of copies of this MOA. Each signed copy shall be deemed to be an original, but all of them together shall represent one and the same agreement.
- 30. Legal Agreement.** This MOA is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this MOA, each person signing this MOA represents and warrants that he or she is duly authorized and has the legal capacity to execute this MOA and understands the meaning of all terms contained herein and agrees to their application and enforceability.

APPROVALS

The parties have caused this MOA to be executed by their duly authorized officials and have affixed their signatures to this MOA on the date written below.

SCHOOL: BEREAN ACADEMY NUMBER 040063203105

Frank Yanez
Signature

Date: 10-10-2023

Frank Yanez, Executive Director
Printed Name and Title

CochisESA: Cochise County through the Cochise County School Superintendent also known as the Cochise County Education Service Agency

Jacqui Clay
Cochise County School Superintendent

Date: _____

Peggy Judd, Chair
Cochise County Board of Supervisors

Date: _____

ATTEST:

Sharon Gilman, Interim Clerk of the Board
Cochise County Board of Supervisors

Date: _____

EXHIBIT A

CochisESA agrees to provide the following services to SCHOOL to support the special education services SCHOOL provides to its students with disabilities during the term of this MOA for FY 2023-24 for the costs specified below:

CochisESA will offer services to SCHOOL at the following rates for SY23/24:

These services cover evaluation, screening, METs/IEPs, Counseling, Functional Behavioral Assessment, Functional Behavioral Plans, and Coaching.

Service	Full-day Rate	Half-day Rate	Hourly Rate
School Psychologist	\$500	\$250	\$66
School Psychologist Assistant	\$400	\$200	\$50
Behavioral Inter. Specialist	\$300	\$150	\$40
Behavioral Inter. Coach	\$280	\$140	\$35
Child Find Screening	\$1000		