

*Lummi Nation*

**STATE-TRIBAL EDUCATION COMPACT  
BETWEEN THE WASHINGTON STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION**

**[OCTOBER 22, 2014]**

**STATE OF WASHINGTON AND  
THE LUMMI NATION  
EDUCATION COMPACT**

**INTRODUCTION**

THIS COMPACT is entered into pursuant to chapter 28A.715 RCW, State-Tribal Education Compact Authority and the Lummi Constitution Art. VI, Section 1, (g) and (n), Lummi Indian Business Council Resolution # 2014-131, and Lummi Education Board Motion;

**PARTIES**

THIS STATE-TRIBAL EDUCATION COMPACT is made and entered into by and between the WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION (hereinafter "Superintendent"), on behalf of the STATE OF WASHINGTON, a sovereign state of the United States, with all rights and powers thereto pertaining; and the Lummi Nation (hereinafter "the Lummi Nation", federally recognized as an Indian Tribe pursuant to The Treaty of Point Elliott of 1855, possessed of all sovereign powers and rights thereto pertaining.

**RECITALS**

WHEREAS, American Indian and Alaska Native students make up 2.5 percent of the total student population in the State of Washington and twenty-five percent or more of the student population in fifty-seven schools across the State;

WHEREAS, American Indian students in the State have the highest annual drop-out rate at 9.5 percent, compared to 4.6 percent of all students in each of grades nine through twelve

WHEREAS, the parties recognizes that the teaching of American Indian language, culture, and history, is important to American Indian people and critical to the educational attainment and achievement of American Indian children;

WHEREAS, it is the intention of the parties that the State will support public education programs offered in tribal schools to assist tribal schools in providing comprehensive, culturally

competent teaching and learning that can help close the educational opportunity gap among American Indian students;

WHEREAS, the Washington State Legislature, through chapter 28A.715 RCW, authorized the Superintendent in 2013 to enter into state-tribal education compacts with the governing bodies of Indian tribes located in Washington or of schools in Washington that are currently funded by the federal Bureau of Indian Affairs;

WHEREAS, the purpose of these state-tribal education compacts is to support K-12 schools operated by eligible Indian tribes or tribal schools. Schools that are the subject of a state-tribal education compact are entitled, like Washington school districts, to receive state and federal education funding for enrolled students, including general apportionment, special education, categorical, and other nonbasic education moneys;

WHEREAS, the Washington State Supreme Court held in *McCleary v. State* (2012) that the State should increase funding of basic education, additional state funding that is appropriated in response to the *McCleary* decision will be apportioned to schools that are subject to state-tribal compacts in the same manner as funds are apportioned to school districts.;

WHEREAS, the Lummi Nation adopted a resolution authorizing the Lummi Nation Education Director to negotiate with OSPI to enter into a state-tribal compact for enhanced funding for the Lummi Nation School;

WHEREAS, on April 15, 2014, the Superintendent received the resolution and an application (hereinafter, "Application") to establish a state-tribal charter school referred to as the Lummi Nation School (hereinafter, "School");

WHEREAS, on August 8, 2014, the Superintendent convened a government-to-government meeting with the Lummi Nation for the purpose of considering the resolution and application and initiating negotiations; and

WHEREAS, this Compact reaffirms the State of Washington's and the Lummi Nation's important commitment to government-to-government relationships that has been recognized by proclamation, and in the Centennial Accord and the Millennium Agreement. The Compact builds upon the efforts highlighted by the Office of the Superintendent of Public Instruction (hereinafter, "OSPI") in its *2012 Centennial Accord Agency Highlights*, including *The Since Time Immemorial (STI): Tribal Sovereignty in Washington State Curriculum Project* that imbeds the history surrounding sovereignty and intergovernmental responsibilities into the State's classrooms; OSPI's regular meetings with the superintendents of tribal schools and the federal Bureau of Indian Education representatives at the regional and national level on issues relating to student academic

achievement, accessing of funding for tribal schools, and connecting tribal schools to OSPI's K-20 network; and the recent establishment, in statute, of the Office of Native Education within OSPI.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and other consideration recited in this Compact, the Superintendent and the Lummi Nation do enter into this Compact as provided for herein.

## **I. TITLE**

This document shall be cited as "The State of Washington–Lummi Nation Education Compact."

## **II. TERM OF COMPACT**

Unless modified in accordance with the Amendment provision of the Compact, the Compact will have an initial term of five years, to commence on August 27, 2014 (the first day of the School's 2014-15 operations), unless terminated sooner as provided in section VI (Nonrenewal and Termination). Prior to expiration of the initial term, the Parties will review this Compact and may agree to renew this Compact for an additional three-year term, or to negotiate a new Compact. Upon expiration of any renewal term, the Parties will review the Compact in five-year increments, subject to the nonrenewal and termination provisions of the Compact

## **III. SCHOOL'S ROLES AND RESPONSIBILITIES**

### **A. Educational Program**

**1. Content Standards.** The Lummi Nation agrees that the School will conduct an educational program that satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and RCW 28A.230.010 through 28A.230.195. Standards that must be met by the School include, but are not limited to, the following:

- (a) Basic education, as defined in RCW 28A.150.200, .210 and .220;
- (b) Instruction in the essential academic learning requirements and associated standards;
- (c) Participation in, and performance on, statewide student assessments as provided for under federal and state law, including, but not limited to, chapter 28A.655;
- (d) Performance improvement goals, as provided for in chapter 28A.655.100, and associated requirements;
- (e) Accountability measures;

- (f) State graduation requirements;
- (g) Academic standards applicable to Washington State public schools;
- (h) Other tribal, state, and federal accountability requirements imposed by statute, regulation, rule, policy or this Compact.

**2. Curriculum.** The Lummi Nation agrees to the following:

(a) The School will implement the educational program and curriculum consistent with the program and curriculum presented in the Final Approved Application. "Final Approved Application" means the application submitted by the Lummi Nation pursuant to WAC 392-800-825-835, together with any subsequent modifications to the application requested by the Superintendent and agreed to by the Lummi Nation.

(b) The School may revise and amend the educational program and curriculum presented in the Final Approved Application at its discretion and without requiring approval from the Superintendent or amendment to this Compact; provided, that such revisions or amendments do not (i) materially change to the school's mission or its student performance standards or targets as contained in the Final Approved Application, or (ii) violate any term of this Compact.

(c) The Lummi Nation will notify the Superintendent of any material changes or amendments to the educational program or curriculum as presented in the Final Approved Application.

**3. Graduation Requirements for High Schools.** The Lummi Nation agrees that the School's curriculum will meet or exceed all applicable graduation requirements as established by the State Board of Education. The Lummi Nation further agrees that it will comply with the provisions in chapter 180-51 WAC (High school graduation standards) that apply to school districts.

**4. Staff Qualifications.**

(a) The Lummi Nation agrees that instructional staff employed at the School will be certificated consistent with the standards described in RCW 28A.410.010 and Title 181 WAC; provided, that the Lummi Nation may hire noncertificated instructional staff of unusual competence and in exceptional cases as specific in RCW 28A.150.203(7).

(b) The Lummi Nation agrees that it will comply with employee record checks requirements in RCW 28A.400.320 when employing School employees. The Lummi Nation

further agrees that it will comply with the mandatory termination and notification provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475.

(c) If the Lummi Nation or School administrator(s) has reason to believe that an employee with a certificate or permit authorized under chapter 28A.410 RCW or chapter 28A.405 RCW has engaged in unprofessional conduct (chapter 181-87 WAC) or lacks good moral character (chapter 181-86 WAC), the School agrees to submit a complaint to Northwestern Educational District #189 (hereinafter, "ESD") stating the basis for the belief and requesting the ESD to submit the complaint to OSPI's Office of Professional Practices (hereinafter, "OPP"). The School will simultaneously send a copy of the School's complaint to OPP. Certificated and licensed staff employed by the School are subject to Title 28A RCW as well as any applicable state or federal laws.

**5. Staff Training.** The Lummi Nation agrees that the School will provide employees and staff with training required by applicable state and/or federal law..

**6. Student Assessment.** The School will participate in all testing programs required by OSPI and the State Board of Education. The School will comply with all assessment protocols and requirements established by OSPI and the State Board of Education, maintain test security, and administer the tests consistent with all tribal, state, and federal requirements. The School shall follow OSPI's test administration and security requirements.

**7. English Language Learners.**

(a) The Lummi Nation agrees that the School will at all times comply with all state and federal law applicable to the education of English language learners including, but not limited to, the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 6301 et seq.) (the "ESEA"), Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, and associated state laws or rules. The School will provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program. The School will employ and train teachers to provide appropriate services to English language learners. The School will work to assure compliance with any and all requirements of state and federal law regarding services to English language learners.

(b) The Lummi Nation agrees that the School will provide transitional bilingual instructional in accordance with chapter 392-160 WAC (Special service program—Transitional bilingual ) and as presented in its Final Approved Application.

**8. Students with Disabilities.** The Lummi Nation agrees that the School will provide services and accommodations to students with disabilities as set forth in the Final Approved Application and in accordance with any relevant policies thereafter adopted, as well as with all

applicable provisions of the Individuals with Disabilities Education Act (20 U.S.C. § 1401 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (the “ADA”), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and all regulations promulgated pursuant to such federal laws. This includes providing services to attending students with disabilities in accordance with the individualized education program (“IEP”) recommended by a student’s IEP team. The School will also comply with all tribal, federal and state laws, rules, policies, procedures and directives regarding the education of students with disabilities including, but not limited to, chapter 28A.155 RCW.

**9. Supplemental Programs.** The Lummi Nation agrees that the School will provide supplemental programs to students as presented in its Final Approved Application. The Lummi Nation agrees that it will comply with all state and federal legal requirements in providing such programs, including, but not limited to, Title I of the ESEA and chapter 392-162 WAC (Special service program—Learning assistance) and chapter 392-164 WAC (Special service program—Chapter 1 Migrant of the Education Consolidation and Improvement Act of 1981).

**10. Highly Capable Students.** The Lummi Nation agrees that the school will administer programs for the education of K-12 students who are highly capable in accordance with chapter 392-170 WAC (Special service program—Highly capable students).

**11. Student Conduct and Discipline.** The Lummi Nation agrees that the School will comply with the School’s discipline policy contained the Final Approved Application, as well with all state and federal laws relating to student discipline. The Lummi Nation further agrees that it will notify the Superintendent of any material changes or amendments to the Final Approved Application’s discipline plan.

## **B. School Operations**

**1. Compliance With State and Federal Law.** . The parties recognize that it is not the intention of this Compact to create a public school district. The parties further recognize that the School shall be considered a local education agency under federal law. The Lummi Nation agrees to comply with applicable laws, including but not limited to laws relating to health and safety, student and parents’ rights, civil rights, nondiscrimination laws, student assessment, assessment administration, data collection, reporting, and remediation requirements. These requirements include, but are not limited to, those imposed under the Individuals with Disabilities Education Improvement Act (20 U.S.C. Sec. 1401 et seq.); the Federal Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), the Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.), and the McKinney-Vento Act (42 U.S.C. 11432 et seq.).

### **2. Student Data and Enrollment Reporting.**

(a) The Lummi Nation agrees to report School enrollment to OSPI in the same manner and using the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of Washington public school districts.

(b) The Lummi Nation agrees to meet all CEDARS reporting requirements as outlined in OSPI's annual CEDARS data manual.

### **3. Evaluation and Effectiveness Review.**

(a) The Lummi Nation agrees that, pursuant to WAC 392-800-855, it will annually evaluate the impact of this Compact on the academic success of American Indian and Alaska Native students enrolled in the School.

(b) The Lummi Nation agrees to collect and report to the Superintendent academic growth data and high school graduation data by August 1 of each year during which this Compact is in effect.

**4. Nonsectarian Status.** The Lummi Nation agrees that the School will not engage in any sectarian practices in the School's educational program, admissions policies, employment practices, and all other School operations. The Lummi Nation agrees that the School will not be to any extent under the control or direction of any religious denomination.

**5. Non-discrimination.** The Lummi Nation agrees that the School will comply with all federal and state non-discrimination laws, regulations and policies which are otherwise applicable to Washington public schools, including, but not limited to, chapters 28A.640 and 28A.642 RCW. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the School or its agents. Provided, nothing herein is intended to limit any exemption under federal or state law pertaining to employment practices under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation. Provided further, nothing herein is intended to limit any exemption under federal or state law pertaining to student enrollment practices under which a preferential treatment is given to any individual because he or she is a Tribal member or sibling of an already enrolled student..

### **6. Recordkeeping and Auditing.**

(a) The School will comply with all tribal, federal, and state, and OSPI recordkeeping requirements including those pertaining to students, governance, and finance.



(b) The Lummi Nation agrees to maintain all books, records, documents, data and other evidence relating to this Compact, including School administrative and student records. The Lummi Nation will retain such records for a period of six years following the expiration, nonrenewal, or termination of the Compact. These records must be subject at all reasonable times to inspection, review or audit by OSPI, personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by statute, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

**7. Right of Inspection.** The Lummi Nation agrees to provide right of access to the School to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate compliance under this Compact on behalf of the Superintendent. All inspections and evaluations will be performed in such a manner that will not unduly interfere with the Lummi Nation's or School's operations.

**8. Student Welfare and Safety.** The Lummi Nation agrees that the School will comply with all applicable federal, state, and tribal health and safety laws. The Lummi Nation further agrees that (a) it will comply with the safety plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's discipline plan.

**9. Transportation.** The Lummi Nation agrees that the School will be responsible for providing students transportation in accordance with tribal, state, and federal law, including, but not limited to, chapter 392-141 WAC (Transportation—State allocation for operations), chapter 392-142 WAC (Transportation—Replacement and depreciation allocation), chapter 392-143 WAC (Transportation—Specifications for school buses), chapter 392-144 WAC (School bus driver qualifications), and chapter 392-145 WAC (Transportation—Operation rules). The Lummi Nation further agrees that (a) it will comply with the transportation plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's transportation plan.

**10. School Calendar.** The Lummi Nation agrees that the School will annually adopt a School calendar with an instructional program that meets the compulsory school attendance requirements of state law, financial guidelines, and state rules, including, but not limited to, RCW 28A.150.220, RCW 28A.225.010, chapter 180-16 WAC (State support of public schools), and chapter 392-410 WAC (Courses of study and equivalencies). The Lummi Nation further agrees that it will notify the Superintendent of any changes or amendments to the School's calendar as presented in the Final Approved Application.

## **11. Admission and Enrollment.**

(a) The Lummi Nation will not charge students tuition except to the same extent as public school districts may be permitted to do so with respect to out-of-state and adult students pursuant to chapter 28A.225 RCW; provided, that the Lummi Nation may charge students fees for participation in optional extracurricular events and activities if authorized under state law and rules.

(b) The Lummi Nation agrees that it will not limit admission to the School on any basis other than age group, grade level, or capacity and must otherwise enroll all students who apply; provided, that if capacity is insufficient to enroll all students who apply, the School may grant preference to the enrollment of Lummi Nation members or members of other federally recognized tribes and siblings of already enrolled students.

## **12. School Facilities.**

(a) The Lummi Nation agrees that the School facilities will conform with provisions of the ADA and any other federal, state, or tribal requirements applicable to public school facility access.

(b) The School facilities will meet all applicable health, safety and fire code requirements and will be of sufficient size to safely house the School's anticipated enrollment.

**13. Accountability for School Performance.** The Memorandum of Understanding Between the Office of the Superintendent of Public Instruction of the State of Washington and The U.S. Department of the Interior – Bureau of Indian Education shall govern. The Lummi Nation agrees the School will compile and report assessment data as specified in the Memorandum of Understanding, and compliance with accountability measures will be determined by the Bureau of Indian Education.

## **14. Ethics.**

(a) The Lummi Nation agrees that no School administrator, or other School employee/ representative authorized to enter contracts on behalf of the School, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(b) The Lummi Nation agrees that no School administrator may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(c) The Lummi Nation agrees that no School administrator may give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the School, for a matter connected with or related to their services as a Board member or School administrator unless otherwise provided for by law.

(d) The Lummi Nation agrees that no School administrator may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(e) The Lummi Nation agrees that no School administrator may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit unless otherwise provided for by law.

(f) Terms in this provision will be defined in accordance with the definitions set out in RCW 42.52.010. The Advisory Opinions of the Executive Ethics Board shall provide non-binding guidance for the parties' interpretation of this provision.

(g) This provision does not apply to the following cases:

(i) The letting of any employment contract for the driving of a school bus if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the School;

(ii) The letting of an employment contract as a substitute teacher or substitute educational aide, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the School and the Lummi Nation has found that there is a shortage of substitute teachers in the School.

(iii) The letting of any employment contract to the spouse or other family member of an officer of the School, the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the School.

## **C. School Finance**

**1. Legal and Accounting Compliance.** The Lummi Nation agrees that the School will comply with all applicable state financial and budget rules, and financial reporting requirements, including, without limitation, the following:

(a) The provisions of chapter 392-101 WAC (Superintendent of public instruction—Administrative practices and procedures), chapter 392-115 WAC (Finance—Audit resolution process), chapter 392-117 (Timely reporting), chapter 392-121 WAC (Finance—General

apportionment), chapter 392-122 WAC (Finance—Categorical apportionment), chapter 392-123 WAC (Finance—School district budgeting), chapter 392-127 WAC (Finance—Certificated instructional staff ratio (46:1000) compliance), chapter 392-129 WAC (Finance—Emergency school closure), chapter 392-134 WAC (Finance—Apportionment for part-time public school attendance), chapter 392-138 (Finance—Associated student body moneys), and chapter 392-140 WAC (Finance—Special allocations), that apply to first class school districts;

(b) The Accounting Manual for School Districts; and

(c) The Administrative Budgeting and Financial Reporting Handbook.

## **2. Audits.**

(a) The Lummi Nation recognizes that the School will be subject to financial examinations and audits as determined by the Washington State Auditor, including annual audits for legal and fiscal compliance. Within the scope of its responsibilities, the State Auditor's Office may conduct the following types of audits:

(i) Financial statement;

(ii) Legal and fiscal compliance;

(iii) Federal single;

(iv) Special investigation (includes fraud audit); and

(b) The Lummi Nation agrees that it will be financially responsible for all costs associated with the audit(s).

(c) The Lummi Nation agrees to provide the Superintendent with a copy of any audits prepared under this provision.

**3. Non-Commingling.** The Lummi Nation agrees that assets, funds, liabilities and financial records of the School will be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization unless approved in writing by the Superintendent. Additionally, public funds and assets received by the School will be tracked and accounted for separately.

## **4. Assets.**

(a) The Lummi Nation agrees that the School shall maintain a complete and current inventory of all school assets that (i) were purchased with funds received by the School under chapter 28A.715 RCW and this Compact, and (ii) cost more than \$5,000 (including sales tax and

ancillary costs), or (iii) are small and attractive assets that cost \$300 or more (including sales tax and ancillary costs). Assets include land, infrastructure, improvements to land, buildings, leasehold improvements, vehicles, furnishings, equipment, collections, and all other tangible and intangible assets that are used in school operations. Small and attractive assets include, but are not limited to Optical Devices, Binoculars, Telescopes, Infrared Viewers, Rangefinders, Cameras and Photographic Projection Equipment, Desktop Computers (PCs), Laptops and Notebook Computers, Tablets and Smart Phones, Television Sets, DVD Players, Blu-ray Players, and Video Cameras (home type).

(b) The School shall update the inventory annually and shall take reasonable precautions to safeguard assets acquired with funds received by the School under chapter 28A.715 RCW and this Compact.

(c) The Lummi Nation agrees that if this Compact expires or is terminated or the School otherwise ceases to operate, School assets will be deemed to be public assets if at least 25 percent of the funds used to purchase the asset were funds received by the School under chapter 28A.715 RCW and this Compact. Any assets acquired wholly with tribal funds must be disposed of consistent with applicable federal, state, and tribal law, provided that the School must maintain records demonstrating the percentage of public funds used to acquire assets. If the School's records fail to establish clearly whether an asset was acquired with the use of public funds, the assets will be deemed to be public assets.

**5. School funds.** The Lummi Nation agrees that any moneys received by the School from any source that remain in the School's accounts at the end of any budget year must remain in the School's accounts for use by the School during subsequent budget years.

**6. Location and Access.** The Lummi Nation agrees that the School will maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended under this Compact. These records will be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Superintendent, the State Auditor, and federal officials so authorized by statute, rule, regulation, or contract. The financial records must be maintained at the School's administrative office.

## V. SUPERINTENDENT'S RIGHTS AND RESPONSIBILITIES

### A. Funding

**1. Apportionment.** The Superintendent will apportion funding for the School according to the schedule established under RCW 28A.510.250, including basic education apportionment and special education, categorical, and other nonbasic education moneys.

**2. Allocations for Certificated Instructional Staff.** Allocations for certificated instructional staff will be based on the average staff mix ratio of the school, as calculated by the Superintendent, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the Omnibus Appropriations Act.

**3. Allocations for Classified and Administrative Staff.** Allocations for classified staff and certificated administrative staff will be based on the salary allocations of the school district in which the School is located, subject to conditions and limitations established by the Omnibus Appropriations Act.

**4. Statewide salary allocation schedule.** Nothing in this provision requires the School to use the statewide salary allocation schedule when establishing compensation for individual School employees.

**5. Teacher Retirement & Personnel Pension Plan Participation.** Nothing in this provision shall restrict the Lummi Nation from making application and assisting teachers of the Lummi Nation Schools from participating fully in the Teacher Retirement System.

**B. Oversight and Enforcement**

**1. Consultation.** At least two times each year, the Superintendent or his or her designee and the Lummi Nation or its designee will engage in consultations relating to School operations, performance, and accountability. Nothing herein shall preclude a party from requesting government-to-government consultation at any time.

**2. Oversight and Enforcement.** The Superintendent will manage, supervise, and enforce this Compact. OSPI will oversee the School's performance under this Compact and hold the School accountable to the performance of its obligations as required by federal and state law, as well as the terms of this Compact. This may include, but is not limited to, offering technical assistance, taking corrective action, developing corrective action plans, withholding payments of state funds, or imposing other sanctions pursuant to this Compact.

**3. Inquiries and Investigations.** The Superintendent may conduct or require oversight activities including, subject to the Notification provision in subsection 4, but not limited to, inquiries, audits, or investigations consistent with chapter 28A.715 RCW, its implementing rules, and the terms of this Compact.

**4. Notification of Perceived Concerns.**

(a) The Superintendent agrees to notify the Lummi Nation of any perceived concerns related to unsatisfactory performance or legal compliance under this Compact within reasonable

timeframes considering the scope and severity of the concern. The Lummi Nation will respond within a reasonable time, which in no event will be longer than 14 days. If the Lummi Nation does not remedy the problem in a timely fashion to the Superintendent's satisfaction, the Superintendent may take further action under Section VI or VII of this Compact.

**5. Other Legal Obligations.** Nothing in this Compact will be construed to alter or interfere with the Superintendent's obligations imposed under federal or state law.

## **VI. COMPLIANCE**

### **A. Compliance**

The Lummi Nation agrees that it will remain subject to and comply with the terms of this Compact, chapter 28A.715 RCW, and any legislation or rules enacted after the effective date of this Compact that governs the operation and management of schools that are the subject of a state-tribal education compact.

### **B. Breach by the School**

(a) The parties agree that the violation of any material provision of this Compact may, be deemed a breach and be grounds for withholding payment of state funds, or nonrenewal or termination of the Compact under Section VII. In making this determination, the parties will consider the underlying facts and circumstances including, but not limited to, the severity of the violation as well as the frequency of violations.

(b) The School's failure to develop, execute, or complete a corrective action plan pursuant to Section V.B of this Compact within the timeframe specified by the Superintendent, absent good cause, will constitute a breach of the Compact.

## **VI. NONRENEWAL AND TERMINATION**

### **A. Nonrenewal**

**1. Notice.** In the event the Superintendent determines that the Compact shall not be renewed, the Superintendent will notify the Lummi Nation in writing of his or her intent to nonrenew the Compact. The notification will invite the Lummi Nation to participate in a government-to-government meeting for the purpose of discussing the Superintendent's intent to nonrenew the Compact.

**2. Timing of notice.** The Superintendent must provide notice of intent to nonrenew the Compact no later than March 15 of the year in which the Compact expires.

## **B. Termination**

**1. Termination for Convenience.** Either party may terminate this Compact effective as of June 30 of any year by providing the other party with written notice of its intent to terminate on or before January 1 of the then-current calendar year. When providing notification of his or her intent to terminate the Compact under this provision, the Superintendent will state with specific reasons why the Superintendent believes the Compact should be terminated.

### **2. Termination for Cause.**

(a) The parties may terminate this Compact for cause if either party breaches this Compact or fails to cure a breach of the Compact's terms.

(b) The non-breaching party will notify the breaching party of the non-breaching party's intent to terminate the Compact for cause. The notification will be in writing and will state with specific reasons why the non-breaching party believes the Compact should be terminated, including: (i) The Compact term, condition, or assurance that the non-breaching party believes the breaching party has violated, or other ground for termination; and (ii) The evidence indicating that the Compact term, condition, or assurance has been violated.

(c) The notification will invite the breaching party to participate in a government-to-government meeting to occur within ten days, for the purpose of discussing the alleged breach and, if appropriate, engage in dispute resolution in accordance with this section.

(d) The parties may mutually agree to mediation of a dispute arising from an alleged breach. In the event the dispute is not resolved pursuant to mediation within an agreed-upon time period, the non-breaching party may terminate the Compact for cause.

## **C. Effect of Nonrenewal or Termination**

**1. Winding Up.** Upon termination of this Compact for any reason, upon expiration of the Compact, and if the School ceases operations or otherwise dissolves, the Lummi Nation shall be responsible for winding up of the business and other affairs of the School with the advice and consultation of the Superintendent. The Lummi Nation and School personnel will cooperate fully with OSPI with the winding up of the affairs of the School. The School's obligations for following a termination protocol and winding up of the affairs of the school shall survive the term of this Compact.

**2. Disposition of Assets.** All assets, including tangible, intangible, and real property in use by the School but originally owned by the State, or assets purchased using up to 25 percent of



public funds allocated by OSPI, are the property of the State and shall be returned to the State upon nonrenewal or termination, in accordance with relevant law.

## VII. GENERAL

**1. Merger.** This Compact, the Final Approved Application, and all attachments, exhibits and amendments thereto, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Compact shall be deemed to exist or to bind any of the parties hereto.

**2. Amendments.** No amendment to this Contract will be valid unless ratified in writing by the Superintendent and the Lummi Indian Business Council and executed by authorized representatives of the parties, except as may be required by RCW 28A.715.020(3)(f) and state legislation or rules enacted after the effective date of this Compact.

**3. Governing Law and Enforceability.** This Compact shall be construed and interpreted in accordance with the laws of the state of Washington. For the limited purpose of enforcing this Compact, the Lummi Nation consents to the jurisdiction of Washington State courts. The Lummi Nation, the Lummi Indian Business Council and its agents, employees, and officers' immunity from suit shall remain in full force and effect except to the extent that it is waived by this Agreement. Members of the Tribal Council shall remain immune from suit for actions taken during the course of and within the scope of their duties as members of the Tribal Council, and nothing contained in this Agreement shall be construed otherwise. Nothing contained in this Agreement shall be construed as a waiver of the Tribe's immunity from suit in any court, except as expressly provided herein. No award or other judgment imposing money damages, punitive or exemplary damages, or attorney fees, shall be applied against the Tribe, its agents, employees, or officers in any action or claim for injuries under this Agreement, except as contemplated by this limited waiver. For the limited purpose of enforcing this Compact, the Lummi Nation hereby expressly and irrevocably waives its sovereign immunity from suit for suits brought by the Superintendent of Public Instruction in the forum provided for in this Compact.

**4. Severability.** If any provision of this Compact or any application of this Compact to the School is found contrary to law or invalid, such provision or application will have effect only to the extent permitted by law and the invalidity shall not affect the validity of the other terms or conditions of the Compact.

**5. Waiver.** The parties agree that no assent, express or implied, to any breach by either party of any one or more of the provisions of this Compact shall constitute a waiver of any other breach. No term or condition of this Compact shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**6. No Employee or Agency Relationship.** Neither the Lummi Nation, its employees, agents, nor contractors are employees or agents of the Superintendent. The Superintendent and his

or her employees, agents, or contractors are not employees or agents of the Lummi Nation or the School. None of the provisions of this Compact will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the parties other than that of independent parties compacting solely for the purpose of effectuating this Compact.

**7. Limitation of Liability.**

(a) In no event will either party, or their agencies, officers, employees, or agents, be responsible or liable for the debts, acts or omissions of the other arising from this Compact.

(b) Neither the Lummi Nation nor the Superintendent are creating, or intend to create, any rights in third parties which would result in any claims of any nature whatsoever against the Lummi Nation or the State as a result of this Compact. Neither the Lummi Nation nor the State has waived immunity from third party suits or claims of any kind against them, and nothing contained in this Compact shall be construed to effect a waiver, in whole or in part, of said immunity.

**8. Non-Assignment.** Neither party to this Compact shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Compact unless the other party agrees in writing to any such assignment.

**9. FERPA.** The parties recognize that they are both bound by the requirements of the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232g; 34 C.F.R. Part 99) ("FERPA"), and they will safeguard such information in accordance with the requirements of FERPA.

**10. Order of Precedence.** The items listed below are incorporated by reference herein. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable Federal, and Washington State laws, regulations, and guidelines;
- (b) Terms and Conditions of the Compact;
- (c) The Final Approved Application (hereby incorporated into the Compact as **Appendix A**);
- (d) Any other provisions incorporated by reference or otherwise into the Compact.

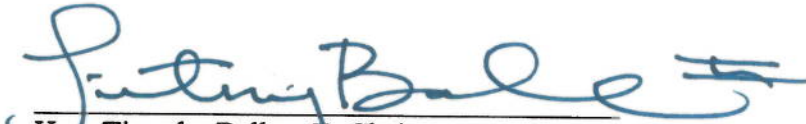
**11. Reservation of rights.** Nothing in this Compact is intended to limit the Tribe and School's ability to take any action in the operation of the School where such actions are consistent with the terms of this Compact.

**VIII. NOTICE**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by certified mail or other expedited services which require a signature for receipt at the following address:

Bernard Thomas, Lummi Education Director  
Lummi Nation School  
2334 Lummi View Drive  
Bellingham, WA 98226

IN WITNESS WHEREOF, the Washington State Superintendent of Public Instruction and the Lummi Nation have executed this compact.



Hon. Timothy Ballew II, Chairman  
Lummi Indian Business Council

\_\_\_\_\_  
Date



Randy Dorn, Office Superintendent of Public  
Instruction

Oct. 24, 2014  
Date