

WITHDRAWAL AGREEMENT

This **Withdrawal Agreement** (hereinafter "Agreement") is made and entered into on the dates set forth below by and between the **Board of Education of Community Unit School District No. 308**, (herein "SD 308") the **Governing Board of the Kendall County Special Education Cooperative** (herein "KCSEC") and the **Regional Superintendent of Schools for Grundy/Kendall Counties, as administrative, legal and fiscal agent of KCSEC** (hereinafter Administrative Agent) as follows:

WITNESSETH:

WHEREAS, KCSEC is a special education joint agreement operating and existing pursuant to Section 10-22.31 of the *School Code* (105 ILCS 5/10-22.31) for the purpose of providing special education facilities, programs and services for member districts, existing and operating pursuant to that certain Kendall County Special Education Cooperative Joint Agreement adopted by each member district, as most recently amended on or about June 16, 2010 (the "Joint Agreement"); and,

WHEREAS, as of the date of execution of this Withdrawal Agreement, the following school districts are members of KCSEC: Newark Community High School District No. 18; Newark Grade School District No. 66; Plano Community Unit School District No. 88; Lisbon Grade School District No. 90; Yorkville Community Unit School District No. 115; and Community Unit School District No. 308; and

WHEREAS, Article V(A) of the Joint Agreement provides that a member district wishing to withdraw from KCSEC must comply with the provisions of the School Code with respect to withdrawal; and,

WHEREAS, SD 308 desires to withdraw from membership in KCSEC effective July 1, 2016, as evidenced by its notice of withdrawal provided to the KCSEC Governing Board on November 11, 2014; and,

WHEREAS, KCSEC and its individual member districts agree to consent to the proposed withdrawal of SD 308 upon the terms and conditions stated below; and,

WHEREAS, the parties to this Agreement have reached mutually acceptable terms and conditions for the withdrawal of SD 308 from KCSEC and wish to memorialize the same here;

NOW, THEREFORE, in consideration of the promises each has made to the other as hereinafter set forth and for other good and valuable consideration which each party deems sufficient by their signature hereto, it is hereby understood and agreed as follows:

1. **Recitals.** The above recitals are incorporated herein.
2. **Effective Date of Withdrawal.** The parties hereto agree that SD 308 shall withdraw from KCSEC effective at 12:01 a.m. local time on July 1, 2016 (the "Effective Date of Withdrawal"), subject to the board of education of each KCSEC member school district adopting a resolution consenting to such withdrawal.
3. **Responsibility for Obligations and Indebtedness of KCSEC.** Except as otherwise provided in this Agreement, SD 308 shall be responsible for its proportionate share of

liabilities incurred by KCSEC prior to the Effective Date of Withdrawal, including, but not limited to, any form of debt or bonded indebtedness or notes, any retirement incentives or costs related to retiring staff (including, but not limited to, benefits paid pursuant to Board Policy 5:212) or any other liabilities incurred by KCSEC pursuant to its approved budget. For liabilities due after the Effective Date of Withdrawal, SD 308 shall be responsible for its share of liabilities as that share is determined for all member school districts in the fiscal year immediately preceding the Effective Date of Withdrawal.

- 4. Waiver of Interests in Property.** After the Effective Date of Withdrawal, SD 308 shall have no claim on any assets of KCSEC including, but not limited to, any real or personal property, buildings, land, equipment, or funds of KCSEC. Moreover, the parties specifically agree as follows:

a. IDEA Carryover Dollars. After all bills and expenses of KCSEC have been paid for the 2015-2016 fiscal year, any portion of any IDEA carryover dollars which are allocable to SD 308 shall be distributed to SD 308. The allocation of carryover dollars to SD 308 shall be determined in accordance with the administrative procedures to Board Policy 4:30, approved by the Governing Board on February 11, 2015. Such distribution shall only be made to SD 308 if written approval is first given by the ISBE for such distribution. Any distribution shall be made within sixty (60) calendar days of written approval by ISBE. The parties agree to work on a plan to spend down the Carryover balance, such as by crediting sums to KCSEC invoices for service during the 2015-2016 school year, as an alternative to outright distribution. Pursuant to directives from ISBE, KCSEC will tender to SD 308 any portion of the Carryover balance attributable to SD 308 federal funds.

b. Personal Property and Equipment. The parties recognize that the amount of personal property and equipment purchased by KCSEC for use by SD 308 students exceeds the amount of personal property and equipment required for use by students in the other member districts of KCSEC. Accordingly, notwithstanding the provisions of Article V(E)(1) of the Joint Agreement, the parties hereby agree that personal property purchased by KCSEC for use by SD 308 students shall be distributed as follows:

i. Any equipment that is purchased for the individual use of a SD 308 student shall become the property of SD 308; provided, however, that if any current SD 308 student enrolls in another KCSEC member district before the Effective Date of Withdrawal, then any equipment that was purchased by KCSEC for the individual use of such student shall remain the property of KCSEC. SD 308 shall have no claim to any equipment purchased for the individual use of a non-SD 308 student.

ii. SD 308 shall return to KCSEC that personal property and equipment identified in Exhibit A, attached hereto, within fourteen (14) days after the Effective Date of Withdrawal.

iii. All other KCSEC personal property that is in the possession of SD 308 upon the Effective Date of Withdrawal shall become the property of SD 308.

iv. After the date of this Agreement, SD 308 shall be responsible for purchasing any and all additional personal property and equipment as may be necessary to provide special education services to SD 308 students.

c. Cooperative Office. The parties recognize that KCSEC will require the continuing use of the property located at 201 Garden Street, Yorkville (the "Cooperative Office") beyond the Effective Date of Withdrawal. Accordingly, notwithstanding the provisions of Articles V(E)(1) and VIII(F) of the Joint Agreement, SD 308 hereby waives all right and interest that SD 308 may have in the Cooperative Office after the Effective Date of Withdrawal. This waiver shall not relieve, decrease, or otherwise impair SD 308's continuing liability for its proportionate share of debt payments owed for the Cooperative Office pursuant to Article VIII(F) of the Joint Agreement and Paragraph 4, above.

d. Clawback. If KCSEC voluntarily dissolves within twelve months after the Effective Date of District 308's Withdrawal, District 308 shall be entitled to its proportionate share of the assets of KCSEC calculated as of the day prior to the Effective Date of District 308's withdrawal. The personal property and equipment received by SD 308 pursuant to Paragraph 4(b), above, shall be considered part of the allocation to which SD 308 would be entitled pursuant to this Paragraph.

5. Termination of Services and Program Sharing. As of the Effective Date of Withdrawal, SD 308 shall be solely responsible for providing all special education and related services to all SD 308 students eligible for such services. Any SD 308 student who is being served in a residential or other private program shall become the sole responsibility of SD 308 as of July 1, 2016. Any tuition or other expenses incurred by KCSEC for SD 308 students on or after July 1, 2016, shall either be paid by SD 308 directly or be debited against SD 308 in KCSEC's final reconciliation audit for the 2015-2016 school year. Notwithstanding the foregoing, the Parties agree as follows:

a. Extended School Year Services. Any SD 308 student who is receiving summer or extended school year services from KCSEC as of July 1, 2016, shall be permitted, at SD 308's option, to remain in that program on a tuition basis for the duration of those services during the summer of 2016.

b. Deaf/Hard of Hearing Services. Upon the Effective Date of Withdrawal, SD 308 shall assume operation of the Deaf/Hard of Hearing program that is currently operated by KCSEC in SD 308. Any student from a KCSEC member district who is enrolled in the Deaf/Hard of Hearing program as of the Effective Date of Withdrawal shall be permitted, at the option of the member district, to remain in that program on a tuition basis from year-to-year until the student graduates or otherwise exits the program. As space permits and at the option of SD 308, current KCSEC member districts may be permitted to enroll new participants in the Deaf/Hard of Hearing program on a tuition basis as well.

c. Opportunity School. After the Effective Date of Withdrawal, SD 308 shall assume operation of the Opportunity School currently operated in SD 308 by KCSEC. Any student from a KCSEC member district who is enrolled in the Opportunity School as of the Effective Date of Withdrawal shall be permitted, at the option of the KCSEC member

district, to remain in that program on a tuition basis from year-to-year until the student graduates or otherwise exits the program. As space permits and at the option of SD 308, current KCSEC member districts may be permitted to enroll new participants in the Opportunity School on a tuition basis as well.

6. **KCSEC Utilization of SD 308 Classrooms.** Except as otherwise provided in this Agreement, KCSEC shall, as of the Effective Date of Withdrawal, no longer utilize any space, classroom or otherwise, in any SD 308 building and any agreements or leases providing otherwise are rendered null and void as of the Effective Date of Withdrawal.
7. **Future Claims and Liability Insurance.** Except as otherwise provided in this Withdrawal Agreement, SD 308 will continue to be obligated to KCSEC beyond the Effective Date of Withdrawal for their proportionate share of all liability, costs and other obligations, including, but not limited to, attorneys' fees, legal costs, settlements, and damage awards on claims of any kind arising from services performed or factual situations or occurrences that occurred prior to the Effective Date of Withdrawal. This provision specifically includes, but is not limited to, any liability, costs, or obligations that might arise out of that certain IMRF audit of KCSEC employees. Unless otherwise provided in this Withdrawal Agreement, SD 308 shall be responsible for its share of liabilities as that share is determined for all member school districts in the fiscal year immediately preceding the Effective Date of Withdrawal.

KCSEC shall name SD 308 as an additional insured on any and all insurance policies providing liability coverage for occurrences or claims made prior to the Effective Date of Withdrawal. Any additional charges incurred by KCSEC for such coverage will be paid by SD 308. Failure by SD 308 to pay such charges in a timely fashion, as set forth in Paragraph 15 of this Agreement, shall excuse KCSEC from any obligation to name SD 308 as an additional insured on any policy going forward.

8. **Personnel.** The employment of special education staff listed on Exhibit B is hereby transferred from KCSEC to SD 308 effective as of the Effective Date of Withdrawal. SD 308 agrees to accept the employment of the staff listed on Exhibit B, with the reserved right to assign said personnel to positions for which they are qualified, and to determine the wages, salary, benefits, and other terms and conditions of their employment consistent with applicable collective bargaining agreements in SD 308. For those staff on Exhibit B who are teachers within the meaning of Section 10-21.12 of the *School Code* (105 ILCS 5/10-21.12), the Parties understand and intend that this change in employment status is a transfer under Section 10-21.12 as a result of a reduction in a special education program. Any additional terms or conditions of this transfer of employment shall be memorialized in a separate intergovernmental and joint agreement executed and entered into by and between the parties hereto and the unions representing affected staff.
9. **TRS Penalties.** Any penalties assessed by the Teachers' Retirement System of Illinois ("TRS") against KCSEC or SD 308 upon the retirement of any teacher who is assigned by KCSEC to SD 308, or who was so assigned at any time, shall be allocated between the parties as follows:
 - a. For teachers who have given their irrevocable notice of their intent to retire before July 1, 2016, any resulting TRS penalties shall be pro-rated between KCSEC and SD 308 on the basis of the teacher's service time.

- b. For any other teacher whose employment is transferred from KCSEC to SD 308, any TRS penalties assessed shall be paid by SD 308.
 - c. For purpose of this paragraph, a teacher's service time at SD 308 shall include all time during which the teacher was assigned by KCSEC to a position in SD 308, plus all time that the teacher was employed by SD 308; and service time at KCSEC shall include all time during which the teacher was employed by KCSEC and assigned by KCSEC to any member district other than SD 308.
- 10. Student Records.** As of July 1, 2016, SD 308 shall be responsible for maintaining all student records for all SD 308 students, including, but not limited to, all individualized education plans and all other documentation concerning the provision of special education services. To facilitate a proper transfer of this responsibility, KCSEC will provide to SD 308, no later than July 1, 2015, with the details of its contract with PCG for the Easy IEP system. Any and all student records of any SD 308 student in the possession of KCSEC shall be provided by KCSEC to SD 308 no later than sixty (60) days after the Effective Date of Withdrawal.
- 11. Special Education Hearing Claims.** SD 308 shall defend and be responsible for any relief awarded as a result of any special education due process hearing or other litigation concerning the provision of special education services to SD 308 students, including, but not limited to, any due process hearing or litigation which results from a change in placement of, or services or manner of delivery of services to, an SD 308 student due to SD 308's withdrawal from KCSEC. KCSEC shall cooperate in the defense of any such proceedings to the extent that they concern services provided by KCSEC prior to the Effective Date of Withdrawal.
- 12. Indemnification and Hold Harmless.** In the event that litigation or other legal action is instituted by any party against KCSEC, or KCSEC's Administrative Agent, or any of KCSEC's member districts, or any of their respective boards, board members, officers, agents, employees, successors, or assigns, challenging the validity of this Agreement or of any act (or omission) taken (or not taken) in connection with SD 308's withdrawal from KCSEC, SD 308 agrees to defend, indemnify, hold harmless and provide its own legal counsel for KCSEC, and KCSEC's Administrative Agent, and any of KCSEC's member districts, and their respective boards, board members, officers, agents or employees, against any and all such claims, and to pay all reasonable costs incurred in defending such litigation or legal action, including reasonable attorney's fees. Except as otherwise provided hereto in this Agreement, the parties shall otherwise hold the other harmless and release the other from any and all claims the parties may have related to or arising out of SD 308's membership in KCSEC and related to the Joint Agreement and the withdrawal of SD 308 from KCSEC.
- 13. Binding Nature of Agreement.** This Withdrawal Agreement shall be binding upon and inure to the benefit of SD 308, KCSEC, KCSEC's Administrative Agent and other member school districts, and all of their respective boards, board members, officers, agents, employees, successors, and assigns.
- 14. Adoption of Agreement.** In order to eliminate the engagement of the Regional Board of Trustees, any KCSEC member district that has not done so previously will promptly adopt a resolution concurring with or approving the withdrawal of SD 308 from

KCSEC. Upon the adoption of such resolutions and the approval of this Agreement by each of the parties, then the withdrawal of SD 308 shall proceed upon the terms and conditions set forth herein, and SD 308 shall withdraw its petition for withdrawal currently pending before the Regional Board of School Trustees.

15. **Payment for Liabilities.** Neither SD 308 nor KCSEC shall withhold payments or reimbursements due to the other in the ordinary course of operations. Such payments shall be timely and shall be paid no later than thirty (30) days from the date on the bill or the date of reimbursement receipts.
16. **Written Agreements.** This Agreement and those certain other written agreements executed by and between the Parties in connection herewith set forth all of the promises, agreements, conditions, and understandings between the Parties relative to the subject matter hereof. All discussions by and between the Parties concerning the subject matter hereof have been merged into this Agreement and those certain other written agreements executed in connection herewith, and there are no oral promises, agreements, or understandings, expressed or implied, between the Parties, including transferring employees, concerning the subject matter hereof.
17. **Voluntary Agreement.** KCSEC and SD 308 acknowledge and agree that they have each read and understand the terms and conditions of this Withdrawal Agreement and enter into it voluntarily, with the full and complete advice of their respective legal counsel and without any duress or undue influence on the part of or on behalf of any person or entity.
18. **Governing Law.** This Withdrawal Agreement shall be interpreted by the laws of the State of Illinois.
19. **Severability.** In the event that any provision or term of this Withdrawal Agreement is declared invalid by a court of competent jurisdiction, said provision or term shall be deleted from this Withdrawal Agreement to the extent that it violates the law, but all remaining provisions and terms not affected by the deleted provision or term shall remain in full force and effect, to the extent that doing so would preserve the original intentions of the parties.
20. **Further Documents.** SD 308 and KCSEC agree to execute any and all documents, resolutions, and other agreements as may be necessary to effectuate the intent and purpose of this Withdrawal Agreement, including, but not limited to, the Intergovernmental and Joint Agreement between KCSEC, SD 308, their respective unions, and KCSEC's Administrative Agent.
21. **Third Party Beneficiaries.** This Agreement creates no rights, whether under a third party beneficiary theory or otherwise, in any person or entity who or which is not a signatory to this Agreement.

IN WITNESS WHEREOF, THE BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT NO. 308, the GOVERNING BOARD OF THE KENDALL COUNTY SPECIAL EDUCATION COOPERATIVE and the REGIONAL SUPERINTENDENT OF SCHOOLS, as ADMINISTRATIVE DISTRICT, LEGAL AND FISCAL AGENT OF KCSEC have caused this

BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT No. 308

By: _____
President, Board of Education

Date

Attest: _____
Secretary

GOVERNING BOARD, KENDALL COUNTY SPECIAL EDUCATION COOPERATIVE

By: _____
Chair, Governing Board

Date

Attest: _____
Secretary

REGIONAL SUPERINTENDENT OF SCHOOLS FOR GRUNDY/KENDALL COUNTIES, AS ADMINISTRATIVE, LEGAL AND FISCAL AGENT OF KCSEC

By: _____
Regional Superintendent of Schools

Date