

Board of Education Special Meeting

Monday, March 23, 2020 7:30 AM

Superintendent's Office Conference Room  
230 Calkins Avenue  
Elm Creek, NE 68836-0490

1. Call to Order
2. Flag Salute
3. Open Meetings Act
4. Roll Call
5. Review of Agenda
6. New Business
  1. Approve Resolution pertaining to temporary closure of operations.
  2. Approve Interlocal Agreement to Share a School Psychologist/Intervention Coordinator with Overton Public Schools
7. Adjournment

**RESOLUTION**

**WHEREAS**, Elm Creek Public School District (“the District”) anticipates that it may need to temporarily close its operations at some point for health and safety reasons; and,

**WHEREAS**, if the District closes on a temporary basis, then the District employees who work on an hourly and/or non-exempt basis may not be able to work at the District; and

**WHEREAS**, it is in the best interests of the District to pay the District’s hourly and/or non-exempt employees while the District is temporarily closed for a variety of reasons, namely: to ensure that said the District employees do not leave employment during the temporary closure, to avoid the spread of any illness to other employees, for staff morale, and for other legitimate reasons.

**NOW, THEREFORE, BE IT RESOLVED** that, in the event of the temporary closure of the District, the Superintendent or Superintendent’s designee is hereby authorized to pay the District’s hourly and/or non-exempt employees in an amount that the Superintendent or Superintendent’s designee deems fair and reasonable, but not to exceed such employee’s customary and regular pay, for up to 4 weeks during the temporary closure. If the District operations continue to be closed after 4 weeks, then the Board shall reconvene and determine what authority, if any, the Superintendent or Superintendent’s designee has to continue paying the District’s hourly and/or non-exempt employees during the temporary closure. Nothing in this Resolution shall prevent the Superintendent or Superintendent’s designee from assigning hourly and/or non-exempt employees to work or perform services and be compensated for such services.

The foregoing Resolution having been read in its entirety, Member \_\_\_\_\_ moved for their passage and adoption. Member \_\_\_\_\_ seconded same. After discussion and on roll call vote the following members voted in favor of passage and adoption of the above Resolution: \_\_\_\_\_

\_\_\_\_\_.

The following members voted against the same: \_\_\_\_\_

\_\_\_\_\_.

The following members were absent or not voting: \_\_\_\_\_.

The above Resolution having been consented to by a majority of the quorum of the Board, it was declared as passed and adopted by the President at a duly held and lawfully convened meeting in full compliance with the Nebraska Open Meetings law.

**DATED** this \_\_\_ day of March, 2020.

**ELM CREEK PUBLIC SCHOOL DISTRICT**

**BY:** \_\_\_\_\_  
President

**ATTEST:**

\_\_\_\_\_  
Secretary

## **INTERLOCAL AGREEMENT TO SHARE A SCHOOL PSYCHOLOGIST/INTERVENTION COORDINATOR**

This agreement is made and entered into under the provisions of the Nebraska Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801 to 13-827, by **Buffalo County School District 10-0009**, commonly known as **Elm Creek Public Schools** (referred to herein as "Elm Creek"); and **Dawson County School District 24-0004**, commonly known as **Overton Public Schools or Overton Public Schools** (referred to herein as "Overton").

WHEREAS, the Parties are political subdivisions of the State of Nebraska and desire to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other and other entities as further agreed on the basis of mutual advantage to provide goods, services, and facilities in a manner and pursuant to forms of governmental organization that will accord the best results in terms of geographic, economic, population, and other factors that will influence the needs and development of the Parties;

WHEREAS, the Parties have passed motions or resolutions authorizing each party to approve and enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties as follows:

- 1. No Separate Legal Entity.** This Agreement does not establish a separate legal or joint entity.
- 2. Purposes.** The purposes of this agreement are:
  - A.** To permit the school districts to make the most efficient use of their powers and resources by sharing the services of a School Psychologist/Intervention Coordinator ("Psychologist") who will provide services on a .50 Full-time Equivalent (FTE) basis to Overton and on a .50 FTE basis to Elm Creek.
  - B.** To enhance the ability of the school districts to attract and maintain a qualified Psychologist by ensuring that the Psychologist will have full-time employment;
  - C.** To facilitate the school districts' use of a Psychologist on a shared basis by providing for the scheduling of the Psychologist's time in a coherent and efficient manner; and

- D. To enhance the school districts' services and programs, and to make increased educational opportunities and services available to the students of both school districts.

**3. Term.** This Agreement shall have a duration of one year, commencing with the 2020-21 school year, which shall begin on or about **July 1, 2020** and end on or about **June 30, 2021**. Subsequently, this Agreement shall automatically renew from year to year for an additional one-year term unless one of the parties gives written notice to the others on or before **March 1st** of its intention to terminate it at the conclusion of the then-current contract term. The parties may by mutual agreement terminate this agreement at any time prior to June 30, 2021.

**4. Administration.** Elm Creek's Superintendent and Overton's Superintendent ("Administrators") shall be responsible for jointly administering the cooperative undertaking described in this Agreement. The Administrators may take any action authorized, either explicitly or implicitly, by the Interlocal Cooperation Act, including any action that may be necessary to perform the duties and functions as provided in this Agreement.

**5. Nature of the Psychologist's Employment.** Elm Creek shall employ a Psychologist who is certificated and endorsed by the Nebraska Department of Education as a School Psychologist (Grades PK-12) and Intervention Coordinator. The Psychologist will be hired by Elm Creek pursuant to its policies and practices. Elm Creek shall be responsible for paying the Psychologist's yearly salary and benefits. The employment contract between Elm Creek and the Psychologist *is not* subject to the collective bargaining agreement between the Elm Creek Board of Education and the Elm Creek Education Association. Elm Creek agrees to provide the services of the Psychologist to Overton on a .5 FTE basis. For the purposes of this Agreement, the Psychologist shall be an employee of Elm Creek Public Schools and will not be an employee of Overton or a "joint employee" of Elm Creek and Overton for any purpose.

**6. Sharing of Services Provided by Psychologist.** The Psychologist shall provide services to both school districts. The type of services to be provided by the Psychologist to Overton shall be the same as those which are described in the Psychologist's contract and/or job description(s) with Elm Creek. The parties agree that to the extent practicable, the Psychologist will on a weekly basis spend approximately 50% of his or her working time at Overton tending to its affairs and approximately 50% of his or her working time at Elm Creek tending to its

affairs. Generally, the Psychologist will spend 50% (91 days) in Elm Creek and 50% (91 days) in Overton. Overton and Elm Creek will cooperate in the scheduling of the Psychologist so as to make it possible for the Psychologist to perform services at both schools without conflict or, when conflict is unavoidable, in a manner that will minimize the conflict. The parties acknowledge and understand that in some cases special circumstances (holidays, conferences, training, testing, and/or other special circumstances) will require that the Psychologist devote more time to the affairs of one of the parties to this Agreement than to the other during the course of a given week or weeks. The parties agree that in such cases, the schedule of the Psychologist in the succeeding week or weeks shall be adjusted so that, for the 2020-21 school year, the amount of time spent by the Psychologist in dealing with the affairs of each of the parties hereto shall be substantially equivalent to the 50/50% split. Schedule changes shall be arranged by e-mails between the school district's superintendents. If the movement of days should impact the days billed, the parties must have a written (e-mail) agreement detailing the change of days and billing amount approved by both the Superintendent of Elm Creek and Overton prior to the change occurring. Every reasonable effort will be made to swap days if necessary to equitably allocate benefit time (professional days, personal days and/or sick days, etc.) between the two entities on the agreed upon split.

**7. Psychologist's Salary and Fringe Benefits.** Elm Creek will pay the Psychologist's salary for the 2020-21 school year pursuant to the terms of an employment contract (attached hereto as **Exhibit A**). The parties agree that, for the 2020-21 school year, Elm Creek has established the amount of the Psychologist's salary at \$ [REDACTED]. Elm Creek shall also provide the Psychologist with those additional fringe benefits specified in the Psychologist's Contract.

**8. Payment to Elm Creek by Overton.** Overton shall make the following payments to Elm Creek:

- A.** An amount equal to 50% of the Psychologist's annual salary as set forth in paragraph 7 above.
- B.** An amount equal to 50% of all expenses incurred by Elm Creek for worker's compensation premiums, FICA, FUTA, and retirement (NPERS), as a consequence of the Psychologist's employment by Elm Creek.
- C.** An amount equal to 50% of the cost of fringe benefits specified in the Psychologist's Contract with Elm Creek (which includes, but is not necessarily limited to, Elm Creek's share of premiums for group health, dental and life insurance).

- D.** The parties shall share equally any costs for professional development expense (training), travel and/or mileage, and dues as agreed between the parties.

Elm Creek shall bill Overton on a monthly basis for all payments pursuant to this paragraph beginning in August 2020 and ending in July 2021. The first 11 payments shall be Overton's share (50%) times the monthly cost of all amounts listed above. The amount billed is due on the 1st of each month and should be paid no later than the 20th of each month. All payments due under this Agreement shall be reconciled in July to account for any discrepancies in the amount of services actually rendered by the Psychologist to Overton, whether above or below the anticipated 50/50 split. Elm Creek shall include all necessary adjustments caused by prior overpayment or underpayment in the final billing statement.

**9. Psychologist Not a Third-Party Beneficiary.** This agreement does not create any enforceable rights in favor of the Psychologist and she is not a third-party beneficiary of the agreement.

**10. No Joint Employment.** This agreement does not make the parties joint employers of the Psychologist for purposes of liability, Workers' Compensation, unemployment compensation, or any other purpose.

**11. Management, Evaluation, Discipline and Discharge.** Elm Creek shall have the right to manage, evaluate, discipline, and discharge the Psychologist in a manner consistent with its employment contract, and as otherwise provided by law. The Overton Superintendent shall have the right to direct the Psychologist in his or her work with respect to the services he or she performs for Overton. Elm Creek shall evaluate the Psychologist's as required by law and school policy, provided that it shall consider the positive and negative comments, if any, of the Overton Superintendent or other representatives in preparing the Psychologist's evaluation. Overton's superintendent shall conduct at least one evaluation of the Psychologist and participate in the Psychologist's annual review.

**12. Provision of Classroom, Books, and Instruments.** Each party shall provide such supplies and equipment as are necessary for the Psychologist's performance of services at its respective premises. Each school district will make a classroom or workspace available for Psychologist's instruction of its students.

**13. Termination During Term of Agreement.** Either party may terminate this agreement during its term if the Psychologist serving at its commencement:

- A. Submits a resignation with an effective date prior to the end of the term of the agreement, and the Elm Creek Board of Education accepts the resignation.
- B. Dies prior to the end of the school year;
- C. Is discharged by the Elm Creek Board of Education prior to the end of the school year.

**14. Manner of Acquiring, Holding, and Disposing of Real and Personal Property.** The Parties do not anticipate a need to acquire, hold, or dispose of real or personal property to accomplish the purposes of this Agreement. The Parties' respective governing boards shall determine the manner of acquiring, holding, or disposing of real or personal property in the event that such a need arises.

**15. Financing and Budgeting.** Each party will budget separately to pay the costs and expenses that it will reasonably and necessarily incur to fulfill its obligations under this agreement.

**16. Taxes.** This Agreement does not grant the school districts any authority to levy, collect, or account for any tax authorized under sections 13-318 through 13-326 or 13-2813 through 13-2816.

**17. Liability Insurance.** Each party shall obtain and pay for its own liability insurance coverage for their participation in this Agreement.

**18. Indemnification.** To the extent permitted by applicable law, but without waiving any rights under any applicable state governmental immunity act, the Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.

**19. Disposal of Property upon Termination.** The parties do not contemplate that this agreement will require the acquisition of any jointly held property. However, if it becomes necessary to dispose of property held jointly under this Agreement, it shall be divided and distributed as agreed between the school districts upon termination of this Agreement. If a dispute arises as to the value of such property or as to how it will be distributed, such property shall be sold by taking bids at public auction and selling said property to the highest bidder with the proceeds therefrom being distributed equally to the school districts.

**20. Nondiscrimination.** The school districts shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

**21. Employment Eligibility Verification.** The school districts shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If a school district employs or contracts with any subcontractor in connection with this Agreement, the contracting party shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

**22. Notice.** A school district giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or electronic mail (to the respective Superintendents, with receipt confirmed). Notice shall be sent to the following addressees at the following addresses:

Elm Creek: Elm Creek Public Schools  
Attn: Superintendent  
230 E Calkins Ave.  
Elm Creek, NE 68836

Overton: Overton Public Schools  
Attn: Superintendent  
401 7th St.  
Overton, NE 68863

Notice is effective only if the party giving the Notice has complied with this section.

**23. Amendment and/or Extension of Agreement.** The school districts may amend or extend this agreement. Any such amendment or extension shall require the approval of both boards of education and shall be in writing.

**24. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in

full force, if the essential terms and conditions of this Agreement for each party remain enforceable.

**25. Counterparts.** The school districts may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the school districts need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other school district to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each school district to the other. In proving this Agreement, a school district must produce or account only for the executed counterpart of the school district to be charged.

**26. Assignment.** The school district shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person or entity without the previous written consent of the other party.

**27. Reservation of Rights.** Each party reserves the right to enforce its own rights, obligations, or benefits of this Agreement.

**28. Entirety of Agreement.** This agreement contains the school districts' entire agreement. It fully supersedes any and all prior agreements or understandings between them pertaining to the subject matter hereof.

**OVERTON PUBLIC SCHOOLS**

\_\_\_\_\_  
Board President

Date: \_\_\_\_\_, 2020

**ELM CREEK PUBLIC SCHOOLS**

\_\_\_\_\_  
Board President

Date: \_\_\_\_\_, 2020