

CYBER SERVICES AGREEMENT

THIS Cyber Services Agreement (“Agreement”) is made this ____ day of _____, 2020, by and between the **WARREN COUNTY SCHOOL DISTRICT**, 6820 Market Street, Russell, Pennsylvania 16345, hereinafter referred to as -
----- **“WCSD”**

AND

OTTO-ELDRED SCHOOL DISTRICT, 143 R.L. Sweitzer Drive, Duke Center, PA 16729, hereinafter referred to as ----- **“OESD.”**

WHEREAS, WCSD has developed and operates an on-line instructional program administered by certified instructional personnel to provide credit and educational opportunities to students (the “Cyber Service Program”); and

WHEREAS, OESD desires to enroll its students in WCSD’s Cyber Service Program and to award its students credit for coursework completed through the Cyber Service Program.

NOW, THEREFORE, intending to be legally bound hereby, WCSD and OESD agree as follows:

1. Term. This Agreement shall commence on August 15, 2020, and shall terminate on August 14, 2021.

2. Fees / Enrollment.

A. The parties agree that, subject to any cap established by the WCSD pursuant to Section 2 D of this Agreement, OESD students may enroll in the WCSD’s Cyber Service Program during the term of this Agreement. **For each student enrolled during the OESD school year, OESD shall pay the WCSD an enrollment fee in the amount of \$2,750 for a yearly full-time seat license (4 or more courses); \$1,375 for a**

second semester full-time seat license (4 or more courses) or, if less than 4 courses are taken, \$250 for a half credit course and \$500 for a full credit course. Summer School services can be purchased for the summer of 2021 at the following rate: \$125 for a half credit course and \$250 for a full credit course. OESD students may be registered to enter into the Cyber Service Program at any time upon the mutual agreement of OESD and WCSD. All invoices must be paid within 60 days of receipt. Late payments shall be subjects to a late fee equal to 5% of the invoice amount or \$100, whichever is lower, and WCSD shall have the right to remove the relevant student(s) from the course(s) if payment is not made within 75 days of receipt of the original invoice.

B. There shall be no proration of enrollment fees for students accepted for enrollment after the commencement of the course.

C. If a student withdraws or is otherwise removed from the Cyber Service Program after the commencement of any course, there shall be no refund of the enrollment fee owed to OESD. However, OESD may assign another student to the fulltime seat from which a student has withdrawn without incurring an additional enrollment fee.

D. WCSD reserves the right to place a cap on the number of students that are permitted to enroll in its Cyber Service Program and to deny the enrollment of any student that exceeds the cap number established by the WCSD.

3. Responsibilities of WCSD.

A. WCSD will supply an online accessible curriculum and assessments that meets the academic content standards of the Pennsylvania Department of Education. Courses available for the 2020-2021 school year are listed on Exhibit A attached hereto.

B. WCSD shall provide to OESD, upon request, information regarding OESD's students enrolled in the Cyber Service Program.

C. In exchange for the fees specified in Section 2A of this Agreement, WCSD shall be responsible for all costs associated with the operation and maintenance of its Cyber Services Program including the costs to acquire and provide courses, the cost of paying WCSD employees and teachers to operate the Cyber Services Program, etc. Courses may be added or removed at the discretion of WCSD, with the understanding that a course shall not be removed until such time as any student that is enrolled in the course has been afforded the opportunity to complete the course.

4. Responsibilities of OESD.

A. OESD will submit a completed enrollment application for each student and provide any other information reasonably necessary for the enrollment and participation of its students in the Cyber Service Program. OESD shall determine the minimum academic, attendance, and other eligibility requirements for OESD students to participate in the Cyber Services Program. OESD shall make information regarding the Cyber Services Program available to parents and post it on its website.

B. Students enrolled in the Cyber Service Program shall remain, for all purposes, students of OESD, and OESD shall be entitled to all Commonwealth reimbursement for its students. Thus, OESD will be responsible for enforcement of compulsory attendance requirements; the determination and reporting of grades; determining grade promotion and graduation eligibility for its students; and student discipline (which may include removal from the Cyber Services Program) pursuant to the OESD Code of Conduct/Discipline Code.

C. OESD shall not attend or be physically present on WCSD property pursuant to this Agreement. All OESD students enrolled in the Cyber Service Program shall participate in the program using computer hardware, a compatible operating software system and an internet connection furnished by, and paid for by, OESD and/or the student and physically located at either OESD or the student's home.

D. OESD shall be responsible for determining and ensuring that its enrollment of students in the Cyber Service Program is consistent with any requirements imposed on OESD by applicable laws or regulations regarding minimum hours of student instruction (990 hours for secondary students and 900 hours for elementary students) and/or students receiving special education services pursuant to the IDEA or Section 504 of the Rehabilitation Act. The parties agree to implement a system that accurately tracks instructional time in the Cyber Services Program similar to attendance in a school building.

E. OESD shall be solely responsible for compliance with all federal and state laws and regulations relative to any Section 504, special education (IDEA), or gifted services for which an OESD student may be entitled. OESD shall be solely responsible for the identification of students in need of 504 Plans, special education or gifted services, the designated placement for such students, and the development of any 504 Plan, IEP or GIEP for its students enrolled in the Cyber Service Program. OESD shall be solely responsible for the implementation of, compliance with, review of, and updating of its students' 504 Plans, IEP's and GIEP's. As a part of its obligations pursuant to Section 8 of this Agreement, OESD shall defend, indemnify and hold harmless the WCSD, its employees, agents, Board Members, directors, officers, representatives and insurers from and against any and all claims, liabilities, losses and expenses arising from OESD's or its employee's, agent's, or representative's failure to meet the responsibilities set forth in this provision. The terms of this provision shall survive the termination of this Agreement.

5. Compliance with Distance Learning Requirements.

During the entire term of this Agreement, WCSD and OESD warrant to each other that they shall both be and remain in compliance with all respectively applicable Pennsylvania Department of Education guidelines regarding electronic and distance learning programs or any other requirements issued by the Commonwealth of Pennsylvania, Department of Education, or any other respectively applicable statute, regulation, or ordinance regarding any aspect of the Cyber Service Program referenced herein. Each party shall provide to the other party such information or reports as are

necessary for reporting to the Pennsylvania Department of Education concerning distance learning programs.

6. Non-Assignment.

Neither this Agreement, nor any of the rights or obligations state herein, may be assigned by either party without the express written consent of the other party.

7. Confidentiality of Personally Identifiable Information.

Student data, including student assessment data, shall be attributed to OESD. WCSD and OESD shall work cooperatively to safeguard the confidentiality of enrolled students' personally identifiable information consistent with the Family Educational Rights and Privacy Act and its associated regulations.

8. Indemnification.

Without waiver of any immunities, limitations of liability, or damage limitations provided by law, each party shall defend, indemnify and hold harmless the other party, its employees, agents, Board Members, directors, officers, representatives and insurers from and against any and all claims, liabilities, losses and expenses arising from the indemnitor's or its employee's, agent's, or representative's acts or omissions relating to the performance of this Agreement. The terms of this provision shall survive the termination of this Agreement.

9. Default / Termination.

In the event that either party defaults under any provision of this Agreement and such default is not cured within thirty (30) days of receipt of written notice, the non-defaulting party shall have the right to terminate this Agreement upon subsequent written notice.

10. Notice.

All notices required under this Agreement shall be delivered via certified mail, return receipt requested, or Federal Express delivery service to the following parties at the addresses set forth below:

If to Otto-Eldred School District:

Otto-Eldred School District
Attention: Superintendent
143 R.L. Sweitzer Drive
Duke Center, PA 16729

If to Warren County School District:

Warren County School District
Attention: Superintendent
6820 Market Street
Russell, PA 16345

11. Entire Agreement.

This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. No party is relying upon any promise, representation or understanding other than as is expressly set forth in this Agreement.

12. Construction.

This Agreement is between two public school entities, each having expertise in the area of public education and the opportunity to consult with counsel of their own choosing. Accordingly, the terms of this Agreement shall not be presumptively construed in favor of or against either party regardless of the circumstances of the preparation or negotiation of this Agreement.

13. Authority.

By executing this Agreement, each party hereto certifies that all necessary approvals of the parties' respective governing bodies have been obtained prior to the execution hereof and that, upon its execution, this Agreement shall be binding upon each party.

14. Amendment.

This Agreement may be amended, modified, or waived only by written agreement signed by the parties hereto and approved by both parties' Board of School Directors at a public meeting held in compliance with the mandates of the Sunshine Law.

15. No Waiver.

No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

16. Force Majeure.

No party to this Agreement shall be responsible to the other party for non-performance or delay in performance of the terms or conditions of this Agreement due to acts of God, acts of governments, war, riots, strikes, accidents and transportation or other causes beyond the reasonable control of such party.

17. SEVERABILITY

All sections, sentences, and provisions contained in this Agreement are severable. Should any section, sentence, or provision of this Agreement be rendered void, invalid or unenforceable by any court of law (or arbitrator), for any reason, such a determination shall not render void, invalid, or unenforceable any other section, sentence, or provision of this Agreement and the remainder of this Agreement shall remain in full force and effect and binding on the parties hereto.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

ATTEST:

WARREN COUNTY SCHOOL DISTRICT

Secretary

President, Board of School Directors

ATTEST:

OTTO-ELDRED SCHOOL DISTRICT

Secretary

President, Board of School Directors