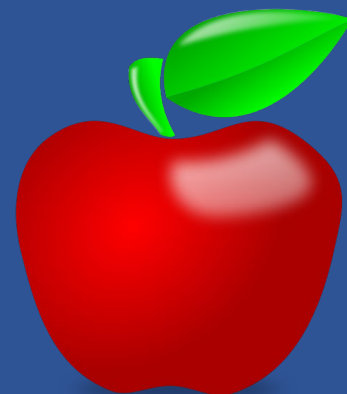


School-Based Health Centers 101

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Using This Toolkit

- ◆ **The content of this toolkit does not, and is not intended to, constitute legal advice; instead, all information and content is for general informational purposes only.**

This toolkit was published in December 2022. The content of this toolkit may not constitute the most up-to-date legal or other information. Users of this toolkit should contact their attorney to obtain advice with respect to any specific legal matters and questions. No user of this toolkit should act or refrain from acting on the basis of information in this toolkit without first seeking legal advice from their counsel. Only a user's individual attorney can assure when the information contained herein, and the user's understanding of it, are applicable or appropriate to an individual situation. Use of this toolkit does not create an attorney-client relationship between the user and the toolkit authors. All liability with respect to actions taken or not taken based on the contents of this site are hereby expressly disclaimed. No representations are made that the content is completely free of error.

That being said, the authors of this toolkit are eager for this to be a helpful resource in creating awareness about typically successful practices for school districts hosting school-based health centers and lessons learned since they have been established, with an eye toward supports and constraints found in Washington state law. We welcome your feedback and questions and provide our contact information at the end of this toolkit.

What is a School-Based Health Center (SBHC)?

- ◆ **A student-focused health center located in or adjacent to a school where students can receive integrated medical, behavioral health, and other healthcare services such as dental care.**

SBHC staffing typically includes at minimum a primary care provider, behavioral healthcare provider, and a clinic coordinator. An SBHC may also include dental, vision, and other health professionals. Students must be enrolled by their families to receive the full range of services provided by the SBHC.

The primary care offered at an SBHC may include:

- ◆ preventive well-child visits
- ◆ sports physicals
- ◆ immunizations
- ◆ management of chronic medical conditions such as diabetes and asthma
- ◆ treatment of illness or injury
- ◆ nutrition counseling
- ◆ reproductive health services
- ◆ mental health services
- ◆ substance abuse services
- ◆ telehealth
- ◆ and referrals to community providers for services not offered at the SBHC.

SBHCs can help promote equity in healthcare and health outcomes, particularly in historically marginalized communities. For example, it can be very helpful that a parent does not have to take time off work, arrange transportation, and take a child to a health appointment. In addition, promoting student health is interdependent with school attendance and academic progress, so that illness and healthcare needs are not barriers to education.

School Nurses vs. SBHCs: Differing roles

Since SBHCs and school nurses' offices both provide healthcare services, there can be confusion as to whether both entities are doing the same thing, or whether students' needs could be met by just one rather than both. However, each provides a unique and valuable benefit to the student community. Here is a general breakdown of what students typically access specifically at their school nurses' office and at an SBHC.

School nurses:

- ◆ Conduct mandatory vision and hearing screenings
- ◆ Track immunization schedule compliance
- ◆ Help students manage chronic disease and life-threatening health conditions such as asthma and diabetes
- ◆ Care for students dependent on medical technology
- ◆ Help students manage medications
- ◆ Screen and refer students for additional healthcare services in the community
- ◆ Supervise and support execution of Section 504 plans for students requiring medical accommodations at school
- ◆ Prepare for and respond to medical emergencies at school
- ◆ Conduct mental health screenings
- ◆ Healthcare planning and education

SBHCs:

- ◆ Provide preventative primary care
- ◆ Administer immunizations
- ◆ Perform sports physicals
- ◆ Diagnose conditions and ailments
- ◆ Write prescriptions
- ◆ Provide reproductive health care (*i.e.* pregnancy tests, contraceptives, STD testing)
- ◆ Mental health counseling/therapy
- ◆ Order lab testing
- ◆ Provide nutrition counseling

Sharing Student Data

- ◆ **In general, student data cannot be shared between a school district and an SBHC without a written release by the student's guardian.**

- ◆ **Sharing student data with parents:**

- School District:
- SBHC

Under FERPA, parents/guardians are entitled to inspect and review their child's education records. Typically, there are no restrictions on what educational records a school is permitted by law to share with the student's parent/guardian.

By contrast, there are restrictions on the records an SBHC can share with a student's parents/guardians. When a minor student has consented to care for reproductive health services, mental health services, or substance abuse-related services, an SBHC cannot share that information with a student's parents/guardian without the student's authorization.

- ◆ **Can the school district share student education records with an SBHC?**

All of the records, files, documents, and other materials which contain information directly related to a student are considered education records and are protected by the federal law FERPA. The school district may only provide student education records to an SBHC with signed, written consent from the student's parent/guardian or adult student, unless a FERPA exception applies, such as directory information or health and safety emergency. An example of a FERPA consent form appears in this toolkit.

A school district could also provide student data containing no personally identifiable information. The data must not contain direct or indirect identifiers, biometric records, or other information that alone, or in combination, would allow a reasonable person in the school community to identify an individual student with reasonable certainty.

- ◆ **Should the school district share student educational records with an SBHC under the school official exception?**

Under the school official exception, a school district may provide access to student education records without parent/guardian consent when an SBHC performs an institutional service or function for which the school district would otherwise use employees. Although it may be possible in certain situations to apply this exception to the work of an SBHC, it is not advisable. For example, record-sharing in this manner can contribute to an apparent agency argument in which a student's parent/guardian attempts to hold a school district accountable for actions by an SBHC employee. As a result, using this exception could increase the risk of financial liability for a school district.

Additionally, if a school district becomes involved with the day-to-day operations of the clinic, it may be operating in violation of Washington law. A 1989 Attorney General Opinion regarding health care clinics on school property states that "a district may not, under the guise of lease conditions, actually participate in the day-to-day operations of an adolescent health care clinic." AGO 1989 No. 17.

- ◆ **Addressing data sharing in the lease agreement.**

The lease agreement with the SBHC should make expressly clear that the school district and the SBHC and/or SBHC sponsor must separately and independently maintain their respective records to ensure compliance with FERPA and help maintain students' privacy rights.

Example lease provisions:

1. Both parties, their officers, employees, and subcontractors shall agree to maintain confidentiality regarding all education records, medical records, or any other student or employee records or information obtained during the Lease and each shall be responsible for ensuring that their employees and agents abide by such obligations. Neither party, its employees, and subcontractors shall engage in any practice that could compromise the confidentiality of students, patients, guests or staff, or information maintained at the Premises. Both parties agree that any student education or medical information or records obtained in connection with this Lease and/or services provided by the SBHC sponsor are confidential and cannot be disclosed to any third party unless disclosure is expressly authorized or required under applicable law. Tenant and its employees and agents understand that identifiable student information and education records maintained by the school district are confidential and subject to the Family Educational Rights Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99, Tenant and its employees and agents understand that student education records will not be released without written authorization from the students parent/guardian (or from the student if 18 years of age or older) or to comply with state or federal law or a court order. Tenant and its employees and agents agree that any student education records received from the school district will not be disclosed to any third party except as authorized under FERPA.

2. Tenant shall retain all medical records, and such records shall be the property of Tenant, and not a part of student's educational records. The school district's education records for its students are the property of the school district, and are not a part of the medical records for any student maintained by tenant. Tenant shall not have access to the school district's education records for its students except as authorized under FERPA. The school district shall not have access to tenant's medical records for its patients except as authorized under HIPAA.

HIPAA and FERPA:

An introduction

- ◆ **Hosting a school-based health center requires some familiarity with HIPAA, and when HIPAA and FERPA come into play.**

- ◆ **What is HIPAA?**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects the privacy of patient health information held by what it refers to as “covered entities.” “Covered entity” is defined by HIPAA to mean health plans, health care clearinghouses, and health care providers who transmit health information in electronic form related to certain types of transactions.

- ◆ **When does HIPAA apply?**

HIPAA applies when submitting claims to health insurers, making benefit and coverage inquiries to insurers, making inquiries about submitted claims, and sending health care authorization requests, among other types of transactions.

- ◆ **Does HIPAA apply to school districts?**

HIPAA does not apply to school districts in almost all situations. In most cases, HIPAA does not apply to a school district because the school district either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are by definition “education records” under FERPA and, therefore, is not subject to the HIPAA Privacy Rule. HIPAA’s definition of protected health information (PHI) specifically excludes education records covered by FERPA.

◆ **Are there exceptions to HIPAA?**

Yes. Generally, HIPAA prohibits covered entities from releasing any protected health information unless they have written permission for the release. It is best practice to consult with legal counsel before determining an exception applies. Exceptions include disclosures to law enforcement and social service agencies regarding cases of suspected abuse, neglect, or domestic violence; disclosures to a health agency providing legal oversight of covered entities (such as audits, inspections, and disciplinary actions); disclosures in the process of defending or testifying regarding a malpractice claim; and disclosures made as part of a covered entity's training program or credentialing activities.

◆ **What is FERPA?**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of students' personal records held by "educational agencies or institutions" that receive federal funds under programs administered by the U.S. Secretary of Education.

"Educational agencies or institutions" are defined by FERPA as institutions that provide direct instruction to students, such as schools, as well as educational agencies that direct or control schools, such as school districts. Almost all public school districts receive some form of federal education funding, and therefore must comply with FERPA.

"Education records" are defined by FERPA as records, files, documents, or other materials that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution. Communications that are not recorded in any form, such as the contents of a conversation between a teacher and student in a hallway, are not part of the education record and are not subject to FERPA. Therefore, FERPA does not apply to all information at a school exchanged by school staff—only what is recorded.

"Information directly related to a student" is defined by FERPA as any information "that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community . . . to identify the student with reasonable certainty."

Only school staff with a “legitimate educational interest” in student records should be able to access them. FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education file to school officials, and, if so, which parties are considered school officials for this purpose and what the school considers to be a “legitimate educational interest.” FERPA also requires educational agencies to allow parents to access, seek to have the records amended, and have some control over the disclosure of personally identifiable information from their minor student’s education records.

◆ **Are there exceptions to FERPA?**

Yes. It is best practice to consult with legal counsel before determining an exception applies. Generally, FERPA prohibits educational agencies from releasing any information in the education record unless they have written permission for the release. In most cases, a parent must sign that release. When students are eighteen years old or older, they sign their own release forms.

Exceptions include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record; “directory information” about students if the school and district have given public notice to parents about the types of information the school and district consider directory information, the parents’ right to refuse directory disclosures, and how long parents have to inform the school or district about their intent to opt out; and sharing information in emergency situations with contractors.

◆ **Does FERPA have an emergency exception?**

FERPA authorizes disclosures to “appropriate parties” if “knowledge of the information is necessary to protect the health or safety of the student or other individuals.” *See* 20 U.S.C § 1232g(b)(1)(I). “Emergency” is to be strictly construed. *See* 34 C.F.R §§ 99.31(a)(10), 99.36.

This exception allows disclosure of information contained in student education records to respond to a specific situation posing an imminent danger. In FERPA’s words, the disclosure is permissible:

if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals.

In making [this] determination, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

See 20 U.S.C § 1232g(b)(1)(I).

HIPAA and FERPA: FAQs

◆ **Can FERPA and HIPAA apply at the same time to the same records?**

No.

◆ **Does FERPA or HIPAA apply to student health information contained in school records, such as and Individualized Education Program (IEP) documents?**

In almost all cases, student health records maintained by a school, such as sports physical examination forms, IEP assessments, and records of immunizations, are part of the education file, meaning that FERPA applies, not HIPAA.

FERPA does not treat health information in a minor's education file differently than it does any other information, such as grades or demographic information in the file. This includes mental health records.

◆ **Does FERPA or HIPAA apply to school nursing records?**

In general, a school nurse's records become part of the school's education record, as they contain information related to a student and are maintained by a school employee or agent. These records are not covered by HIPAA because HIPAA specifically exempts from its coverage health information in an education record.

◆ **Can a school or school district share information from student education records with a community health provider for purposes of providing that student with health services?**

Only 1) in the event of a health or safety emergency, pursuant to the related FERPA emergency exemption and 2) when the minor student's parent or a student over the age of 18 has completed a FERPA release for

the community health provider, regardless of whether that provider works in a school-based health center or elsewhere in the community.

In the absence of written authorization, the school could provide the health provider access to directory information depending on how the school district has defined directory information in its annual notice to parents, and whether parents have opted out. In addition, the school also may disclose information to the provider that is not contained in the education record, such as information from oral communications or personal observation that have not been recorded.

◆ **Can a school nurse share protected health information with a student’s pediatrician?**

See the answer above to “Can a school or school district share information from student education records with a community health provider for purposes of providing that student with health services?” Only 1) in the event of a health or safety emergency, pursuant to the related FERPA emergency exemption and 2) when the minor student’s parent or a student over the age of 18 has completed a FERPA release for the community health provider, regardless of whether that provider works in a school-based health center or elsewhere in the community.

In the absence of written authorization, the school could provide the health provider access to directory information depending on how the school district has defined directory information in its annual notice to parents, and whether parents have opted out. In addition, the school also may disclose information to the provider that is not contained in the education record, such as information from oral communications or personal observation that have not been recorded.

◆ **Can a health care provider at a school-based health center share protected health information with a teacher or principal at their host school about how a student is progressing?**

Only when the minor student’s parent or a student over the age of 18 has completed a HIPAA release for the health care provider. Otherwise, there is no exception under HIPAA that would allow a provider to share protected health information with a teacher for this purpose.

◆ **Can a health care provider, such as a student’s pediatrician, share protected health information with the school nurse?**

Usually, yes. As always, the information can be shared when the minor student’s parent or a student over the age of 18 has completed a HIPAA release for the health care provider. Otherwise, HIPAA permits health care providers to disclose protected health information to other health care providers for “treatment” purposes. HIPAA defines “treatment” broadly in this context to include coordination or management of health care, consultation, and referral as well as direct treatment. Health providers also are allowed to disclose information to other providers even without authorization in a few other circumstances, such as in certain medical emergencies.

If a health care provider provides health information to a school nurse, and the school nurse puts the information in school nursing records, FERPA likely will apply when determining access to the information in the copy stored by the school nurse in future, rather HIPAA. This means that information that was once protected under HIPAA may lose those protections once it is placed in a student’s education file. This is of particular note with regard to health issues for which students may want privacy from their parents, including gender identity, sexuality, mental health, and substance abuse.

◆ **Can a health care provider, such as a student’s pediatrician, share protected health information with school staff other than a school nurse when they learn of a threat of harm?**

Yes. An SBHC provider may learn information related to a student’s risk of harm to themselves or threat of harm to others and may be in a position to warn their hosting school district.

HIPAA provides that when a health care provider believes in good faith that a patient poses an imminent threat to the health or safety of the patient or to others, the provider may disclose information about a patient to law enforcement, family, school administrators, campus police, or others who may reasonably be able to prevent or lessen the risk of harm.¹

The Washington Supreme Court also recently expanded and made compulsory a mental health counselor’s duty to warn, holding, “the mental

¹ 45 C.F.R. § 164.512(j); OCR Guidance titled, “HIPAA Privacy Rule and Sharing Information Related to Mental Health”; DHHS Message to Our Nation’s Health Care Providers dated January 15, 2013.

health professional is under a duty of reasonable care to act consistent with the standards of the mental health profession and to protect the foreseeable victims of his or her patient.”² Thus, SBHC mental health counselors have an obligation to share information to protect foreseeable victims from harm. We recommend adding the following provision to the lease to reinforce a practice of information sharing to prevent risks of harm, and to provide MultiCare notice of the school district’s threat assessment policy.

Example lease provision:

If and when any SBHC employee believes in good faith that a patient poses an imminent threat to the health or safety of the patient or to others, the SBHC shall provide information regarding the threat to the District necessary to prevent or lessen the risk of harm to the fullest extent allowed under the law. The SBHC acknowledges that (1) HIPAA allows health care providers who believe in good faith that a patient poses an imminent threat to the health or safety of the patient or to others may disclose information about a patient to law enforcement, family, school administrators, campus police, or others who may reasonably be able to prevent or lessen the risk of harm; (2) that Washington law requires mental health professionals to protect the foreseeable victims of a patient; and (3) that the school district has a Plan for Recognition, Screening, and Response to Emotional or Behavioral Distress in Students which may be employed to address such risks/threats.

² *Volk v. DeMeerleer*, 187 Wn. 2d 241, 386 P.3d 254 (2016).

Minor Consent to Healthcare

Some students will not seek needed health care, including mental health, substance abuse and sexual/reproductive health care, if they have concerns about their family learning they received that care. Those students may be more likely to seek and access needed care if it is available at an SBHC at their school. To alleviate minors' privacy concerns from whether they seek health care, and how openly they share with their health care providers, Washington law allows minors to consent to and access healthcare in the absence of parent/guardian consent in some scenarios.

In Washington State, the general age of majority for health care is 18. However, a minor over the age of 13 can receive treatment without parental consent for outpatient mental health treatment, inpatient mental health treatment, and outpatient substance abuse treatment. In addition, a minor over the age of 14 can consent to sexually transmitted disease testing and treatment and a minor of any age can consent to family planning services/care including birth control, prenatal, and abortion. Generally, HIPAA treats parents as the "authorized representative" and gives them access to the health information of their unemancipated minor children, including adolescents. However, in situations where a minor has been able to consent to their own care, they would have to give permission for their parents to have access to records related to that care. Further, parent/guardian access is limited in situations that involve abuse or endangerment or when it would not be in the minor's best interest. 45 C.F.R. § 164.502(g)(5).

Students must be enrolled by their parents/guardians to receive the full range of services provided by the SBHC. One reason is certainly to coordinate with the student's health insurance for payment for services. Major payment sources sustaining SBHC services include private insurance, Medicaid, and children's health insurance program (CHIP), although most of the necessary funds come from state and federal government. However, it is also an issue of consent.

Students not enrolled in the SBHC by their parents/guardians may still access confidential reproductive or behavioral health services, if available at the specific SBHC.

Services which a minor may independently consent to in Washington, regardless of age:

- ◆ Birth control
- ◆ Abortion
- ◆ Prenatal care services
- ◆ Emergency medical services (if guardian's consent is not readily available)

Services which a minor age 13 and over may independently consent to in Washington:

- ◆ Outpatient mental health treatment
- ◆ Inpatient mental health treatment
- ◆ Outpatient substance abuse treatment
- ◆ Inpatient substance abuse treatment

Services which a minor age 14 and over may independently consent to in Washington:

- ◆ Sexually transmitted disease testing and treatment

Services which a minor may independently consent to under Mature Minor Doctrine in Washington:

- ◆ Non-emergency medical services
- ◆ Immunizations

Services that require notifying the minor's parents:

- ◆ Inpatient mental health treatment
- ◆ Inpatient substance abuse treatment (when school district personnel refer a minor, they must notify parents/guardians within 48 hours)

If a student receives mental health or sexual reproductive health services, may parents access their student's protected health information?

Not without obtaining written authorization from the student on a HIPAA-compliant authorization form if the student was the one who provided consent for the services. Minors can independently consent to these services without their parents' knowledge. Records regarding pregnancy or birth control services

provided to a minor cannot be disclosed to parents without the minor's written authorization. 42 U.S.C. § 290dd-2; 42 C.F.R. Part 2.

Although unlikely, if the records are within an education file subject to FERPA, the parent may access the information for students under age 18 or for the time period after a student turns 18 when the student is claimed as a dependent by either parent for tax purposes. Generally, a parent has the right to review their minor child's education record.

The Mature Minor Rule

The Mature Minor Rule was created in *Smith v. Seibly*, 72 Wn.2d 16 (1967) and allows health care providers to treat youth under the age of eighteen as adults based upon an assessment and documentation of the youth's maturity.

The Mature Minor Rule requires that providers consider the Mature Minor Factors below to determine whether a youth meets one or more of the factors and therefore has the capacity to understand the proposed health care service and/or treatment and is sufficiently mature to make their own health care decisions.

- ◆ Freedom from parents or guardian: lives apart, manages their own affairs?
 - The youth is living apart from their parents or guardians and is managing their own affairs.
- ◆ Age and maturity?
 - The youth is able to provide reliable information and make important decisions with good insight and judgment.
- ◆ Self-supporting?
 - The youth is financially independent from parents or guardians or is involved in a work-training program.
- ◆ Training and experience?
 - The youth has sufficient training and experience to make knowing and intelligent healthcare decisions.
- ◆ General conduct as an adult?
 - The youth demonstrates the general conduct of an adult.

SBHC Legal Frameworks: Leases and MOUs

Over time, school districts have increased opportunities for outside providers to offer services and activities in their schools. By doing so, they become hubs of community activity and school buildings experience greater utilization for public benefit. Often, the additional services and activities available at school sites help to enhance student educational experience and increase academic achievement, providing a valuable benefit to the school district.

Whenever a school district expands the utilization and types of uses in their buildings, there will be an increased risk of liability. At the outset, a school district should contemplate whether they are willing to accept some risk for the potential student benefit that may be received. Although the risk of legal liability will never be eliminated, there are several ways in which the law and legal agreement structure surrounding the activity can help to limit a school district's risk.

For school-based health centers, it is important to set up a legal agreement structure around the use to limit the school district's risk of liability to the maximum extent possible. The most important agreement to put into place with an SBHC is a **commercial landlord-tenant lease agreement**.

With respect to commercial leases, landlords need to exercise reasonable care to assure that lawful guests and employees of the tenant are not subject to an unreasonable risk of harm with respect to common areas and any other areas in which the landlord retains a high degree of control. Otherwise, a landlord will only be responsible for acts stemming from their gross negligence. As such, it is recommended school districts put into place standard commercial lease agreements with school-based health center tenants which include clear language regarding tenant responsibility for the leased space. Doing so will reduce the potential risk of liability.

Recommended lease terms

- ◆ whether the school district may make contributions in the form of utilities, janitorial services and maintenance.
- ◆ insurance requirements of the healthcare sponsor.
- ◆ rent requirements.
- ◆ a no partnership or agency clause to avoid creating an unintended legal relationship between the parties such as one of partnership or agency
- ◆ an indemnification clause to establish the other party agrees to compensate if their actions cause the school district to suffer a loss, such as if the SBHC commits an action that results in the school district being sued by a third-party

In addition, it is recommended to put into place a **memorandum of understanding (MOU)** between the school district and school-based health center to outline their working relationship with the goal for the school community to achieve the maximum benefit of the SBHC being in the school building while reducing risk. The MOU may describe the purpose of the SBHC collaboration and delineate school district and healthcare sponsor roles and responsibilities, including when the school may provide referrals for SBHC services. It should also identify the protocol when claims arise from SBHC care.

Recommended MOU terms

- ◆ how student information can be shared in compliance with FERPA
- ◆ requirements that SBHC staff:
 - meet state licensure requirements, including an active, unrestricted Washington Department of Health (DOH) licensure.
 - provide a background check, as with any other third party contracting with a school district where employees of the third party are going to have unsupervised contact with students.
 - handle all aspects of procuring payment, including the billing process.
- ◆ any other tasks or responsibilities that will help the SBHC to operate effectively within the school (*e.g.*, periodic meetings with principal, distribution of SBHC materials, etc.).

An effectively written MOU can help the school district and SBHC to work efficiently together, establish the lack of legal relationship such as partnership which can increase liability, and avoid legal violations by making legal responsibilities clear such as those found in FERPA.

Although this legal structure will not guarantee that the school district will not be named as a defendant in a lawsuit based around a harmful act of a SBHC, it is likely the school district will be able to avoid liability because of the legal structure provided by the agreements that are in place.

As an aside, it is also possible that a school district could choose to accept some liability based upon the facts of a certain situation whether or not they would be found to be civilly liable. For example, consider a situation in which a mistake is made by an SBHC that harms a student who is a member of a protected class, and it garners extensive negative media attention, community outrage, and there is a public perception that the school district should take responsibility. Upon being named in a lawsuit, a school district may determine that some amount of payment will help to calm fear, build community trust, and resolve an issue that is taking extensive employee time away from school district priorities. While not technically legally liable, the school district may choose to make a financial settlement despite the legal agreements written to avoid liability.

SBHC Legal Frameworks:

Do SBHCs Pay Rent?

- ◆ **TIP: Charge nominal monthly rent for the school district's expenses resulting from the SBHC's operating on its premises.**

Why should SBHCs pay rent despite their intrinsic value to the school community? Because Washington school districts do not have legal authority to use district funds to operate SBHCs (or to use school district funds for the construction or remodel of facilities to house SBHCs), because RCW 28A.335.050 only allows school districts to lease surplus property with payment of “reasonable compensation,” and because of Washington’s “**Gift of Public Funds Doctrine.**” The “Gift of Public Funds Doctrine” originates in the Washington State Constitution, and it prohibits state and local governmental entities—including school districts—from conferring benefits on private parties in ways that may disadvantage public interests. These constitutional provisions are:

ARTICLE 8, SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

ARTICLE 8, SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm...

If a state auditor finds a violation of Gift of Public Funds Doctrine, the auditor’s office will issue an audit finding. The exact consequences can vary depending on the seriousness of the violation, but audit findings are best avoided altogether. If a lawsuit is filed regarding compliance with Gift of Public Funds Doctrine, and the court finds a violation, the court will likely void the contested

transaction or issue an injunction prohibiting it. Litigation can be very costly and have political ramifications.

A court's analysis for compliance with the Gift of Public Funds Doctrine begins with the inquiry of whether the spending of public funds was for "a fundamental purpose of government."¹ At time of writing, the Washington courts have not explicitly recognized SBHCs as serving "a fundamental purpose of government." Therefore, the second step of a "Gift of Public Funds Doctrine" inquiry may well come into play, of whether there is intent to make a gift, or there is an absence of financial consideration. Consideration is a legal term used in the analysis of contracts, and it is basically a question of whether both sides have received something of value in the contractual transaction. The simplest form of consideration is money. The analysis is not whether a school district gained a real financial advantage, such as making a profit from renting out its premises to an SBHC, but whether it received something of value, as opposed to nothing. If the school district receives (or appears to receive) nothing in return for providing premises to an SBHC, a state auditor or state court may consider that lease an illegal gift under the Gift of Public Funds Doctrine.

The Gift of Public Funds Doctrine leaves two paths open to school districts in allowing SBHCs to operate on their premises.

Two options for consideration in lease agreements with SBHCs to satisfy the Gift of Public Funds Doctrine:

- ◆ **Monetary rent: a nominal amount or the District's costs resulting from the SBHC's operating on its premises.**
- ◆ **"In kind" rent: the District does not charge monetary rent, but documents how several tangible benefits of the SBHC provide adequate consideration.**

The first, as described above, is to charge monetary rent, even a very small amount that may be less than what the district could reasonably charge for use of that property based on its location, building use permits, etc. A school district

¹ See, for example, *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997) (finding that the Gift of Public Funds Doctrine was satisfied when the City of Spokane contributed to construction and operation of a downtown parking garage), and *King County v. King County Taxpayers*, 133 Wn.2d 584, 949 P.2d 1260 (1997), (finding that the Gift of Public Funds Doctrine was satisfied when the County executed a lease for the Seattle Mariners baseball stadium with sufficient consideration).

might also calculate rent based on the actual expenses from SBHC operation in the form of water and electricity usage, or use of the school district’s janitorial staff.

The second—which may involve more risk of an adverse state audit and/or court decision—is not to charge any monetary rent, but to document that the school district received adequate consideration for use of its premises based on the valuable services and benefits that the SBHC provides to the school community. If a school district decides to follow this path, it is essential that the lease explain with clarity and detail the consideration received from the SBHC in terms of their value to the school community. The lease terms should state:

- ◆ The estimated monetary value of the rent;
- ◆ As valuable consideration for waiver or discount on monetary rent, the District anticipates receiving educational and health benefits to its students from housing the SBHC; and
- ◆ If the SBHC fails to provide the anticipated benefits to the District’s students, it will be required to pay the estimated monetary rent.

Example lease language for in-kind payment of rent:

The value of the base rent for the Premises is established to be \$_____ per month from _____ to _____. In consideration for the value of the services provided by Tenant to the District, including but not limited to the educational benefits, health benefits, and improved educational outcomes of the District’s students, especially its disadvantaged students, the District agrees to provide the Premises to Tenant free of monetary rent. Such free rent is contingent upon the Tenant’s provision of the services, and if the Tenant fails to provide such services, Tenant agrees to pay the base rent established in this section for all periods during which it fails to perform.

At least 60 days before the beginning of the lease term, it is also best practice under the Gift of Public Funds Doctrine for a school district to:

- ◆ Notify the public, relevant governmental entities, and local neighborhood councils of the District’s intent to lease property to an SBHC.
- ◆ Request public input regarding whether leasing to an SBHC is the “highest and best use” of the property.

- ◆ Request that the school board make findings as to:
 - Whether the property proposed to be leased is “surplus property;”
 - Whether such a lease would “maximize benefit to the school district;” and
 - Whether an SBHC would confer valuable educational benefits to the school district and its students.

Finally, in light of the limitations on a school district’s use of its own funds and property due to the Gift of Public Funds Doctrine, it should be noted that there is no problem under the Doctrine when a school district assists another entity in accessing public funds not belonging to the school district. For example, the Seattle Public Schools have assisted tenant SBHCs in applying to receive grants from the City of Seattle. In this situation, the school district still must ensure compliance with statutes such as RCW 43.09.210, for which coordination with the school district’s counsel is necessary.

Example lease language for school district contributions to the SBHC:

Section 101 DISTRICT will provide the construction and renovation of the space where the CLINIC will be located at the ____ School. DISTRICT will be responsible the maintenance and any future renovation of the physical space of the CLINIC.

Section 201 DISTRICT will be responsible for the utilities expense of the CLINIC including but not limited to the electrical and water expenses.

Section 301 DISTRICT will provide the network and internet connection and telecommunication services connection for the CLINIC. DISTRICT will be responsible for the network connectivity and support.

Section 401 DISTRICT will provide the security services consistent with the District’s routine standards for its facilities to monitor for safety of the CLINIC, its providers and patients.

Section 501 DISTRICT will provide the custodial services (to include standard volume sharps disposal) consistent with the District’s routine standards for of its facilities.

Section 601 DISTRICT will provide administrative and clerical supplies including but not limited to computers, wide computer screens, and paper.

Section 701 DISTRICT will provide non-medical furniture supplies such as chairs and desks for the CLINIC as typically available in DISTRICT facilities.

Section 801 DISTRICT will provide a dedicated private room for SBHC behavioral health services to visit with patients.

Section 901 DISTRICT will be responsible for the sharps disposal and waste stream of the CLINIC as part of standard Landlord duties as described above. The parties anticipate standard sharps disposal volume that can be accommodated through the existing nurse's stations sharps receptacle. No .

Section 1001 DISTRICT will provide access to the CLINIC building to Clinic providers.

Section 1101 DISTRICT will provide parking spaces to CLINIC providers and staff.

SBHC Legal Risks: Apparent Agency

- ◆ **TIP: Create as much separation as possible between the school district and the SBHC to avoid liability for the acts of the SBHC.**

When a school district provides premises for an SBHC intended to serve school district students, it is important that any patients of the SBHC have notice that the employees of the facility are not employees or agents of the school district, who is merely a landlord, to limit potential liability through vicarious liability and apparent agency.

While SBHC providers are not employees or “actual agents” of school districts, school districts could potentially be liable if the health care employee is found to be an **apparent agent** of the school district. This is true even if the parent/guardian or student has signed paperwork acknowledging the SBHC is an independent contractor. An “apparent agent” is not an employee or actual agent, but someone a third party objectively and reasonably believes is an agent of the school district. *Mohr v. Grantham*, 172 Wn.2d 844 (2011).

A school district could be liable for the actions of an apparent agent (*e.g.* an SBHC employee) if (1) objective manifestations of the school district (2) cause one claiming apparent authority to believe that the agent has authority to act for the school district and (3) such belief is objectively reasonable. Based on these factors, Washington courts have held hospitals liable for the actions of health care providers who were independent contractors and not hospital employees even where the plaintiff signed paperwork acknowledging the health care provider was an independent contractor.

To avoid the appearance that an SBHC is a branch of the school district, or that its employees are school district employees, efforts should be made to inform students and their parents/guardians that the services are being provided by a third-party entity that is separate and distinct from the school district. Ways to limit the school district's liability exposure from potential apparent agency claims include conspicuous signage to notify any visitors to the SBHC that it is an independent and separate organization from the school district and that any providers within the SBHC are not employees or agents of the school district. In addition, students visiting the SBHC can be required to first "sign-out" as they would be required to do if they left campus, then sign back in when they return to school. This could help to reinforce the understanding that the Clinic is not owned or operated by the school.

Other methods to provide this notice can include: (1) written documentation that is sent home with every student; (2) clear discussion of this issue in parent permission forms; (3) inclusion in student handbooks; and (4) posting information on the school district website, as well as school webpages.

An example of where apparent agency may come into play is with medical malpractice claims. Health care providers in Washington are subject to medical malpractice liability pursuant to RCW 7.70 et seq. A "health care provider" includes persons licensed to provide health care or related services and entities employing such persons, such as an SBHC and its employees. School districts simply acting as landlords leasing space to an SBHC would generally not be considered a health care provider subject to medical malpractice liability unless the SBHC or its employees are found to be the apparent agents of the school district (see above).

If an SBHC or its employees are the apparent agents of a school district, a school district could be liable for their medical malpractice if (1) the health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances; and (2) such failure was a proximate cause of the injury complained of.

◆ **Can SBHCs “Borrow” School District Employees?**

- NO. There are a number of considerations that prevent a school district from lending their employees to work in an SBHC, even in an emergency or temporary situation.

From a school district perspective, unless its job listings are created with job descriptions identifying job duties at the SBHC (which also is not advisable for a number of reasons), “lending” a school district employee to an SBHC would exceed the scope of their job with the school district, setting the school district up for an indefensible union grievance.

Additionally, if a school district employee is injured while “borrowed” by an SBHC, they would have little hope of a successful worker’s compensation claim because they were working outside of the scope of their employment with the school district.

“Lending” employees to SBHCs also is not tenable for school districts because any other types of claims that may arise will not be covered by their risk management pool or insurer, due to the employee exceeding the scope of their school district employment.

Finally, school districts facing such requests should consider that “lending” employees to SBHC simply is not necessary. SBHCs are set up to provide primary care, not serve as an onsite emergency department. There are no situations in which a school district employee should feel compelled to step in and provide assistance.

◆ **Risk of Expense to the School District Even in the Absence of Liability**

School districts should also remember that even if this message has been delivered, parents and the press may still hold the school district accountable for the actions, or misdeeds, of the SBHC, at least in the public eye. Parents may call on the school district to take measures to address the health provider’s actions, even if the school district does not have a legal means of recourse. For example, parents may pressure a school district to terminate any relationship with a provider if that provider conducts itself in a way the parents disapprove of. The school district may or may not be in a position to act on this demand.

Another issue to be aware of when messaging to parents is that fact that parents may object to the provision of certain types of health services, such as contraception. While school districts will not control the scope of services offered by the health provider, districts should be prepared to answer any questions that parents might have in this regard.

Example lease language:

Tenant shall post prominent signage inside and outside of CLINIC which notifies patients that the CLINIC is independently owned, operated, managed, and supervised by the SBHC, that the SBHC is responsible for its own medical policies and procedures, hiring and supervision of staff, and all activities of and services provided by its staff, and that the school district does not manage, supervise, or otherwise control, sponsor, or endorse the CLINIC. Any signage outside the CLINIC shall be subject to approval from Landlord with the understanding and agreement that Tenant will remove these at the termination of the tenancy and repair any damage to the premises caused thereby.

Example Lease Language on Consent forms:

1. It is the policy of the District to require written parent or guardian permission for students' visits to and treatment on the Premises.
2. The SBHC is solely responsible for obtaining appropriate medical consent for care of its patients.
3. The consent forms shall describe the scope of services approved by the school district and provide notice that that the SBHC is independently owned, operated, managed, and supervised by the SBHC sponsor, that the SBHC sponsor is responsible for its own medical policies and procedures, hiring and supervision of staff, and all activities of and services provided by its staff, and that the school district does not manage, supervise, or otherwise control, sponsor, or endorse the Clinic.
4. The school district and Tenant shall cooperate in the distribution and obtaining of appropriate consent forms, which shall describe the scope of health services approved by the school district, from parents and guardians of school students.
5. Tenant will make a good faith effort to secure such written consent in all cases, and will not provide treatment and services without such written consent except in situations (*e.g.*, STDs, drug/alcohol, and mental health) where federal and/or state law require provision of treatment or services to minors without parent/guardian consent; provided, in no event shall any treatment or services exceed the scope of health services approved by the school district.

SBHC Legal Risks: Supervision of Students

Although a student leaves a school district's custody when visiting SBHC, a school district could potentially be liable for any injuries or harm sustained by the student while at the SBHC.

Students who visit SBHCs leave district supervision and custody and enter onto property under the possession, control, and supervision of the SBHC, even though the clinic may be on a school campus. However, the Washington Supreme Court in *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422 (2016) expanded a school district's potential liability to include circumstances where students may be *outside* of the school's custody. In such situations, liability may attach if (1) the breach of duty occurred while the student was still in the school district's custody and (2) the harm occurring outside of the school district's custody was foreseeable.

Thus, although a student leaves a school district's custody when visiting SBHC, under the standard adopted in *N.L.*, a school district could potentially be liable for any injuries or harm sustained by the student while at the SBHC. For example, if a school district has notice that an SBHC is performing unauthorized medical procedures and does not take reasonable care to protect students (such as by revoking the lease) and continues to refer students to the SBHC, it could potentially be liable for any injury or harm caused to students by those procedures.

Recommended lease language:

It is the policy of the District to require written parent or guardian permission for students' leaving District property, including for visits to and treatment on the Clinic Premises. District and Tenant shall cooperate on appropriate school sign-in/sign-out procedures for students visiting the Clinic.

Supervision of Students and Patients on Clinic Premises. Tenant is solely responsible for supervising students and patients on Clinic Premises; the school

district is not responsible for the supervision of any students or patients within the Clinic premises.

SBHC Legal Risks: Premises Liability

- ◆ **By leasing space for a health care organization to operate an SBHC, a school district could face potential premises liability to the SBHC tenant or the SBHC's invitees.**

By leasing space for a health care organization to operate an SBHC, a school district could face potential premises liability to the SBHC tenant or the SBHC's invitees.

A landlord may be liable under the “latent defect theory” for harm caused by (1) latent or hidden defects in the leasehold (2) that existed at the commencement of the leasehold (3) of which the landlord had actual knowledge (4) and of which the landlord failed to inform the tenant.¹

Under Washington law, a landlord is subject to liability for physical harm caused to a tenant or the tenant's invitees by a dangerous condition existing before or arising after the tenant has taken possession if the landlord has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of: (1) an implied warranty of habitability; or (2) a duty created by statute or administrative regulation. This rule applies even when the dangerous condition occurs in an area of the premises under the control of the tenant so long as the defect constitutes a violation of either the implied warranty of habitability or a duty imposed by statute or regulation.

In addition, to protect a school district from potential premise liability exposure for injuries sustained within the SBHC, it is important that exclusive control of the leased property pass to the tenant upon commencement of the lease, and that the school district not retain any control of the leased premises. Certain provisions of the lease making the school district responsible for

¹ *Lian v. Stalick*, 106 Wn. App. 811, 821-22, 25 P.3d 467, 474 (2001).

maintenance and repairs, janitorial services and security could be interpreted as the school district maintaining control over the premises and opening up the school district to premise liability exposure.

Example lease language:

Maintenance and Repairs. The Tenant, at its sole expense and cost, shall keep and maintain the Premises clean and in good repair and shall be responsible for all regular maintenance costs associated with the Property and Premises. Tenant shall not be responsible for defects or deferred maintenance on the Property or in the Premises. Tenant shall not be required to make any repairs with respect to structural defects in the walls, foundation, or roof of the Premise. The school district will make inspection and testing reports on all life-safety systems available to Tenant if required by the Washington State Department of Health (DOH) or other governmental or accrediting body, if applicable.

Utilities, Taxes. The District shall provide heat, light, water, electricity, sewer, data lines, two computers, cable, telephone, security, and custodial services (to include standard volume sharps disposal as provided in the nurse's office), and all other public or private utilities which may be used in or charged against the Premises consistent with the school district's routine standards for its facilities. Tenant shall be responsible for paying any and all taxes assessed or due as a result of this Lease, including but not limited to leasehold excise tax. If Tenant is exempt from paying Washington leasehold excise tax, it must provide the school district with documentation of that from the State of Washington prior to the execution of this Lease.

SBHC Legal Frameworks: Adequate Insurance

Like any third-party contractor that may have unsupervised access to minors at school, it is important that the SBHC and/or its sponsor has liability coverage that expressly includes coverage for claims for sexual misconduct at the SBHC. It is important that the SBHC and/or its sponsor also have liability coverage for medical malpractice claims arising out of the services of providers at the SBHC. These types of claims may not be covered under a commercial general liability policy unless they are expressly included. The school district should be listed as additional insured on all required policies, and certificates of insurance should be provided prior to the commencement of the lease.

Example lease language:

Insurance. At all times during the term of this lease, Tenant shall, at its sole cost and expense and as additional consideration, maintain in full force and effect the following insurance, which shall be primary as respects the school district and any other insurance maintained by the school district shall be excess and not contributing insurance with the Tenant's insurance. Except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the Tenant's Commercial General Liability and Commercial Automobile Liability insurance coverage shall apply as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought. Failure of the Tenant to fully comply with the insurance requirements of this lease will be considered a material breach of contract and, at the option of the school district, will be cause for such action as may be available to the school district under other provisions of this lease or otherwise in law, including immediate termination of the lease.

The following are the types and amounts of insurance coverage that must be maintained by the Tenant during the term of this lease. The Tenant must provide acceptable evidence of such coverage prior to the start of this Lease.

A. Commercial General Liability. An occurrence policy of Commercial General liability with the minimum limits of \$_____ each occurrence and \$_____ aggregate. As the Tenant shall be in contact with minor children, the Tenant shall provide evidence that sexual misconduct coverage has not be excluded from the policy and is covered under this policy. Acceptable evidence of sexual misconduct coverage must include on the evidence of coverage limits applicable to sexual misconduct and will be subject to approval by the District's Risk Manager. Evidence of Coverage will provide that Washington Stop Gap coverage is provided with a limit of at least \$_____ for each incident.

B. Commercial Automobile Liability Insurance. A policy of Commercial Automobile liability Insurance, including coverage for owned, non-owned, leased or hired vehicles written with a minimum limit of \$_____ combined single limit and which provides Under Insured and Uninsured coverage of at least \$_____.

C. Medical Malpractice Insurance. A Medical Malpractice insurance appropriate to the Tenant's profession shall be for any professional error, act or omission arising out of the scope of work with minimum limits of \$_____ per claim and \$_____ aggregate.

D. Workers Compensation Insurance. As respects Workers Compensation insurance in the State of Washington, the Tenant shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW). If the Tenant is qualified as a self-insurer in accordance with Chapter 51.14 RCW, the Tenant shall so certify by a letter signed by a corporate officer indicating that it is a qualified self-insured entity and setting forth the limits of any policy of excess insurance covering its employees or any similar coverage required.

SBHC Legal Frameworks: Indemnification

Indemnification clauses can be enforced even when an agreement indemnifies against a party's sole or concurrent negligence. Washington courts have found that such agreements do not violate public policy and are enforceable except when prohibited, such as pursuant to RCW 4.24.115 (see below). Thus, a lease with an expansive indemnification provision requiring a tenant to indemnify a school district for the district's sole or concurrent negligence can be enforced.¹

RCW 4.24.115 provides restrictions on indemnification agreements related to sole or concurrent negligence "in connection with or collateral to" a contract or agreement relative to the construction, alteration, repair, or maintenance of any building and provides" regarding indemnification for sole or concurrent negligence. This statute is generally applied to construction contracts and not to commercial leases.²

Under Washington law, an indemnification clause is not enforceable to compel one party to indemnify another party from claims by the first party's employee for injuries sustained on the job without an express waiver of immunity under the Industrial Insurance Act.³ Although the proposed lease addresses indemnification of the District for claims by Tenant's employees, it does not include a waiver by the Tenant of immunity for claims brought under the Industrial Insurance Act and thus may have limited enforceability.

¹ *Snohomish Cty. Pub. Transp. Benefit Area Corp. v. FirstGroup Am., Inc.*, 173 Wn. 2d 829, 271 P.3d 850 (2012).

² *NW. Airlines v. Hughes Air Corp.*, 104 Wn. 2d 152, 158, 702 P.2d 1192, 1195 (1985) ("Presently, only RCW 4.24.115, addressing indemnification clauses in construction contracts, has been enacted. Statutory prohibition against one's sole negligence in the construction setting is not applicable in the commercial lease setting.").

³ *Brown v. Prime Const. Co.*, 102 Wn. 2d 235, 684 P.2d 73 (1984).

Example lease language:

Indemnification/Hold Harmless. Tenant shall indemnify, defend, and hold harmless the school district, its employees, officials and agents against from any and all claims, demands and lawsuits, including medical malpractice claims, demands and lawsuits brought against Tenant's employees, officials and agents, and shall pay all costs and attorney's fees incurred in the defense thereof, for any injury to persons or property damage, including claims by the Tenant's employees, contractors, subcontractors, and agents allegedly resulting arising from or relating to any act, omission, neglect, default, incident, or accident by Tenant and/or its employees, officials, and agents, arising from or relating to the Tenant's use of the Property or Premises. or arising from or relating to the Tenant's performance of or failure to perform its obligations under this Lease. Without limiting the generality of the foregoing, Tenant shall indemnify, defend and hold harmless District from allegations that the school district is vicariously liable for negligent acts of Tenant and/or its employees, officials, and agents, or that District negligently failed to supervise Tenant and/or its employees, officials, and agents.

The District shall not, by this provision, be required to indemnify, defend or hold harmless the Tenant for any loss or damage or cost incurred in defense which arises out of the sole negligence of the Tenant or the employees, contractors, subcontractors or agents of the Tenant.

For the sole purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligations under this Lease shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable to or for any third party under the Industrial Insurance Act, disability benefit act, or other employee benefit act. The Parties acknowledge that the foregoing provisions have been specifically and mutually negotiated between the parties.

Washington State School Districts Hosting SBHCs

- ◆ Bellevue
- ◆ Bethel
- ◆ Bremerton
- ◆ Central Kitsap
- ◆ Chimacum
- ◆ Elma
- ◆ Evergreen
- ◆ Federal Way
- ◆ Highline
- ◆ Kennewick
- ◆ Lummi Nation
- ◆ Newport
- ◆ North Mason
- ◆ Pasco
- ◆ Port Townsend
- ◆ Quilcene
- ◆ Quincy
- ◆ Renton
- ◆ Seattle
- ◆ Sedro-Woolley
- ◆ South Kitsap
- ◆ Spokane
- ◆ Tacoma
- ◆ Vashon
- ◆ Walla Walla
- ◆ Wenatchee
- ◆ Yakima

*As of January 2022

LEASE AGREEMENT

PART I - LEASE COVER SHEET

Open School-Exclusive Use and Joint Use

Contract No. J

School: _____

Date: August 17, 2020

1.

Basic Lease Information

1.1 Lease Reference Date: August 17, 2020

1.2 Tenant: Community Clinic, a non-profit corporation.

1.3 Address of Tenant: Health Center Tenant
Seattle, WA

1.4 Landlord: Seattle School District No. 1 (the "District")

1.5 Landlord Address: Property Management Office, MS 23-365
Seattle School District No. 1
P O Box 34165
Seattle, WA 98124-1165

1.6 Premises: Student Based Health Center, located in the Building, and assigned grounds.

1.7 Building: The Building known as _____,
located at _____ which is situated
on the Land.

1.8 Land: The real property more particularly described on Attachment 7 attached hereto.

1.9 Lease Term: Commencing on September 1, 2020 (the "Commencement Date") and terminating on June 30, 2024, ("the Termination Date"), with the following days and hours of use:

Exclusive use: Student Health Center

School Year: Monday - Friday 8 a.m. to 4:30 p.m.

Breaks and Summer: When building is open and staffed

Legal Holidays are excluded.

Requests for access to the Premises during Legal Holidays and any other days or hours not specified in this paragraph shall be submitted in writing and approved by the School Principal or Program Manager. Such requests shall be assessed by the Principal on a case-by-case basis. The approval shall be submitted by Tenant to the Seattle School District's Property Management Office at least TEN (10) working days in advance. Tenant agrees to pay all applicable charges for such additional uses if approved. In cases of emergency school closures due to inclement weather, natural disaster, fire, or other casualty, Tenant will not have access to the Premises.

In the case of school closures due to a pandemic, Tenant may, at its option, submit a request for access to the Premises to operate during the time of closure. The request must be submitted in writing to the School Principal. Such requests will be assessed by the Principal in coordination with the District's Chief of Operations on a case-by-case basis. The District will provide a request response within three business days of receipt. Approval shall not be unreasonably withheld and will be evaluated based on directives and guidance provided by all applicable state and local authorities. Use according to the Section will implicate Section 3 of this agreement, Custodial and Utilities Services. Notwithstanding anything to the contrary, Tenant shall not be obligated to pay any rent or operate from the Premises during any period of closure due to a pandemic.

1.10 Rent: The value of the base rent for the Premises is established at \$4,965.00 per month from September 1, 2020 through June 30, 2024. In consideration of the program alignment services to be provided by Tenant to Landlord, Landlord agrees to provide the Premises to Tenant free of the base rent stated herein; however, such free rent is contingent on a) A Memorandum of Understanding ("MOU") between Landlord and Tenant, signed by both parties, b) Tenant's performance of the services and meets the criteria as stated in the signed MOU (Attachment 2), a copy of which is attached herein and incorporated as part of this Lease Agreement. If Tenant fails to perform the above conditions stated herein, Tenant agrees to pay the base rent established in this section for all periods during which it fails to perform, retroactive to the Commencement Date of this lease term.

1.11 Security Deposit: \$0.

1.12 Business Purpose: Student Health Clinic Only.

1.13 Cancellation: This Lease shall be subject to cancellation by Landlord prior to the Lease Termination Date upon 90 days notice. Tenant shall give Landlord 90 days written notice in advance in the event Tenant wishes to terminate this Lease prior to the expiration of this Lease without being charged an early termination penalty.

1.14 Early Termination Penalty:

If Tenant terminates this Lease prior to the expiration of this Lease without giving the full 90-day written notice to Landlord, Tenant agrees to pay Landlord the base rent as established in Section 1.10 of Part I of this Lease, prorated for each day of late notice. For example, if this Lease expires on August 31, 2024, Tenant gives its notice of early termination on July 10, 2024, Tenant shall pay Landlord 38 days of base rent.

1.15 The following Attachments and Exhibits are incorporated herein as part of this Lease:

Attachment 1: Lease Agreement - Part II (Revision dated 5/2012)

Attachment 2: Current ("MOU") agreement for services

Attachment 3: Engrossed House Bill 1824 (RCW 28A.600.190 and RCW 4.24.660)

Attachment 4: General Rules and Regulations For Use of School Facilities

Attachment 5: Holiday/Vacation Schedule and Charges

2. Extension of Lease Term

The Learning Partners Committee (LPC), or its designee, will complete an annual evaluation of Tenant's performance of the program standards by May 31st each year. If the annual evaluation is satisfactory and Tenant complies with all terms and conditions of this Lease, and subject to Landlord's right under Section 1.13 ("Cancellation") of Part I, this Lease shall stay in force. If the annual evaluation is unsatisfactory, Landlord may terminate this Lease upon 90-day notification at the termination date and Landlord may elect to seek another provider. The decision of the LPC or its designee is final.

3. Custodial and Utilities Services

If Tenant chooses to operate during outside normal academic hours, Landlord's designated school vacations (such as winter, mid-winter and spring break), early

dismissals, summer vacation, legal holidays and other school closure days and if heat, air-conditioning or custodial staffing is required during these days due to Tenant's operation, Tenant agrees to pay for the heating/cooling and custodial staffing costs. Such costs are indicated in Attachment 5 (FY 2020-2021 Holiday/Vacation Schedule and Charges) attached herein. The costs are updated annually for each school year. It is the District's expectation that the Tenant will provide proper heating/cooling to meet licensing standard.

4. Alterations and Improvements

Tenant agrees to be responsible for all costs of any alterations or improvements to the Premises.

5. Use of Common Areas and Other Space in the Building

5.1 In addition to the Premises, Other Spaces in the Building may be used occasionally by the Tenant rent free at the sole discretion of the Building principal or Building manager. Tenant agrees it has an obligation to regularly inspect Other Spaces prior to its use. Other Space is used "AS IS" and use of such space by Tenant constitutes acceptance of its "AS IS" condition. Other Spaces is defined as: spaces that are used occasionally, but not included in the Premises and not Common Areas. The Tenant agrees that any damage caused by Tenant or an agent, employee, contractor, servant, invitee, licensee, or concessionaire of Tenant to any personal or real property in the common areas or Other Spaces shall be promptly repaired or replaced by Tenant at the Tenant's sole expense. Except as provided above, Tenant is not responsible for any maintenance or repair to the Common Areas or to Other Spaces.

5.2 Tenant agrees that the Accident and Indemnification provision (Section 14) in the Lease Agreement, Part II, shall also apply to all Claims arising in whole or in part out of any occurrence in, upon, at, or from the Common Areas or Other Spaces when a Claim is advanced or prosecuted by any agent, employee, contractor, servant, invitee, licensee or concessionaire of Tenant.

5.3 Tenant further agrees that all insurance required to be purchased under the Insurance provision (Section 10) in the Lease Agreement, Part II, shall apply and provide general liability protection to the Landlord for all Claims discussed in Section 5.2 above.

6. Maintenance

6.1 Landlord may inspect Premises from time to time (at least once per year) to ensure Premises is kept in a neat, clean, and sanitary condition and Tenant has made all necessary repairs. Repairs requiring attention not tied to main building systems or items noted in 6.2 are the responsibility of the Tenant.

6.2 Tenant is required to make all necessary repairs and maintenance to the Premises that are used exclusively by Tenant as provided for in the Lease Agreement, Part II (Section 8), except it is the District's responsibility to:

- (a) Repair a roof leak in a District building or portable, based on District standards and the District's priority for scheduling and making the repair;
- (b) Repair or replace light fixtures in a District building or portable, based on District standards and the District's priority for scheduling and making the repair;
- (c) Take down, repair or replace falling ceiling tiles (at the District's discretion) in a District building or portable caused by a roof leak (Tenant may also take down such tiles after obtaining permission from the District), based on District standards and the District's priority for scheduling and making the repair;
- (d) Repair interior walls when the damage was caused solely by a roof leak in a District building or portable, based on District standards and the District's priority for scheduling and making the repair;
- (e) Repair or fix water temperature problems tied to a District-owned building system, based on District standards and the District's priority for scheduling and making the repair; and
- (f) Repair the heating and ventilation system in a District building or portable, based on District standards and the District's priority for scheduling and making the repair.

Landlord is not responsible for any loss caused to Tenant by Landlord's failure to make these repairs. The District's priority and scheduling may push these repairs out several years.

6.3 Landlord will repair the Premises that are not used exclusively by Tenant based on District's standards and the District's priority for scheduling the repair at the Landlord's sole discretion. Landlord is not responsible for any loss caused to Tenant by Landlord's failure to make these repairs. The District's priority and scheduling may push these repairs out several years. However, Tenant agrees that any damage caused by Tenant or an agent, employee, contractor, servant, invitee, licensee, or concessionaire of Tenant to any personal or real property in the Common Areas or Premises as stated in Section 1.6 of Part I shall be promptly repaired or replaced by Tenant at the Tenant's expense.

6.4 Any repairs or improvements that are required to permit Tenant to use the Premises for the purpose(s) set forth in Section 1.12 above, or to obtain licensing for Tenant's operation shall be the sole responsibility of Tenant. Any repairs or improvements done by Tenant must have prior approval by Landlord before commencing work.

6.5 Tenant is responsible for any and all costs or fines associated with false alarms caused by Tenant.

7. Special Provisions

7.1 Landlord, acting through its Board of Directors, shall approve the scope of health services offered on the Premises.

7.2 Tenant shall set medical policies and procedures, hire and supervise all clinic staff, and assume responsibility for the professional activities of the staff. Landlord's role in the clinic's operation shall be confined to referring students to the clinic through the school nurse.

7.3 It is the policy of the Seattle School District to require written parent or guardian permission for students' visits to and treatment on the Premises. Landlord and Tenant shall cooperate in the distribution and obtaining of appropriate consent forms, which shall describe the scope of health services approved by the District, from parents and guardians of Schools students. Tenant will make a good faith effort to secure such written consent in all cases, and will not provide treatment and services without such written consent except in situations (e.g., STD's, drug/alcohol, and mental health) where federal and/or state law require provision of treatment or services to minors without parent/guardian consent; provided, in no event shall any treatment or services exceed the scope of health services approved by the District.

7.4 Tenant shall retain all medical records, and such records shall be the property of Tenant, and not a part of student's educational records.

7.5 Tenant acknowledges that the Seattle-King County Department of Public Health has over-all responsibility for evaluation of the teen health centers. Tenant agrees to cooperate in established evaluation process.

8. Compliance With Zackery Lystedt Law - Youth Programs

_____(initial) Youth Programs - When facility will be used for youth programs, the Applicant agrees to fully comply with the State of Washington requirements for concussion and head injury education, prevention, and management as prescribed by the Zackery Lystedt Law. Access to facilities used for youth

programs under this Agreement will not be granted until the "Seattle School District Compliance Statement for the Zackery Lystedt Law" is signed and returned to Landlord.

9. Compliance With Rules and Regulations

Tenant agrees to comply with the General Rules and Regulations For Use Of School Facilities as described in Attachment 4 attached hereto and incorporated into the Lease.

10. Duty of Cooperation

Tenant will not interfere with the operation of the regular school program and will cooperate with the Building principal's reasonable guidelines and requests to assure same.

11. Dispute Resolution Process

In the event that Tenant is dissatisfied with issues pertaining to space use and/or access, repairs, maintenance and custodial staffing, a request can be made through the Seattle School District's Property Management Office for a meeting with the District's Executive Director of Facilities to try to reach an amicable resolution.

12. Waiver of Immunity

As provided in Part II, Paragraph 14.4, solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable to or for any third party under worker compensation acts, disability benefit acts or other employee benefit acts. The parties acknowledge that the foregoing provisions have been specifically and mutually negotiated between the parties.

13. Site Access

The Landlord retains the right to immediately prohibit any staff, employee, agent, or volunteer of Tenant from entering District property if the District determines that such action is necessary for the health, safety, or education of its students or staff. This includes, but is not limited to, allegations of criminal misconduct or violation of a District policy, procedure, or guideline.

In the event of any conflict between this Part I - Lease Cover Sheet and the terms of Part II - Lease Agreement, the terms of this Lease Cover Sheet shall control.

Landlord:

Tenant:

SEATTLE SCHOOL DISTRICT NO. 1

-

By _____

By _____

Its _____

Its _____

Date _____

Date _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that

_____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged

it as the _____ of _____, a corporation,

to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

LEASE AGREEMENT

PART II

THIS LEASE AGREEMENT is made by and between SEATTLE SCHOOL DISTRICT NO. 1, a municipal corporation (hereinafter "Landlord"), and Tenant, and dated as of the Lease Reference Date set forth in PART I of the Lease Agreement ("Lease Cover Sheet").

WITNESSETH

FOR AND IN CONSIDERATION of the rents herein reserved and in further consideration of the mutual promises, terms and conditions hereof, the parties hereby agree as follows:

1. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in Section 1.6 of the Lease Cover Sheet, together with a non-exclusive right during the term of this Lease to use the common areas of the Building as from time to time constituted by Landlord, such use to be in common with Landlord and all other occupants of the Building, and their employees, agents, customers and invitees. Landlord reserves the right to make changes in the common areas and the Building as Landlord deems necessary and to establish reasonable rules and regulations for the use of the common areas and the Building.

2. BUSINESS PURPOSES

The Premises are to be used only for the purposes described in Section 1.12 of the Lease Cover Sheet and for no other business or purpose without the written consent of Landlord, which it may give or withhold in its sole discretion.

3. TERM

The term of this Lease shall commence on the Commencement Date and shall terminate at midnight on the Termination Date, with the days and hours of use as stated in Section 1.9 of the Lease Cover Sheet. Use of the Premises excludes legal holidays and school vacations except as stated otherwise in Section 1.9 of the Lease Cover Sheet. Tenant acknowledges that Landlord may revise the School Calendar at its discretion from time to time, and Tenant's use of the Premises shall be subject to such changes. Requests for access to the Premises during legal holidays, school

vacations, and other days or hours not specified herein shall be submitted in writing to Landlord at least ten (10) working days in advance. Such requests shall be reviewed by Landlord on a case-by-case basis. Tenant agrees to pay all applicable charges for such additional uses if approved. Landlord reserves the right to lease or use the Premises during the days and hours they are not occupied by Tenant.

4. SECURITY DEPOSIT

4.1 The Security Deposit, if any, deposited by Tenant shall be kept by Landlord as

security for the performance by Tenant of all the terms, covenants, and conditions required to be performed by Tenant hereunder, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. The Security Deposit shall be returned to Tenant (less any amounts retained by Landlord as permitted herein) within thirty (30) days after the expiration of the term of this Lease and return of possession of the Premises to Landlord if, at such time, Tenant has performed all such terms, covenants, and conditions of this Lease. Prior to the time when Tenant is entitled to any return of the Security Deposit, Landlord may intermingle the Security Deposit with its own funds and use such sum for such purposes as Landlord may determine. Tenant shall not be entitled to any interest on the Security Deposit.

4.2 In the event of default by Tenant in respect to any of its obligations under this Lease, including, but not limited to, the payment of rent, Landlord may use, apply, or retain all or any part of the Security Deposit for the payment of any unpaid rent, or for any other amount which Landlord may be required to expend by reason of the default of Tenant, without prejudice to any other remedy. No portion of the Security Deposit shall be applied towards payment of the last month's rent hereunder without the prior written consent of the Landlord. Tenant shall, upon five (5) days' written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

5. RENT & LEASEHOLD EXCISE TAX.

- 5.1 Tenant covenants and agrees to pay Landlord, as monthly rental for the Premises, in lawful money of the United States, in advance on the first day of each calendar month to Landlord at Landlord's office or at such other place as Landlord may hereafter designate, the amount(s) stated in Section 1.10 of the Lease Cover Sheet.
- 5.2 In addition to the monthly rental and utility expenses specified in Section 1.10 of the Lease Cover Sheet, Tenant shall pay to Landlord monthly, in advance, on the first day of each calendar month, the leasehold excise tax assessed pursuant to RCW 82.29A against Tenant, if any, in respect of the monthly rent paid pursuant to paragraph 5.1 above. The said leasehold tax is currently equal to twelve point eighty-four percent (12.84%) of the taxable rent paid to Landlord, and is subject to change by the Legislature. Tenant shall in addition pay to Landlord when due the leasehold excise tax in respect of any payment or obligation hereunder which is deemed to be taxable rent.
- 5.3 Tenant acknowledges that late payment to Landlord of rental or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which would be extremely difficult and impractical to ascertain.

Such costs include, but are not limited to, processing and accounting charges. Therefore, in the event Tenant should fail to pay any installment of rental or any sum due hereunder after such amount is due, Tenant shall pay to Landlord as additional rental a late charge equal to five percent (5%) of each such late installment or the sum of Twenty-Five Dollars (\$25.00) per month, whichever is greater. A Fifteen Dollar (\$15.00) charge will be paid by Tenant to Landlord for each returned check.

6. SECURITY ALARM

- 6.1 Tenant is responsible for securing the Premises before leaving the Building, i.e. closing windows, locking doors, etc.
- 6.2 Tenant agrees to reimburse Landlord for all reasonable costs incurred for each

security call due to failure of Tenant to properly follow established procedures for securing the Building or using the security alarm system upon leaving or entering the Building.

7. UTILITIES AND SERVICE

- 7.1 During the term of this Lease, Landlord will provide to the Premises Monday through Friday each week, the following utilities and services (provided that, costs for additional heat, electricity and utilities incurred by Landlord due to Tenant's use will be billed to Tenant, as stated in Section 1.10 of the Lease Cover Sheet in addition to the monthly rent):
- (a) Electricity, water, gas and sewer service;
 - (b) Telephone connection, but not including telephone stations and equipment (it being expressly understood and agreed that Tenant shall be responsible for the ordering and installation of telephone lines and equipment which pertain to the Premises);
 - (c) Heat to such extent and to such levels as, in Landlord's judgment, is reasonably required for the comfortable use and occupancy of the Premises while premises also are occupied by Landlord's educational programs; and
 - (d) Janitorial and window washing service to the common areas.
- 7.2 Tenant shall, at its own costs, provide custodial and grounds keeping (if the grounds are included in the leased Premises) services to the Premises.
- 7.3 Tenant shall arrange for and shall pay the entire cost and expense of all telephone stations, equipment and use charges, electric light bulbs and all other materials and services not expressly required to be provided and paid by Landlord pursuant to the provisions of paragraph 7.1 above.
- 7.4 Tenant shall not, without the written consent of Landlord, use any apparatus or device on the Premises (including, but without limitation thereto, electronic data processing machines, punch card machines or machines using current in excess of 110 volts) which will in any way increase the amount of electricity or water usually supplied at the Premises. Tenant shall not connect with electrical current, except

through existing electrical outlets in the Premises. If Tenant requires water

or electric current in excess of that usually supplied at the Premises, Tenant shall first procure the written consent of Landlord for the use thereof. Landlord may cause a water meter or electric current meter to be installed in the Premises. The cost of such meters and of installation, maintenance, and repair thereof shall be paid by Tenant.

Tenant further agrees to pay Landlord promptly upon demand for all such water and electric current consumed at the rates charged for such services by the City of Seattle or the local public utility, plus any additional expense incurred by Landlord in keeping account of the water and electric current so consumed.

- 7.5 Landlord shall not be liable for and Tenant shall not be entitled to terminate this Lease or to effectuate any abatement or reduction of rent by reason of Landlord's failure to provide or furnish any of the foregoing utilities or services unless such failure was due to the gross negligence or intentional misconduct of Landlord. Landlord shall not be liable for loss or injury to persons or property, however arising, occurring in connection with or attributable to any failure to furnish such utilities or services, unless and only to the extent due to the gross negligence or intentional misconduct of Landlord, and in no event shall Landlord be liable for Tenant's consequential damages.

8. ACCEPTANCE AND CARE OF PREMISES

- 8.1 Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition. During the term of this Lease and any extension thereof, Tenant, at Tenant's sole cost, shall keep the Premises in a neat, clean, and sanitary condition and shall make all necessary repairs and maintenance to the Premises.

Tenant shall maintain the Premises including, but not limited to, glass, plumbing and lighting fixtures, in good and proper repair, and in accordance with all applicable statutes, city ordinances and directions or regulations of the proper public authorities. Tenant shall not be required to make any repairs in respect to structural defects in the walls, foundation or roof of the Premises; provided, however, Tenant acknowledges that Landlord shall not be required to make such repairs or any repairs to the Premises.

- 8.2 In the event Tenant fails to maintain the Premises in good order, condition, and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the

event Tenant fails to commence such work within ten (10) days of notice and to diligently prosecute it to completion, then Landlord shall have the right, at its option and in addition to all other remedies, to do such acts and expend such funds to maintain the Premises and to invoice Tenant for costs incurred. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

- 8.3 Tenant acknowledges and agrees that Landlord shall have no obligation whatsoever to make any alterations, additions, renovations or improvements to the Premises or to determine if any alterations are necessary in order for Tenant to conduct its business as set forth in Section 2 above. In the event that any federal, state, or city department or agency determines that certain alterations, additions, renovations or improvements are required to permit Tenant to use the Premises for the purpose(s) set forth in Section 2 above, Landlord shall have no obligation to make such changes. If Tenant is unable, in its sole judgment, to make such changes, then this Lease shall be terminated and both parties relieved of all rights and obligations hereunder.

9. WAIVER OF SUBROGATION

- 9.1 Landlord and Tenant do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for, any loss or damage to the real or personal property of either located anywhere in the Premises or the Building, arising out of or incident to the occurrence of any of the perils which are covered by any property insurance policy obtained by Tenant or Landlord or required by this Lease to be obtained. Each party shall obtain any special endorsements, if required by its insurer, to evidence this waiver of the insurer's right to subrogation against the other party.
- 9.2 The mutual waivers and waivers of subrogation rights in Section 9.1 above shall not apply to the extent Tenant self-insures for property damage, if allowed to do so by Landlord. Additionally, the mutual waivers and waivers of subrogation in Section 9.1 above shall not apply for losses or claims for any one (1) property damage occurrence, in which the amount of damages is equal to or less than Landlord's property damage deductible or self-insurance retention (collectively, the "Deductible"), which is, as of the date of execution hereof, \$100,000 ("Deductible"). For all such property damage losses equal to or less than the Deductible, Landlord shall be the sole loss payee under the Tenant's property insurance, and any proceeds

received therefrom shall be made payable by the insurance company directly to Landlord. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of any such property damage event or occurrence.

10. INSURANCE

10.1 Tenant, at its own expense, shall provide and keep in force with companies reasonably acceptable to Landlord, the following:

- Commercial general liability insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence and Two Million Dollars (\$2,000,000) in the aggregate for this location, including coverage for contractual liability and personal injury, and One Hundred Thousand Dollars (\$100,000) for tenant's legal liability;
- If Tenant operates or allows subcontractors to operate day care or other child-serving programs (any program where children are on District premises and not under the care or supervision of their own parents), sexual abuse or molestation coverage shall be provided with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;
- If Tenant provides or allows its contractors or sublessees to provide professional medical or mental health services, medical professional liability (errors and omissions) coverage shall be required with a minimum limit of \$1,000,000 per wrongful act and \$2,000,000 annual aggregate;
- Statutory Workers' Compensation, including Employer's Contingent Liability (Stop Gap) in Tenant's commercial general liability coverage with a limit of at least \$1,000,000 per bodily injury/accident; \$1,000,000 bodily injury/disease-policy aggregate, and \$1,000,000 bodily injury/disease-employee;
- Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000, including all owned, non-owned and hired vehicles and covering claims for damages because of bodily injury or death

of any person or property damage arising out of ownership, maintenance or use of any motor vehicle; and

- Products/Completed Operations Liability in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

The foregoing insurance shall be placed with an insurance company or companies licensed to do business in the State of Washington and shall have an A.M. Best's rating of A or better. Tenant shall furnish Landlord with a copy or certificate of such policies before the commencement date of this Lease and whenever required shall satisfy Landlord that such policies are in full force and effect. Such policies shall list Landlord as an **additional insured** and shall be primary and non-contributing with any insurance carried by Landlord.

Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. In the event that Tenant fails to deliver the policies or certificates to Landlord as required above, Landlord may, after fifteen (15) days' notice to Tenant, take out such coverage and/or policies as Landlord may deem necessary or prudent in its sole discretion and for its sole benefit, and charge their costs to Tenant as additional rent, to be paid by Tenant on the fifth day of the month following the date on which Landlord takes out such coverage and/or policies and sends notice to Tenant demanding such payment.

- 10.2 If Landlord permits Tenant to self-insure for all or any portion of the insurance coverages required to be carried by Tenant hereunder, Tenant hereby agrees to provide written proof of such self-insurance program and agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, demands, damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of any event or occurrence which is or would have been covered by insurance policies otherwise required to be maintained by Tenant.

11. ALTERATIONS OR IMPROVEMENTS

Tenant shall not make any alterations, additions, renovations or improvements in or to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements which shall be made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord

and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, or be removed from the Premises by Tenant at the sole discretion of Landlord. Tenant further agrees to indemnify, defend, and hold Landlord and the Premises free and harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work. Landlord reserves the right to review and approve Tenant's plans, specifications and contractor and, further, Landlord reserves the right to impose such restrictions or conditions upon its consent to the above work, including the requirement that Tenant appropriately bond the same, as Landlord may deem reasonably appropriate.

Tenant shall provide Landlord within sixty (60) days after receipt from contractor of "As-built documentation", a set of reproducible copies of record drawings and other data showing the construction project. Tenant shall also furnish to Landlord one preliminary review copy and three finished copies of "Equipment Operation and Maintenance Manual" for the Premises at which work was performed. All plan views of the construction project shall be prepared using the most current AutoCAD software available. Copies of all plan drawings shall be submitted to District in AutoCAD drawing format as well as PDF format.

Landlord further reserves the right to make any alterations, additions, or improvements to the Premises which, in Landlord's sole discretion, are necessary or appropriate for the Premises, provided that Landlord will avoid to the extent reasonably possible interfering with Tenant's use of the Premises.

12. DAMAGE OR DESTRUCTION

In the event the Premises or the Building are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, it shall be optional with Landlord to repair or rebuild the same, and in the meantime the monthly rental, leasehold excise tax payment, and utility costs (to the extent such utilities are not actually used by Tenant) shall be abated in the same proportion as the untenable portion of the Premises bears to the tenantable portion thereof. Unless Landlord within sixty (60) days after the happening of any such damage or casualty shall notify Tenant of its election to restore said Premises or Building, this Lease shall thereupon terminate. Landlord shall not be required to repair or restore any damage or injury nor replace any equipment, inventory, fixtures or other personal property of Tenant or others located on the Premises. Any proceeds payable to Landlord from insurance policies carried by Landlord or Tenant and

covering the Premises or the Building shall be the sole and exclusive property of Landlord.

13. CONDEMNATION

If any part of the Premises or the Building shall be taken or condemned, and a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rental payable hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of such rent as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises at the date of condemnation; but in such event Landlord shall have the option to terminate this Lease by written notice to Tenant within thirty (30) days of the date when title to the part so condemned vests in the condemnor. If part or all of the Premises or the Building be taken or condemned, all compensation awarded upon such condemnation or taking shall go to Landlord and Tenant shall have no claim thereto, and Tenant hereby irrevocably assigns and transfers to Landlord any right to compensation or damages to which Landlord may be entitled during the term hereof by reason of the condemnation of all or a part of the Premises; provided, Tenant may make separate claims against the condemning authority for damages to its personal property or moving expenses.

14. ACCIDENTS AND INDEMNIFICATION

14.1 Tenant shall indemnify and hold harmless Landlord and its Superintendent, Board members, officers, agents, employees, trustees, advisors and consultants (collectively, "Landlord's Agents") from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, demands, personal injuries, loss of life, losses, liens, liabilities, penalties, fines, lawsuits, actions, other proceedings and expenses (including reasonable attorneys' fees and expenses incurred in connection with the proceeding whether at trial or on appeal) (collectively, "Claims") (a) arising in whole or in part out of any occurrence in, upon, at or from the Premises, to the extent (b) arising in whole or in part out of any act, omission or negligence of Tenant, its agents, employees, contractors, servants, invitees, licensees or concessionaires, (c) arising in whole or in part out

of any breach of default by Tenant under this Lease, or (d) advanced or prosecuted by any agent, employee, contractor,

servant, invitee, licensee or concessionaire of Tenant; provided that, Tenant shall not be liable to Landlord if and to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord in failing to repair or maintain those portions of the Building which Landlord is required to maintain as required under the express terms of this Lease after at least thirty (30) days advance written notice of the required repair or maintenance from Tenant to Landlord.

- 14.2 Tenant hereby expressly waives and releases Landlord from, and Landlord shall not be responsible or liable at any time for, any Claims (a) arising out of any acts or omissions of other tenants, occupants, licensees, visitors, contractors or other third parties in, on or about the Building, (b) arising out of any fire, flood, robbery, theft, vandalism, terrorism or other casualty, (c) arising out of any leakage in any part of the Premises or Building from rain, ice or snow or from drains, pipes or plumbing fixtures, (d) arising out of any interruption or diminution of utilities, or (e) advanced or prosecuted by any agent, employee, contractor, servant, invitee, licensee or concessionaire of Tenant; except only if and to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord in failing to repair or maintain those portions of the Building which Landlord is required to maintain as required under the express terms of this Lease after at least thirty (30) days advance written notice of the required repair or maintenance from Tenant to Landlord. In no event and under no circumstances shall Landlord be liable for special, punitive or consequential damages. Tenant shall store its property in the Premises and shall use and enjoy the Premises and all other portions of the Building at its own risk, and hereby waives and releases Landlord, to the fullest extent permitted by law and except as expressly provided above, from all Claims arising out of any cause whatsoever.
- 14.3 In the event Tenant hires any agents or contractors ("Contractors") to perform work on the Premises, Tenant shall include a provision in all contracts between Tenant and any Contractor that, to the fullest extent permitted by law, Contractor will defend, indemnify, and save Landlord harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorneys' fees) arising from loss, damage, or injury to persons or property or loss of use of the property occurring in, on, or about the Premises, arising out of the work performed at the Premises, or occasioned wholly or in part

by any act or omission of Contractor, Contractor's agents, contractors, lower-tier subcontractors, customers or employees. Notwithstanding anything to the contrary herein, Contractor shall not be required to indemnify Landlord for Landlord's sole negligence or intentional misconduct.

14.4 Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties acknowledge that the foregoing provisions of this Section 14.4 have been specifically and mutually negotiated between the parties.

15. COMPLIANCE WITH ZACKERY LYSTEDT LAW - YOUTH PROGRAMS

Applicant/Organization is responsible for the safety and conduct of its participants and spectators. All private/non-profit youth programs must verify that they have complied with the mandated policies for concussion and head injury education, prevention, and management as prescribed in the Zackery Lystedt Law. Access to facilities used for youth programs under this Agreement will not be granted until the "Seattle School District Compliance Statement for the Zackery Lystedt Law" is signed and returned to Landlord.

16. COMPLIANCE WITH LAWS

Tenant shall comply fully at its sole expense with all federal and state statutes and city ordinances now or hereafter in force in respect to the Premises and Tenant's activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

17. ACCESS

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, improving the Premises or the Building, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to

make any repairs, alterations or improvements. Tenant shall not install any new lock or bolt on any door without Landlord's prior written consent. Landlord shall have the right to show the Premises to prospective tenants three months prior to the expiration of the term of this Lease.

18. SIGNS OR ADVERTISING

Tenant will not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto. Any consent so obtained from Landlord shall be with the understanding and agreement that Tenant will remove same at the termination of the tenancy herein created and repair any damage or injury to the Premises or the Building caused thereby, and must comply with applicable governmental requirements. Any advertising, flyers or posters must state that Landlord is not in any way sponsoring or endorsing this activity. In addition, the Premises may not be used by religious groups for recruitment or proselytizing activities.

19. WASTE AND UNLAWFUL USE

Tenant will not commit or suffer any waste upon the Premises, or disturb the quiet enjoyment of any other occupants of the Building by making or suffering any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal or unlawful, or which will be dangerous to life or limb, or which will increase any insurance rate upon the Premises or the Building.

20. SUCCESSORS

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be performed or paid by Tenant hereunder.

21. POSSESSION

In the event of the inability of Landlord to deliver possession of the Premises or any portion thereof at the time of the commencement of the term of this Lease, Landlord shall not be liable for any loss or damage

caused thereby, nor shall this Lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in such event Tenant shall not be liable for any rental until such time as Landlord can deliver possession. If Landlord shall deliver possession of the Premises to Tenant prior to the commencement date of this Lease and Tenant agrees to accept the same at such time, both Landlord and Tenant agree to be bound by all the provisions and obligations of this Lease during the prior period, including the payment of rental and other amounts payable by Tenant to Landlord hereunder at the same monthly rate prorated for the prior period.

22. TAXES

The monthly base rent and leasehold excise tax payments required hereunder are exclusive of any sales, business or occupation or other state taxes levied or assessed against Landlord and which are based on rents, and should any such taxes apply, or be enacted during the life of this Lease, the rental shall be increased by such amount. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed and which shall become payable during the term of this Lease upon Tenant's fixtures, furniture and personal property installed or located in the Premises.

23. INSOLVENCY

Either (i) the appointment of a receiver to take possession of all or any part of the assets of Tenant, or (ii) the general assignment by Tenant for the benefit of creditors, or (iii) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall, if such appointment, assignment or action continues for a period of thirty (30) days, constitute a breach of this Lease by Tenant, and Landlord may at its election and without notice terminate this Lease and in that event Landlord shall be entitled to immediate possession of the Premises. Provided, however, that in the event any provision of this Paragraph is contrary to any applicable law, such provision shall be of no force or effect.

24. COSTS AND ATTORNEYS' FEES

If, by reason of any default or breach hereunder by Landlord or by Tenant, it becomes necessary to institute suit, the prevailing party in such suit shall be entitled to recover, as part of any judgment, such amount as the court shall determine reasonable as attorneys' fees for the prevailing party in such suit, together with taxable costs, including such costs and attorneys' fees on appeal and in any bankruptcy proceeding.

25. NON WAIVER OF BREACH

The failure of Landlord to insist upon strict performance of any of the covenants and agreements of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such or of any other covenant or agreement, but the same shall be and remain in full force and effect.

26. REMOVAL OF PROPERTY

In the event of any entry in, or taking possession of, the Premises upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

27. HOLDOVER

If Tenant shall, without the written consent of Landlord, hold over after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month tenancy, which tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy, Tenant agrees to pay to Landlord the same rate of rental as set forth herein including all other amounts then payable by Tenant to Landlord, unless a different rate is agreed upon, and to be bound by all the terms, covenants, and conditions as herein specified, so far as applicable.

28. ASSIGNMENT AND SUBLETTING

28.1 Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (each of the foregoing shall be a "Transfer") without the prior written consent of Landlord in each instance, which may be withheld in Landlord's sole discretion. Such prohibition against Transfer shall include any transfer by operation of law and any transfer of this

Lease from the Tenant by merger, consolidation, transfer of assets, or liquidation. In the event that Tenant hereunder is a corporation, an unincorporated association, or a partnership, the transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate in excess of twenty percent (20%) in any continuous twelve-month period shall be deemed a Transfer requiring Landlord's prior consent.

28.2 Any Transfer without Landlord's consent shall, at Landlord's sole discretion, be void, and shall constitute a default hereunder which, at the option of Landlord, shall result in the termination of this Lease or exercise of Landlord's other remedies hereunder. Consent to any Transfer shall not operate as a waiver of the necessity for consent to any subsequent Transfer, and the terms of such consent shall be binding upon any person holding by, under, or through Tenant.

28.3 If this Lease or all or any portion of the Premises is Transferred or occupied by any person other than Tenant, Landlord may collect rent and other charges from such other party and apply the amount collected to the rent and other charges reserved hereunder, but such collection shall not constitute consent or waiver of the necessity of consent to such Transfer, nor shall such collection constitute the recognition of such assignee, sublessee, or other party as Tenant hereunder or a release of Tenant from the further performance of all of the covenants and obligations of Tenant herein contained. In the event that Landlord shall consent to a Transfer, Tenant shall pay to Landlord a fee equal to ten percent (10%) of one month's rent for expenses incurred in connection with processing of documents necessary to the giving of such consent, and shall include with the request for consent a copy of the proposed transfer document and adequate financial information for the proposed transferee.

29. NOTICES

All notices, statements, demands, requests, consents, approvals, authorization, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Tenant, addressed to the last known post office address of Tenant or to the Premises;

If to Landlord, addressed to Landlord at the address set forth in Section 1.5 of the Lease Cover Sheet, or to such other place as Landlord may from time to time designate by notice to Tenant.

30. LIENS AND ENCUMBRANCES

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. At Landlord's request Tenant shall furnish Landlord with written proof of payment of any item which, if not paid, would or might constitute the basis for such a lien on the Premises.

31. BREACH BY TENANT

In the event that Tenant defaults in the performance of any of the terms, provisions, covenants and agreements on the Tenant's part to be kept, observed and performed, and such default is not corrected within thirty (30) days after the provision of notice thereof from Landlord, or such longer period as may be reasonable under the circumstances; or shorter period if required by applicable fire or safety codes; or if Tenant shall abandon, desert, vacate or remove from the Premises; or if Tenant shall fail to pay any amount due hereunder for more than five (5) days after written notice thereof from Landlord, then, in such event, Landlord, at its option at any time thereafter, may terminate this Lease together with all of the estate, right, and title thereby granted to or vested in Tenant by giving twenty (20) days notice in writing of such election, by certified mail addressed to Tenant at the address specified in this Lease, and at the expiration of such (20) day period, this Lease and all of the estate, right, title and interest thereby granted to or vested in Tenant shall then cease and terminate, and Landlord may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by Landlord and anything to the contrary in this agreement, the liability of Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease. The Manager of Landlord's Property Management Office shall have the right to determine on Landlord's behalf the existence of any default in performance or other breach or violation of the terms and conditions hereof on the part of Tenant. Notwithstanding anything to the contrary herein, Landlord has the right to terminate this Lease immediately, or to suspend access to the Premises if Landlord determines that access to the Premises or continuation of Tenant's occupancy would jeopardize the health or safety of the students, staff or public.

In the event of a default by Tenant, Landlord, in addition to other rights or remedies that it may have, shall have the right to either terminate this Lease or from time to time, without terminating this Lease, enter and relet the Premises or other part thereof for the account and in the name of Tenant or otherwise, for any such term or terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. Tenant shall pay to Landlord as soon as ascertained, the costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs. Rentals received by Landlord from such reletting shall be applied: First, to the payment of any indebtedness, other than rental, due hereunder from Tenant to Landlord; second, to the payment of the cost of any alterations and repairs to the Premises necessary to return the Premises to good condition, normal wear and tear excepted, for uses permitted by this Lease and the cost of storing any of Tenant's property left on the Premises at the time of reletting; third, to the payment of rental due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of

termination as the same may become due and payable hereunder and the balance, if any, at the end of the term of this Lease shall be paid to Tenant. Should such rental received from time to time from such reletting during any month be less than that agreed to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly.

32. CANCELLATION

In the event Landlord determines at any time during the term of this Lease that the Premises are required for other purposes, this Lease shall be subject to cancellation by Landlord as provided in Section 1.13 of the Lease Cover Sheet.

33. VACATING OF PREMISES

Upon termination of this Lease, Tenant shall return the Premises in good order and condition, except for normal wear and tear and damage by fire or other casualty. On or before the date of termination, Tenant shall have removed all furniture, equipment, supplies, and other materials owned and controlled by Tenant. At the election of Landlord, Tenant shall restore the Premises to their original condition, including the removal of all improvements, additions, fixtures or alterations made by Tenant to the Premises.

34. MISCELLANEOUS

- 34.1 The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.
- 34.2 Time is of the essence hereof.
- 34.3 If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- 34.4 This Lease shall be interpreted under the laws of the State of Washington.
- 34.5 The parties agree that the Superior Court of the State of Washington for King County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- 34.6 Tenant acknowledges that except as expressly set forth in this Lease, neither Landlord nor any other person has made any representation or warranty with respect to the Premises or any other portion of the Building. Specifically, but not in limitation of the foregoing, no representation has been made or relied on with respect to the suitability of the Premises or any other portion of the Building for the conduct of Tenant's business.
- 34.7 When applicable, Tenant shall provide all cooking surfaces with hood, vent, and fire suppression systems that have been approved by the Washington Survey & Rating Bureau to issue maximum fire insurance rate credit. In the event the premium for fire insurance on the Premises or the Building is increased as a result of Tenant's failure to install such an approved system, Tenant shall be liable for the increase.
- 34.8 If Tenant fails to pay, when the same is due and payable, any rent, or other sum required to be paid by Tenant hereunder, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to ten percent (10%). Landlord may elect to make payment of any unpaid amounts required to be made by Tenant hereunder and, upon demand, Tenant shall reimburse Landlord for said amounts together with interest.

- 34.9 Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- 34.10 Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.
- 34.11 This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. Any guaranty attached hereto is an integral part of this Lease and constitutes consideration given to Landlord to enter into this Lease. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. Submission of this Lease for examination does not constitute an option for the Premises and becomes effective as a lease only upon approval of this Lease by the Seattle School District Board and execution and delivery of this Lease by Landlord to Tenant. If any provision contained in a Rider or Addenda is inconsistent with a provision in the body of this Lease, the provision contained in said Rider or Addenda shall control. The captions and paragraph numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any paragraph.
- 34.12 Landlord and Tenant shall comply with all applicable federal, state and local requirements prohibiting discrimination based on sex, sexual orientation, race, national origin, age, and/or handicapping conditions. Tenant acknowledges that Tenant's failure to comply with the foregoing shall be a default under this Lease, and may cause Landlord to sustain substantial damages, including the loss of federal, state, and/or local funding.
- 34.13 Tenant shall, at its sole cost, dispose of all toxic substances that it brings or uses on the Premises. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling

of and disposing of toxic substances, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this Section 33.13.

- 34.14 If Tenant operates or allows subcontractors to operate day care or other child-serving programs or services (any program or services where children are on District premises and not under the care or supervision of their own parents), all of Tenant's staff and contractor personnel who have access to children on the Premises shall take the Adult Sexual Misconduct (ASM) training class approved or provided by the Seattle School District. Upon completion of the ASM training, evidence of such training shall be submitted to the District.
- 34.15 Landlord reserves the right to change the name of the Building in its sole discretion, without notice or liability to Tenant.
- 34.16 Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, and defend with counsel acceptable to such party, all liabilities arising from any such claim (including, without limitation, the cost of counsel fees in connection therewith).

-END OF PART II-

Sample Memorandum of Understanding
Between
School District Name and Community Health Center Name

Purpose

Community Health Center Name and School District Name are entering into this Memorandum of Understanding (MOU) for the provision of physical health and dental health care services to the children of **Community Name** in school-based health clinics (District SBHCs) from **Date to Date**. This MOU addresses services at **School Name(s)**.

Responsibilities of the Parties

The Parties (Parties) understand that each should be able to fulfill its responsibilities under this Memorandum of Understanding (MOU) in accordance with the provisions of law and regulation that govern their individual activities. Nothing in this MOU is intended to negate or otherwise render ineffective any such provisions or the operating procedures of either Party. If at any time either Party is unable to perform its functions under this MOU consistent with such Party's statutory and regulatory mandates, the affected Party shall immediately provide written notice to the other seeking a mutually agreed upon resolution.

Community Health Center Name will:

1. Provide administration and oversight to the District SBHC(s) in accordance with the terms of the **Grant Name(s)** and this MOU.
2. In collaboration with **School District Name**, establish a District SBHC(s) Policy and Procedure Manual that operationalizes the responsibilities outlined in this MOU.
3. Be responsible for obtaining and maintaining all required licenses, waivers and certifications for the District SBHC(s).
4. Be responsible for the hiring and supervision of all District SBHC(s) staff and/or consultants as outlined in the *SBHC Human Resources policies and procedures*. **Name of School District** representatives will be invited to participate in the interview process if appropriate.
5. Be responsible for credentialing all District SBHC site(s) and professional staff including confirmation of malpractice insurance, professional development and conferences as outlined in the *SBHC Credentialing policy and procedure*.
6. Provide documentation of all required licensure and professional insurance.
7. Obtain consent and enrollment information from parents or legal guardians so that students can access the District SBHC in accordance with the *SBHC Consent and Enrollment policies and procedures*.

8. Establish and maintain medical and/or dental records for students who receive services at the District SBHC(s) as outlined in the *SBHC Medical and Dental Record policies and procedures*.
9. Provide and oversee medical (physical) and dental (oral health) services in a timely manner including screenings, well child exams, immunizations, sports and job physicals, acute care, chronic disease management and referrals regardless of insurance coverage as outlined in the *SBHC Services policy and procedure*. (No student will be charged for physical exams).
10. Provide services to children who are primarily **Community Name** residents. The children of the **School District Name** will be given priority for scheduling appointments. Clients living outside of the city may be seen if there is time available as outlined in *SBHC Services Eligibility policy and procedure*.
11. Provide medical and dental staff to deliver services during hours when school is in session as outlined in the *SBHC Staffing policy and procedure*. *Community Health Center Name* will inform **School District Name** in writing of scheduled dates when staff will not be available. **Community Health Center Name** will try to schedule these dates on teacher work day or school holidays.
12. Provide 24 hour access to medical and dental services to serve the needs of **School District Name's** children. This will include: medical and/or dental personnel onsite at Downey eight (8) hours per day Monday - Friday, except for holidays, agency meetings, or days when school is closed due to weather conditions, and after hours care at night and on the weekends when the District SBHC(s) are closed as outlined in the *SBHC Hours of Operation and 24 Hour Access to Care policies and procedures*. **Community Health Center Name** will work with **School District Name** to ensure all children requiring immediate access to medical or dental care during the school day are triaged and provided the care needed.
13. Make referrals to **School District Name** for students needing mental health services in accordance with the SBHC policies and procedures.
14. Coordinate transportation services as outlined in the *SBHC Transportation policy and procedure*.
15. Develop, in cooperation with **School District Name** policies and procedures to comply with applicable State-mandated health requirements.
16. Participate in SBHC Collaborative Team Meetings to discuss operation of the SBHC at least monthly, as outlined in the *SBHC Collaborative Team Meetings policy and procedure*.

17. Establish, with **School District Name**, a SBHC Advisory Council with broad representation from a wide variety of stakeholders including but not limited to medical sponsor, school personnel, parents, students, community health departments and agencies, private physicians, local hospital, business community, and faith community to provide input to and support for the District SBHC(s) as outlined in the *SBHC Advisory Council policy and procedure*.
18. Establish a SBHC quality improvement system that includes medical and dental performance measures and stakeholder satisfaction as outlined in the *SBHC Quality Improvement policy and procedure*
19. Prepare a services report for **School District Name** a quarterly as outlined in the *SBHC Services Report policy and procedure*.
20. Provide all materials, supplies, equipment and other items necessary to the provision of students' physical and dental health care services, with the exception of one (1) fax machine and one (1) copy machine, which has been provided by **School District Name**.
21. Be responsible for the maintenance of all medical and dental equipment as outlined in the *SBHC Equipment Maintenance policy and procedure*, including that which was previously purchased by **School District Name**. Maintenance agreements will be developed and maintained with the manufacturers of the dental and medical equipment per the recommendation of the manufacturer.
22. Manage claim and encounter submissions, including submission of bills to health insurance companies and MCO's, in a timely manner as outlined in the *SBHC Billing and Collections policies and procedures*.
23. Establish a separate SBHC account where reimbursement for medical and dental services will be deposited as outlined in the *SBHC Revenues policy and procedure*. The funds in this account can only be used to support the SBHC operation.
24. Deliver all services described in this MOU in accordance with the Health Information Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and regulations promulgated thereunder, and other governing state and/or federal laws and regulations as outlined in the *SBHC confidentiality, HIPAA, and Family Education Rights and Privacy Act (FERPA) policies and procedures*, and any amendments thereto.
25. Protect the privacy and confidentiality of patient health information in accordance with the
26. Health Information Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and regulations promulgated thereunder; the Pennsylvania Drug and Alcohol Abuse Control Act governing the confidentiality of drug and alcohol abuse patient

records (Act 63); the Confidentiality of HIV Related Information Act (Act 148); and other governing state and/or federal laws and regulations as outlined in the *SBHC confidentiality, HIPAA, and FERPA policies and procedures*.

27. Share client information with **School District Name** as necessary for the provision of services, administration of the SBHC, and accountability to the extent allowable and in accordance with governing state and/or federal laws and regulations as outlined in the *SBHC confidentiality, HIPAA, and FERPA policies and procedures*.
28. Notify **School District Name** of any unauthorized possession, use, knowledge, or attempt thereof, of any protected health information data files or other confidential information; promptly furnish to **School District Name** full details of the unauthorized release of such confidential information; and assist with the investigation or prevention of the further release of such information as outlined in the *SBHC confidentiality, HIPAA, and FERPA policies and procedures*.

School District Name will:

1. Provide appropriate referrals and facilitate appointment logistics of students to the District SBHC in accordance with the *SBHC Referrals, Appointment Scheduling, and Appointment Logistics policies and procedure*.
2. Provide in-kind staff support to the District SBHC operations including, but not limited to, the District Director of Health Services, the Dental Hygienist, School Nurse and/or Health Technician.
3. Provide mental health counseling to students identified and referred by the District SBHC as outlined in the *SBHC Mental Health Counseling Referral policy and procedure*
4. Participate in SBHC Collaborative Team Meetings to discuss operation of the District SBHC at least monthly as outlined in the *SBHC Collaborative Team Meeting policy and procedure*.
5. Establish, with **Community Health Center Name**, a SBHC Advisory Council as outlined in the *SBHC Advisory Council policy and procedure*.
6. Provide the facilities, utilities and equipment including but not limited to fax, copy, printing and internet services at District SBHC(s) adequate for the provision of physical health and dental care services as outlined in the *SBHC Facilities, Utilities and equipment policy and procedure*.
7. Provide telephone and computer network support for the District SBHC(s) purposes (not including the cost for the Language Line) as outlined in the *SBHC Telephone and Computer Network Support policy and procedure*.

8. Provide custodial and maintenance services for the District SBHC(s) as outlined in the *SBHC custodial and maintenance services policy and procedure*.
9. Provide monthly invoices to **Community Health Center Name** for the cost of transportation of students and be reimbursed by HHC for that cost up to the amount specified in the grant.
10. Comply with the Health Insurance and Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR Parts 160 and 164, Related Excerpts from the Preamble and Final Regulation Text Amended as of August 14, 2002: 160.102 Applicability and 164.504 Uses and Disclosures: Organizational Requirements (a) *Definitions Health Care Component and Hybrid entity*, (b) *Standard: health care component*, (c) (2) *Standard Requirements*, and (c) (3) *Responsibilities of the Covered Entity* as outlined in the *SBHC Confidentiality, HIPAA, and FERPA policies and procedures*.
11. Comply with the Family Education Rights and Privacy Act, (FERPA), *as amended*, 20 U.S.C. 1232g, Distinguishing Education Records from Health Records, and Access to and Use of School-Based Student Health Information, U.S. Department of Health and Human Services, "Standards for Privacy of Individually Identifiable Health Information, Federal Register 65, no. 250 (December 28, 2000): 82483, 82496, 82595 as outlined in the *SBHC Confidentiality, HIPAA, and FERPA policies and procedures*.
12. Share client information with **Community Health Center Name** as necessary for the provision of services, administration of the SBHC and accountability to the extent allowable and in accordance with governing state and/or federal laws and regulations as outlined in the *SBHC confidentiality, HIPAA, and FERPA policies and procedures*.
13. Notify HHC of any unauthorized possession, use, knowledge, or attempt thereof, of any protected health information data files or other confidential information; promptly furnish to **Community Health Center Name** full details of the unauthorized release of such confidential information; and assist with the investigation or prevention of the further release of such information as outlined in the *SBHC confidentiality HIPAA, and FERPA policies and procedures*.

Professional Liability

The Parties shall each be responsible for their respective acts or omissions in the performance of medical services under this MOU and neither party shall incur any liability for the performance of the other party. **School District Name** affirms that it carries a professional liability insurance policy as required by law in sufficient amounts to cover any personal injury or loss that may occur through the provision of services by its medical staff under this MOU. **Community Health Center Name** affirms that it has professional

liability insurance coverage under the Federal Tort Claims Act (FTCA) in levels and amounts as required by law for any HHC staff providing services under this MOU.

General Liability

The Parties shall each be responsible for their respective professional liabilities consistent with the preceding provision. As to personal and property damage unrelated to the provision of medical or dental services under this MOU, **School District Name** affirms that it carries a general liability insurance policy sufficient in amount and coverage which will apply to any personal injury or loss or property damage that may occur on the SBHC's property.

Termination

Either Party may terminate this MOU by giving written notice of termination to the other Party at least 60 days prior to the intended date of termination. Any equipment purchased prior to the signing of this MOU, and still within its useful life, shall be returned to **School District Name** in good operating condition. Any equipment purchased subsequent to this MOU shall be kept by **Community Health Center Name**.

Extension

School District Name and **Community Health Center Name** SBHC collaborative team agree to review this MOU annually, at least 60 days prior to its expiration date. Extension of this MOU for a specified period of time must be by mutual agreement of **School District Name** and **Community Health Center Name** and must be put in writing. Suggestions for recommended changes, clarifications, deletions or additions will be discussed at the monthly SBHC collaborative team meeting. Mutually agreed upon extensions of this MOU for a specified period of time and changes to the MOU must be incorporated into an addendum which must be signed by the authorized representatives of **School District Name** and **Community Health Center Name**.

Amendment

This MOU shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto.

Notice of Failure to Perform

If either of the Parties to this MOU is dissatisfied with the performance by the other Party of any obligations imposed under the terms of this MOU, the dissatisfied Party shall request in writing that its grievance(s) be placed on the monthly meeting agenda of the SBHC collaborative team meeting for discussion, action and resolution. The performing Party shall have 10 working days in which to correct any failure to perform the duties so specified or to communicate with the dissatisfied Party, and/or to resolve any disagreement between the Parties. The grievance procedure will be executed in accordance with the *SBHC Non-Performance Policy and Procedure*.

Scope of Agreement

This MOU incorporates all 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 MOU.

Assignment

The Parties shall not assign or transfer any interest in this MOU or assign any claims for money due or to become due under this MOU without prior written approval from the other Party.

Funds Accountability and Accounting

The Parties hereto agree that each shall maintain appropriate records for strict accountability for all receipts and disbursements of funds transferred or expended pursuant to this MOU, pursuant to established federal and **State's Name** cost accounting requirements.

Surplus of Funds

Disposition of any surplus funds should be determined in consultation with the SBHC collaborative team.

Subcontracting

The Parties may not subcontract any portion of this MOU without obtaining the prior written approval of the other Party.

Duration of MOU

This MOU shall be in force from **Date through Date**.

Notice

Any notice required to be given pursuant to the terms of this MOU shall be in writing and shall be hand-delivered or sent by certified mail to the addresses listed in [Exhibit A: List of Addresses] attached hereto. Either Party to this MOU may change the address to which notice is to be submitted by notice delivered pursuant to this section.

Signatures

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this MOU effective as of the date first above written.

Dated: _____, 2009 BY: _____

CEO, **Community Health Center Name**

Dated: _____, 2009 BY: _____

Superintendent, **School District Name**

ABC PUBLIC SCHOOLS

HIPAA-Compliant Authorization for Exchange of Health & Education Information

Patient/Student Name: _____ **Date of Birth:** _____

I hereby authorize _____ [insert health care provider name & title]
and _____ [insert name & title of school official] to exchange
health and education information/records for the purpose listed below.

_____ [insert address & telephone of school/school district]

_____ [insert address and telephone of health care provider]

Description:

The health information to be disclosed consists of:

The education information to be disclosed consists of:

Purpose: This information will be used for the following purpose(s):

1. Educational evaluation and program planning
2. Health assessment and planning for health care services and treatment in school.
3. Medical evaluation and treatment
4. Other: _____

Authorization

This authorization is valid for one calendar year. It will expire on _____ [insert date]. I understand that I may revoke this authorization at any time by submitting written notice of the withdrawal of my consent. I recognize that health records, once received by the school district, may not be protected by the HIPAA Privacy Rule, but will become education records protected by the Family Educational Rights and Privacy Act. I also understand that if I refuse to sign, such refusal will not interfere with my child's ability to obtain health care.

Parent Signature Date

Student Signature* Date

*If a minor student is authorized to consent to health care without parental consent under federal or state law, only the student shall sign this authorization form. In Connecticut, a competent minor, depending on age, can consent to outpatient mental health care, alcohol and drug abuse treatment, testing for HIV/AIDS, and reproductive health care services.

Copies: Parent or student*
Physician or other health care provider releasing the protected health information
School official requesting/receiving the protected health information

Questions?

Feedback?

We want to hear from you!

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