

OPERATING AGREEMENT FOR IVY CREEK SCHOOL

THIS OPERATING AGREEMENT (the "Operating Agreement"), dated _____, 2011 for identification, is by and among the COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA (hereinafter "Albemarle County"); the SCHOOL BOARD OF THE CITY OF CHARLOTTESVILLE, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF CULPEPER, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF FLUVANNA, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF GREENE, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF LOUISA, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF MADISON, VIRGINIA; the SCHOOL BOARD OF THE COUNTY OF NELSON, VIRGINIA; and the SCHOOL BOARD OF THE COUNTY OF RAPPAHANNOCK, VIRGINIA (collectively the "School Boards"), who mutually covenant, promise and agree as follows:

1. Recitals.

a. Each of the School Boards is a body corporate organized under the laws of the Commonwealth of Virginia and is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law. As such, each School Board is responsible for the management of its respective school division.

b. The School Boards participate as members of a cooperative regional education program known as the Piedmont Regional Education Program ("PREP"). The purpose of PREP is to develop and provide special education programs and other appropriate education services to selected students who attend the respective school divisions managed by the School Boards.

c. PREP is governed by a Joint Board of Control (the "Joint Board") consisting of a representative from each School Board. The Joint Board is responsible for establishing policy and making decisions related to the operation of the programs and services provided by PREP, in accordance with regulations established by the Virginia Board of Education for jointly-operated school programs and with the by-laws governing PREP (the "PREP By-laws").

d. As part of the services it provides to the School Boards, PREP operates a school known as Ivy Creek School, at the facility constructed by Albemarle County and located at 225 Lambs Lane, Charlottesville, Virginia 22901 (the "Facility"), for students with emotional disabilities who are placed by each of the School Boards, as permitted by applicable state and federal laws.

e. Each of the School Boards is legally authorized under Virginia Code §22.1-26 to enter into this Operating Agreement.

f. Each of the School Boards has, by formal action taken at a lawfully called and constituted meeting, approved this Operating Agreement and authorized its respective representative to execute this Operating Agreement on its behalf.

g. This Operating Agreement shall govern all of the rights and obligations of the parties hereto with respect to the operation of the Facility.

2. **Effective Date of Agreement.** This Operating Agreement shall be effective upon execution by all of the School Boards.

3. **Term.** The term of this Operating Agreement shall commence upon the date of execution (the "Commencement Date") and shall expire on June 30, 2019 unless renewed for an additional term by an executed written agreement of the participating School Boards or terminated as provided by Section 4 of this Operating Agreement.

4. **Termination.** The parties hereto recognize and agree that, prior to the expiration of the original term or any renewal term thereafter, Albemarle County may require the exclusive use of the Facility constructed on its property. In the event that Albemarle County elects to occupy the Facility, it shall notify provide written notice to the Joint Board and all School Boards who are members of the Joint Board one (1) year in advance of the date of its intended occupancy of the Facility and termination of this Operating Agreement. In such event, the Joint Board shall vacate the Facility at a mutually acceptable date (the "Departure Date") and this Operating Agreement shall terminate without liability to any party, except as otherwise provided and except for any costs incurred to vacate the Facility. The Departure Date shall be not later than one (1) calendar year after the end of the school year in which notice to vacate is received by the Joint Board. Albemarle County shall retain its exclusive right to occupy the Facility and terminate this Operating Agreement during the original term or any renewal term thereafter. Except as provided hereunder, no School Board may withdraw from the Joint Board or otherwise exercise any termination rights prior to June 30, 2019.

5. **Lease of Property.** The School Boards agree that they shall cause their Joint Board representatives to enter into the Lease Agreement set forth in annexed **Exhibit "A."**

6. **Allocation and Payment for Student Spaces and other PREP Costs.**

a. **Initial allocation of spaces.** Of the sixty-four (64) student spaces available at Ivy Creek School, the School Boards agree to allocate such spaces as follows:

Albemarle:

Charlottesville:

Culpeper:

Fluvanna:

To be negotiated

Greene:

Louisa:

Madison:

Nelson:

Rappahannock:

b. **Allocation of costs.** Except as provided hereunder, regardless of whether a School Board uses any or all of its allocated student spaces, each School Board shall pay to the Joint Board for each of its allocated student spaces an amount equal to the Joint Board's

annually approved tuition rate package ("Tuition Rate Package"), consistent with the Joint Board's prior practices. The Tuition Rate Package shall be determined and approved annually by the Joint Board and shall cover the projected costs of all operational and capital improvement expenses required for PREP. Expenses covered by the Tuition Rate Package shall include, but not be limited to, rental payments for the Ivy Creek School in the amount of each School Board's share of the annual debt service incurred by Albemarle County to finance the construction of the Facility as set forth on the PREP Debt Schedule annexed as **Exhibit "B,"** any required major repairs and capital improvements that the parties agree are necessary for the operation of PREP, personnel costs, maintenance costs, repair and replacement of equipment and fixtures, water and sewer rental charges and all ongoing charges for gas, electricity, telephone and communication services and other utility services used, rendered or consumed at the Facility during the original term or any renewal term. The Joint Board may, upon majority vote and in accordance with PREP By-Laws, approve annual costs in addition to the Tuition Rate Package as needed.

c. Re-allocation of spaces. Prior to the Joint Board's annual approval of the PREP budget, if any School Board chooses to decrease its allocation of student spaces, Albemarle County shall have the right of first refusal for up to sixty percent (60%) of the student spaces so released. Fractional spaces shall be rounded up to the next whole number. In the event that the Facility is expanded in the future, Albemarle County shall have the right of first refusal for up to sixty percent (60%) of any additional student spaces that become available as a result of such expansion.

7. Annual Appropriations. The School Boards' obligations under this Operating Agreement shall be contingent upon sufficient annual funding and appropriation by their respective governing bodies. Notwithstanding this contingency, each of the School Boards agrees that it shall include in its annual budget and seek appropriation of funds sufficient to meet its financial obligations under this Operating Agreement and the Lease Agreement attached hereto. To the extent permitted by law, the School Boards also agree that, in the event of non-appropriation of sufficient funds to meet their respective financial obligations to the Joint Board under this Operating Agreement and the Lease Agreement, they will not, in the same budget year, appropriate funds to provide services or placements to serve students that would otherwise be served by PREP at the Ivy Creek school as described in Section 1(d).

8. Conflict with PREP By-Laws. To the extent that any of the provisions of this Operating Agreement conflict with the provisions of the PREP By-laws, the provisions of this Operating Agreement shall control and the PREP By-laws shall be deemed amended only for this limited purpose.

9. Assignment. The School Boards may not assign any of their rights or obligations under this Operating Agreement without the prior written consent of all parties hereto.

10. Notices. All notices to be given hereunder shall be in writing and shall be deemed to have been properly given if and when delivered personally or sent by registered or certified mail, postage prepaid, addressed as follows:

Albemarle:

Albemarle County Public Schools
Office of the Superintendent
401 McIntire Road
Charlottesville, Virginia 22902

Culpeper:

Culpeper County Public Schools
Office of the Superintendent
450 Radio Lane
Culpeper, Virginia 22701

Charlottesville:

Charlottesville City Public Schools
Office of the Superintendent
1562 Dairy Road
Charlottesville, Virginia 22903

Fluvanna:

Fluvanna County Public Schools
Office of the Superintendent
14455 James Madison Highway
Palmyra, Virginia 22963

Greene:

Greene County Public Schools
Office of the Superintendent
40 Celt Road
P.O. Box
Stanardsville, Virginia 22973

Louisa:

Louisa County Public Schools
Office of the Superintendent
853 Davis Highway
Mineral, Virginia 23117

Madison:

Madison County Public Schools
Office of the Superintendent
60 School Board Court
Madison, Virginia 22727

Nelson:
Nelson County Public Schools
Office of the Superintendent
Box 276
Lovingston, Virginia 22949

Rappahannock:
Rappahannock County Public Schools
Office of the Superintendent
6 Schoolhouse Road
Washington, Virginia 22747

11. Governing Law. This Operating Agreement shall be governed by the laws of the Commonwealth of Virginia. The exclusive venue of any litigation arising hereunder shall be the Albemarle County Circuit Court.

12. Amendment. This Operating Agreement may be amended only upon the written agreement of all School Boards signed by the authorized representative of each School Board. In the event of any amendment affecting any term of the Lease Agreement (**Exhibit "A"**), the School Boards shall amend the Lease Agreement as needed.

IN WITNESS WHEREOF, the School Boards have, by formal action taken at lawfully called and constituted meetings, approved this Operating Agreement and authorized their respective representatives to execute it on each of their behalves.

COUNTY SCHOOL BOARD OF ALBEMARLE, COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this _____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

SCHOOL BOARD OF THE CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

COUNTY SCHOOL BOARD OF CULPEPER, COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

SCHOOL BOARD OF THE COUNTY OF FLUVANNA, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

SCHOOL BOARD OF THE COUNTY OF GREENE, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

COUNTY SCHOOL BOARD OF LOUISA COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

COUNTY SCHOOL BOARD OF MADISON COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

SCHOOL BOARD OF THE COUNTY OF NELSON, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____

COUNTY SCHOOL BOARD OF RAPPAHANNOCK COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Operating Agreement was signed and acknowledged before me this
_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Registration No.: _____