

**ADE IGA NO. 07-28-ED**

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE NAVAJO NATION AND THE ARIZONA DEPARTMENT OF EDUCATION IN PROVISION OF SERVICES TO 3-5 YEAR OLD CHILDREN WITH DISABILITIES RESIDING ON THE NAVAJO RESERVATION**

This Agreement is entered into by and between the Navajo Nation, hereinafter referred as the "NATION" and the ARIZONA DEPARTMENT OF EDUCATION, hereinafter, referred to as "ADE".

**RECITALS:**

**WHEREAS**, pursuant to 2 N.N.C. § 222 the NATION is duly authorized to execute and administer contracts; and

**WHEREAS**, the NATION receives funds pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. Seq., and Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446 for the coordination of assistance for special education and related services for Navajo children with disabilities aged 3-5, inclusive, residing on the Navajo Reservation; and

**WHEREAS**, pursuant to A.R.S. § 11-952 the ADE is authorized to execute and administer Intergovernmental Agreements; and

**WHEREAS**, pursuant to A.R.S. § 15-231, 15-235, 15-762, 15-766 and 15-771, the ADE is authorized to provide for the evaluation and placement of children in special education programs;

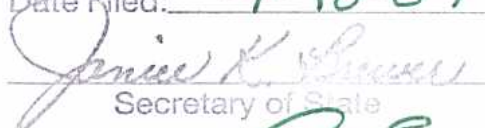

**THEREFORE**, in consideration of the mutual covenants hereinafter to be kept by both parties, it is mutually agreed that:

**I. THE PURPOSE OF AGREEMENT**

- A. Enable the NATION to assist the ADE to meet the responsibility of provision of special education and related services for Navajo children with disabilities aged 3-5, inclusive, residing on the Navajo Reservation located within the State of Arizona.
- B. Enable the NATION to assist the ADE in the accomplishment of child find, screening, and other procedures for the identification of Navajo children with disabilities aged 3-5, or eligible children within ninety days of their third birthday, if a governing board of a school district determines it to be in the best interest of the individual child, residing on the Navajo Reservation within the State of Arizona, during the school years; and
- C. Enable the NATION and the ADE, in conjunction with the Navajo Nation Head Start, to develop a comprehensive plan for implementation of special education and related services for Navajo children with disabilities aged 3-5, inclusive, who reside on the Navajo reservation within the State of Arizona.

**II. TERM OF AGREEMENT**

- A. The term of this Agreement shall commence on July 1, 2007, or when approved by the Education Committee/Intergovernmental Relations Committee of the Navajo Nation Council and the Arizona State Board of Education, whichever date is later, and will remain in effect through June 30, 2010. This Agreement may terminate pursuant to Provision IX, entitled Termination.

NO. 29047  
Filed with the Secretary of State  
Date Filed: 7-10-07  
  
Secretary of State  
By: 

- B. The parties may extend the term of this Agreement by written notice from the ADE to the NATION not less than ninety (90) calendar days prior to the Agreement's expiration date. Any and each notice of extension beyond June 30, 2010 may be of any increment of time but shall not exceed (1) year in duration. In no event shall the exercise of the option to extend exceed five years from June 30, 2010.

**III. SCOPE OF WORK**

- A. The following are designated local education agencies (LEAs) for the purpose of this Agreement:

- 1) Chinle Unified School District
- 2) Ganado Unified School District
- 3) Cedar Unified School District
- 4) Window Rock Unified School District
- 5) Red Mesa Unified School District
- 6) Holbrook Unified School District
- 7) Winslow Unified School District
- 8) Tuba City Unified School District
- 9) Flagstaff Unified School District
- 10) Kayenta Unified School District
- 11) Page Unified School District
- 12) Sanders Unified School District
- 13) Pinon Unified School District
- 14) Joseph City Unified School District

- B. The ADE shall:

- 1. utilize funds provided by the NATION under this Agreement to provide grants to the designated LEAs to undertake child find, screening, and other procedures for early identification of Navajo children with disabilities aged 3-5, or eligible children within ninety days of their third birthday, if a governing board of a school district determines it to be in the best interest of the individual child, residing on the Navajo Reservation within the State of Arizona, as well as to provide direct special education and related services as defined in the provisions of the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. 1400 et. seq. (hereinafter, the "IDEA"); A.R.S. § 15-771
- 2. ensure that preschool grant funds are requested and approved prior to approval of Navajo Nation Grants that are supplemental to the preschool grant.
- 3. ensure that the funds received from the NATION shall be utilized for the provision of child find, screening, and other procedures for early identification, as well as to provide direct special education and related services in least restrictive environments to Navajo children with disabilities aged 3-5, or children within ninety days of their third birthday, if a governing board of a school district determines it to be in the best interest of the individual child, residing on the Navajo Reservation within the State of Arizona; 20 U.S.C. 1400 et seq; A.R.S. § 15-771



4. ensure that the services provided shall be in compliance in all matters with the requirements of the IDEA, and all other applicable provisions of Navajo Nation, federal, and state laws;
5. provide reports to the NATION indicating the number of all Navajo children with disabilities aged 3-5, inclusive, residing on the Navajo Reservation within the State of Arizona, who are provided services by the ADE, or an LEA, on the areas of child find, screening, and other procedures for early identification, as well as direct special education and related services under this Agreement, as well as through the activities of the ADE on behalf of Navajo children, aged 3 to 5, outside of this Agreement; and
6. ensure that the LEAs collaborate with the Navajo Nation Head Start Centers within their boundaries to develop written agreements regarding the child find and service delivery components of the IDEA.

C. The NATION shall:

1. provide to the ADE the funding set forth in Section IV, below, for the services that shall be provided under this Agreement; and
2. ensure that the Navajo Nation Head Start Centers collaborate with the LEAs to develop written agreements regarding the child find and service delivery components of the IDEA.

D. Staffing

When the ADE utilizes the funds received from the NATION under this Agreement for the staffing of LEA positions which are necessary to ensure the provision of a free appropriate public education (FAPE) as defined by the IDEA, the ADE shall ensure that the personnel utilized by the LEA in the provision of services under this Agreement meet all the applicable state licensing or certificate requirements.

#### IV. COMPENSATION

A. Budget

The NATION shall provide funding to the ADE under this Agreement in accordance with the budget attached hereto as Attachment A. The ADE shall not deviate from the budget except only by ADE submitting to the NATION a written amendment to this Agreement for a budget deviation and only after the NATION'S approval of the written amendment.

B. Total Reimbursement

The total reimbursement of this Agreement shall not exceed \$240,000 for the 2007-2008 school year, with subsequent years funding to be determined by the December 1<sup>st</sup> Navajo preschool child count (Attachment B), with the limitation that the performance of this Agreement shall be subject to the availability of IDEA funds provided to the NATION through the Department of Interior, Bureau of Indian Affairs. The determination of the availability of such funds shall be made by the NATION. The funds are to be allocated on a yearly basis to each LEA at a rate of \$1,500.00 for each Navajo preschool child who is eligible for and receiving special education through the LEAs.

C. Payment Method

1. The ADE shall provide to the NATION a “Navajo Nation Preschool Child Count Payment Schedule” (see Attachment A), based on December 1<sup>st</sup> child count, in May of the following year, The NATION shall forward to the ADE 50% of the current year total approved funds in August each year. ADE will submit an invoice to the Nation for the final payment by January. The Nation will provide payment based on the invoice by February 15<sup>th</sup>.

Child Count	Payment Schedule	1st Payment	2 <sup>nd</sup> Invoice from ADE	Final Payment
December 07	May 08	August 08	January 09	Feb 09

2. The ADE shall provide to the NATION copies of completion report 2007, from the LEAs to account for expenditures on a yearly basis.
3. The ADE shall manage the funds provided by the NATION in accordance with the same procedures as other federal IDEA funds are managed by the ADE. Policies and procedures related to IDEA grant management will be provided to the NATION by ADE upon request.

D. Non-supplanting, Non-payment of Administrative Cost

No portion of the funds provided herein shall be used to supplant state funds previously utilized to pay for child find, screening, other procedures for early identification, direct special educational and related services, or costs associated with administrative functions which are required to be provided by the ADE or the LEAs under the provisions of the IDEA or any other provision of federal, or state law. Indirect costs are allowed under this Agreement at the ADE approved restricted rate.

E. Disposition of Assets

This Agreement is for services only. It does not contemplate the use of funds paid hereunder for the acquisition of any personal or real property.

F. Non-Availability of Funds.

Every payment obligation of the State of Arizona (“State”) under this agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the agreement, this agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

V. PROGRAM REPORTING

- A. The ADE shall submit to the NATION a copy of all grants approved by the ADE that include funds derived from this Agreement, as well as all subsequently approved amendments, revisions, and completion reports.
- B. The ADE shall submit a completion report regarding the work which has been performed under each LEA approved grant. Such reports shall indicate, by LEA, the status of the provision of services to Navajo children, aged 3-5 with disabilities, who reside on the Navajo reservation within the State of Arizona. The ADE agrees to assist the LEAs to implement this Agreement, correcting such delays or inability to fully perform this Agreement within the term of the Agreement.



- C. The ADE shall assist the NATION in the collection of the data required for the reporting by the NATION to the Department of the Interior, Bureau of Indian Affairs, of the numbers of Navajo children with disabilities, aged 3-5 receiving services under the provisions of IDEA, in accordance with the format attached hereto as Attachment B.

## VI. STRICT ACCOUNTABILITY

The ADE and the LEAs shall maintain copies of the following documentation for five (5) years following termination of this agreement. Such documentation must be available for review and copying by the NATION, ADE, the United States Office of Inspector General, the United States Department of Education, and their officers, employees, and agents:

- A. Invoices for all materials, equipment, if any, and/or services purchased under this Agreement;
- B. Copies of correctly completed claims for payments;
- C. Time sheets for all personnel, indicating cost allocation where necessary;
- D. All documentation required under 34 CFR Section 75.734, "Records used to facilitate an effective audit."

The ADE agrees to complete and sign a "Release of Claims" form, attached hereto and incorporated herein as Attachment C, required by the Navajo Nation to close out the Agreement. The "Release of Claims" will be submitted to the Navajo Nation within ninety (90) days following the expiration of the Agreement.

## VII. INDEMNIFICATION

As between the Parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees. The liability of ADE shall be subject in all cases to the immunity and limitations of (Arizona tort claims act). The liability of the NATION shall be subject in all cases to the immunities and limitations provided for under the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §551. et seq.

## VIII. INDIAN AND NAVAJO PREFERENCE

With respect to the funds received by the ADE from the NATION, the ADE and its officers, employees, and agents shall comply with the Indian Civil Rights Act of 1968. The ADE shall seek compliance from its subgrantees with the provisions of the Navajo Preference in Employment Act and the Navajo Business Preference Act in the performance of all work done with funds received from the NATION within the territorial boundaries of the Navajo Reservation. Compliance with the Indian Civil Rights Act of 1968 and the Navajo preference in Employment Act, as specified in this section, shall be effective from the date on which the president of the Navajo nation and the Arizona Superintendent of Public Instruction, or his designee, have both signed the Agreement. Such compliance shall not be construed to inhibit the utilization of existing service providers or to require the termination, reduction in force, or reassignment of staff, subcontractors, or other service providers who are already in the employ of, or under contract to, the parties or their subgrantees.

**IX. TERMINATION**

This Agreement may be terminated by either party by provision of sixty (60) days advance written notice, stating the specific reason(s) for such termination. However, by such termination neither party may avoid responsibility for obligations already incurred in reliance on this Agreement, including those specified in applicable state and federal laws.

**X. COMPLIANCE WITH THE NAVAJO AND FEDERAL LAW**

The ADE shall comply with all provisions of the law applicable to this Agreement, including, but not limited to, the Navajo Nation Code, as amended, the IDEA, and the Code of Federal Regulations.

**XI. DISPUTE RESOLUTION**

Concerning any disputes arising out of the execution of this Agreement, the Parties shall resolve the dispute informally under the terms of this Agreement. Nothing herein shall be construed as a waiver of the sovereign immunity of the Navajo Nation or of the State of Arizona.

**XII. AMENDMENTS**

The Agreement may be amended or changed only by written agreement by both parties.

**XIII. CANCELLATION FOR CONFLICT OF INTEREST**

Pursuant to A.R.S. § 38-511, the State of Arizona ("State"), its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other Party to the contract in any capacity or a consultant to any other Party of the contract with respect to the subject matter of the contract. A cancellation made pursuant to this provision shall be effective when the Nation receives written notice of the cancellation unless the notice specifies a later time.

**XIV. NON-DISCRIMINATION**

As applicable, both parties shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

**XV. ARIZONA LAW**

As applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) title 2, Chapter 7 shall apply.



**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

Attorney General Contract No. ADE-IGA-07-28-ED, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona and Navajo Nation to those Parties to the Agreement represented by the Attorney General.

Dated this 22nd day of June, 2007

Louis Denetsosie  
The Attorney General

By Louis Denetsosie

XVI. ENTIRE AGREEMENT

This Agreement, including its Attachments, incorporates all the agreements, covenants, and understandings between the Parties. This Agreement supersedes any and all other prior, simultaneous, oral, or written agreements, covenants, and understandings between the Parties pertaining to subject matter of this Agreement.

WHEREOF, the parties hereto agree to carry out the terms of this Agreement.

Dated this 6TH day of JUNE, 2007

**SUPERINTENDENT OF PUBLIC INSTRUCTION OR DESIGNEE  
ARIZONA DEPARTMENT OF EDUCATION**

Richard Adickes for

DOUGLAS C. PEEPLES, Procurement Administrator  
TYPED NAME AND TITLE OF AUTHORIZED PERSON

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

Attorney General Contract No. 07-28-ED, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this 6th day of June, 2007

TERRY GODDARD  
The Attorney General

By Benita Anderson  
Assistant Attorney General

Joe Shirley, Jr.

JOE SHIRLEY, JR., PRESIDENT, THE NAVAJO NATION OR DESIGNEE

Joe Shirley, Jr., President, THE NAVAJO NATION  
TYPED NAME AND TITLE OF AUTHORIZED PERSON

Dated this \_\_\_\_\_ day of JUN 11 2007, 2007.



## ATTACHMENT A

**NAVAJO NATION PRESCHOOL CHILDCOUNT**  
Payment Schedule 2008

<u>SCHOOL DISTRICT</u>	<u>CHILD COUNT</u>	<u>FUND AMOUNT</u>
Cedar	9	\$ 13,500.00
Chinle	42	\$ 63,000.00
Flagstaff	0	\$ 0.00
Ganado	9	\$ 13,500.00
Holbrook	1	\$ 1,500.00
Joseph City	2	\$ 3,000.00
Kayenta	25	\$ 37,500.00
Page	30	\$ 45,000.00
Pinon	9	\$ 13,500.00
Red Mesa	0	\$ 0.00
Sanders	1	\$ 1,500.00
Tuba City	16	\$ 24,000.00
Window Rock	16	\$ 24,000.00
Winslow	0	\$ 0.00
	<b>Total School Districts</b>	<b>14</b>
	<b>Total Child Count</b>	<b>160</b>
	<b>Total Fund Amount</b>	<b>\$240,000.0</b>

ATTACHMENT B

**ARIZONA**  
**Native American Preschool Child Count**  
**December 1, 20\_\_ , Count Date**

Student Census Number	Date of Birth	Reservation of Residence	Eligibility Criteria	Names of School (for Head Start) Site
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				

**Eligibility Categories for Preschool: Preschool speech/Language (PSL), Preschool Moderate Delay (PMD), Preschool Severe Delay (PSD), Hearing Impaired (HI), Impaired (VI).**



ATTACHMENT C



State of Arizona  
Department of Education

Tom Horne  
Superintendent of  
Public Instruction

RELEASE OF CLAIMS

	07-28-ED	
Grantee	Contract No.	Account No.

.....

**WHEREAS**, by the terms of the Mutual promises, Agreements and Assurances between the Navajo Nation and the Arizona Department of Education, it is provided that 12 months from the original due date of the completion report, the grantee will provide to the Navajo Nation a Release of Claims.

**NOW THEREFORE**, in consideration of the above premises the grantee hereby remises, releases, and forever discharges the Navajo Nation, its officers, agents and employees of and from all manner of debts, liabilities, obligations, accounts, claims and demands whatsoever, in law and in equity, under or by virtue of this said Agreement.

**IN WITNESS WHEREOF**, the grantee has executed this release of Claims

This 07th day of JUNE, 2007

Richard Adisher for  
Signature

DOUGLAS C. PEEPLES, PROCUREMENT ADMINISTRATOR  
Printed Name and Title