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Frank Edelblut
Commissioner

Paul K. Leather
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
TEL: 603-271-2299
FAX 603-271-1953
Citizens Services Line 1-800-339-9900

April 14, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Education to contract with the individuals shown below to conduct Special Education Impartial Due Process Hearings, State Board of Education Hearings, Vocational Rehabilitation Hearings, and Alternative Dispute Resolution sessions, in an amount not to exceed \$103,000.00, effective upon Governor and Council Approval through June 30, 2019. 34% Federal funds, 66% General funds

John P. LeBrun, Esquire	Vendor Code: 263763
Amy B. Davidson, Esquire	Vendor Code: 159722
Peter T. Foley, Esquire	Vendor Code: 159636
Scott F. Johnson, Esquire	Vendor Code: 177681
Briana Hyde, Esquire	Vendor Code: 278089

Funds to support this request are anticipated to be available in the following accounts in FY 2018 and FY 2019, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance & Standards, Field Programs – Match, and Special Education – Elementary/Secondary:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

EXPLANATION

An RFP was published in the *Manchester Union Leader* on January 11, 12, and 13, 2017, as well as published on the Department's web-page starting January 9, 2017 through January 27, 2017, for hearing officers to conduct special education due process hearings, State Board of Education hearings, mediations and neutral conferences. The four current hearing officers submitted applications. There was one new candidate, who responded this year to the RFP, who was selected due to her legal experience as well as background in administrative law.

The applications were given to the Coordinator of Dispute Resolution and Constituent Complaints, who manages the hearings/alternative dispute resolution program. All applications were rated using the criteria in Attachment A, Scoring for Review (attached). In addition, the four current hearing officers were assessed based upon the results of job performance evaluations, together with observation, and participant surveys. This resulted in the Department offering the enclosed contracts in the next biennium to all five candidates.

The committee members responsible for the review of the request for proposal included the following individuals: Bridget Brown, Consultant for the Bureau of Special Education; Sharon DeAngelis, Business Administrator for Vocational Rehabilitation, Bureau of Business Office; and Amy C. Clark, Administrator, Bureau of School Approval and Facilities Management.

The role of the Coordinator of Dispute Resolution and Constituent Complaints was advisory in nature. The Coordinator's role in the process was to provide information, analysis, and recommendation to the Commissioner of Education.

Appointment of hearing officers is a statutory requirement of administrative agencies. The department is required by State and Federal law to provide Hearing Officers to preside at Due Process Hearings and Alternative Dispute Resolution proceedings.

Candidates chosen fulfill Federal and State requirements for hearing officer/alternative dispute resolution officers in the following areas: Special Education Impartial Due Process Hearings, Vocational Rehabilitation Fair Hearings, State Board of Education hearings, mediations and neutral conferences.

Special Education Due Process hearing procedures are complex in terms of the length of time and in the legal issues brought before the hearing officer. The majority of due process hearings involve attorneys who represent school districts and parents. Federal law prohibits hearing officers from being employees of a state agency and, therefore, the department must enter into contracts with attorneys or other individuals with knowledge of state and federal special education laws. Federal law (Individuals with Disabilities Education Act) requires mediation be available upon request. Only twenty to thirty percent of the requests for hearing actually complete the entire process to a decision; mediation is one of the several effective tools that results in dispute resolution that is both cost efficient and less time consuming.

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State Board hearings are required under 21-N:11, Duties of Board. The State Board is charged with hearing appeals and issuing decisions which are considered final decisions of the Department of Education for purposes of RSA 541. These appeals are brought to the State Board by individuals with complaints regarding school systems or the Department of Education.

Additionally, in order to comply with the provisions of RSA 200-C:12, the Rehabilitation Act amendments of 1992 and federal and state regulations pertaining to Vocational Rehabilitation, the Department of Education is contracting with individuals for the services of hearing officers. Federal law requires hearings for vocational rehabilitation clients with claims for reimbursement and/or services.

Please note that the agreements with hearing officers represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle said request, and number of cases currently outstanding for each hearing officer. Hearing officers are compensated based on the payment terms outlined in Exhibit B. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

The Commissioner of Education reviews the information provided and makes the final decision regarding the award of such grants.

Respectfully submitted,



Frank Edelblut
Commissioner of Education

Attachment A

SCORING FOR REVIEW

HEARING OFFICER AND ALTERNATIVE DISPUTE RESOLUTION OFFICER

Proposals were reviewed to determine the extent to which candidates provided information to demonstrate the following:

- 30 Points Expertise/Experience in the field of Administrative Hearings
- 20 Points Demonstrated competency in written and verbal communication
- 30 Points Experience with Special Education, General Education and Vocational Rehabilitation law
- 20 Points Training and experience as a mediator

Each reviewer's score of all criteria listed was totaled for each proposal received. All total scores for each proposal were then computed. Contracts were offered to individuals based on their total score. Awards were made to individuals based on the aggregate score of the panel.

Table

Breakdown of Scoring:

Expertise/Experience in the field of Administrative Hearings (0-30 points)
Experience with Special Education, General Education, and Vocational Rehabilitation Law (0-30 points)

Scoring was to be broken down only as 0, 10, 20 or 30 points not in lesser numbers.

30 available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 20 meets most of the requirements
- 30 meets all of the requirements

Training and experience as a mediator (0-20 points)
Demonstrated Competency in written and verbal communication (0-20 points)

Scoring was to be broken down only as 0, 10, 15 or 20 points not in lesser numbers.

20 Available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 15 meets most of the requirements
- 20 meets all of the requirements

Five (5) proposals were received and scored as shown here:

Expertise/Experience in the field of Administrative Hearings (0-30 points)

Candidate	Bridget Brown	Amy Clark	Sharon DeAngelis
Amy Davidson	28	30	30
Peter Foley	28	30	30
John LeBrun	28	30	30
Scott Johnson	29	20	30
Briana Hyde	25	10	30

Experience with Special Education, General Education, and Vocational Rehabilitation Law (0-30 points)

Candidate	Bridget Brown	Amy Clark	Sharon DeAngelis
Amy Davidson	28	30	30
Peter Foley	29	30	30
John LeBrun	29	30	30
Scott Johnson	28	30	30
Briana Hyde	28	30	25

Scoring was to be broken down only as 0, 10, 20 or 30 points not in lesser numbers.

30 available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 20 meets most of the requirements
- 30 meets all of the requirements

Training and experience as a mediator (0-20 points)

Candidate	Bridget Brown	Amy Clark	Sharon DeAngelis
Amy Davidson	19	15	20
Peter Foley	18	20	20
John LeBrun	19	15	20
Scott Johnson	18	15	20
Briana Hyde	18	20	20

Demonstrated Competency in written and verbal communication (0-20 points)

Candidate	Bridget Brown	Amy Clark	Sharon DeAngelis
Amy Davidson	15	20	20
Peter Foley	20	15	20
John LeBrun	17	20	20
Scott Johnson	20	20	20
Briana Hyde	20	20	15

Scoring was to be broken down only as 0, 10, 15 or 20 points not in lesser numbers.

20 Available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 15 meets most of the requirements
- 20 meets all of the requirements

Total of all scores

Candidate	Bridget Brown	Amy Clark	Sharon DeAngelis	Total Score
Amy Davidson	90	95	100	285
Peter Foley	95	95	100	290
John LeBrun	93	95	100	288
Scott Johnson	95	85	100	280
Briana Hyde	91	80	90	261

The RFP review took place between January 27, 2017 and February 17, 2017. The RFP review panel consisted of the following employees from the Department of Education:

Bridget Brown, Education Consultant, Bureau of Special Education. Bridget was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her experience with Special Education law as well as her role as supervisor of the Special Education complaint process, which gives her insights into a candidate's experience in Special Education Impartial Due Process Hearings.

Amy Clark, Administrator, Bureau of School Approval and Facilities Management. Amy was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her role as an administrator in the Department of Education. In that role, some of the areas of law that she oversees go before the State Board of Education, giving her insights into a candidate's experience in State Board of Education appeals.

Sharon DeAngelis, Business Administrator for Vocational Rehabilitation, Bureau of Business Office was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her role in Vocational Rehabilitation cases wherein she interacts with VR customers and VR laws and regulations. From time to time these cases go in front of a Vocational Rehabilitation Fair Hearing Officer.

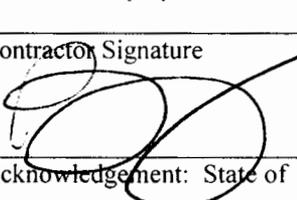
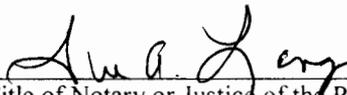
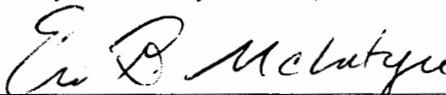
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

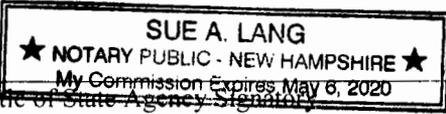
AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Briana Hyde, Esquire		1.4 Contractor Address 154 Maplewood Avenue, Portsmouth, NH 03801	
1.5 Contractor Phone Number (603) 319-1731	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$103,000.00
1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education		1.10 State Agency Telephone Number 271-3801	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Briana Hyde, Esquire	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>April 14, 2019</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sue A. Lang, Notary Public</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>FRANK EDELBLUT, COMMISSIONER OF EDUCATION</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>4/20/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			



2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Exhibit A

Scope of the Work:

Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format Hearing Officer Orders in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.

Contractor Initials

Date 7.14.17

EXHIBIT A – PAGE 2

16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
23. Ensure timely responses to all inquiries of the parties.
24. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
25. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
26. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

Contractor Initials 
Date 4.19.17

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2019. This schedule was developed based on the median and average costs of all hearings and mediations held during a one year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$275; Less than 3 hours - \$155 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$155 			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 			Not Applicable
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials

Date


 4-14-17

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if, and only if, a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Limitation on Price: This contract will not exceed \$103,000.00.

Source of Funding: Funding for this contract is 34% Federal Funds from the accounts titled Field Programs-Match and Special Education and 66% General Funds from Governance & Standards as follows:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Contractor Initials SB
Date 7-14-17

Exhibit C

Special Provisions:

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policy:

Safeco Insurance Company

Terms and Conditions:

Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$103,000 for the biennium - \$51,500 for FY 18 and \$51,500 for FY 19.

Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.

When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.

At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination:

All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

Contractor Initials
Date 7-14-13

EXHIBIT C – PAGE 2

Termination cont.:

In the event that the Contractor fails to complete a case or where the Contractor has recused himself/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials 
Date 9-14-17

Briana M. Hyde (Coakley)

EDUCATION:

Juris Doctor 6/00
Massachusetts School of Law, Andover, Massachusetts
Admitted to practice law in New Hampshire and Massachusetts

Bachelor of Arts/Political Science Major 6/97
University of New Hampshire, Durham, New Hampshire

LEGAL EXPERIENCE:

Partner 3/07-present
Coakley & Hyde PLLC, Portsmouth, NH

I am a partner Collaborative attorney and Certified Family Mediator for a law firm that handles a variety of legal areas. My specialties are in the areas of family law and special education law. I have been recruited to teach continuing education classes in each areas of my specialty. In addition to my current areas of practice I have an extensive legal background in non-profit law, employment law, workers compensation claims, contracts, business law and administrative law for various clients before the Department of Education, NH Commission for Human Rights, Department of Labor Workers Compensation Division and ERISA Litigation Claims. I, along with my law partner, manage and maintain every aspect of owning and operating a very successful law practice.

Professor of Law 1/08-present
Massachusetts School of Law, Andover, MA

I am employed by the Massachusetts School of Law as an adjunct professor to teach law students the specialized area of New Hampshire practice. This class introduces law students interested in practicing law in New Hampshire to the procedural and administrative differences of practice in New Hampshire. I am responsible for creating a class schedule, preparing and presenting the course material, and examining the students' knowledge and understanding of the course material.

Attorney 3/02-3/07
Shaines & McEachern, P.A., Portsmouth, NH

Employed as a trial attorney for medium sized law firm that handles all aspects of civil law with special emphasis in litigation. Responsible for overseeing all aspects of civil litigation passed on to me by the Senior partner. Areas of practice include representing non-profit organizations, business law, employment law, contracts, tax law, workers' compensation – plaintiff, personal injury, wills and trusts, probate, family law, municipal law, tenant (commercial and residential), administrative law and ERISA litigation.

PROFESSIONAL EXPERIENCE:

**Professor of Graduate Studies
Northeastern University**

05/11-present

I am employed by Northeastern University as a faculty lecturer for the College of Professional Studies in Non-Profit Management, for the required courses of Legal and Governance Issues in Non-Profit Organizations and Human Resources Management in Non-Profit Organizations. I am responsible for creating the course schedule and content presentation material through a number of sources, i.e. live lecture, Blackboard, and video to provide students with knowledge and understanding of course material based on my experience and training in the industry.

**Professor of Business
Bay Path College**

11/10-3/11

Employed by Bay Path College as a professor in the business department to teach Business Policy I and Business Policy II. These two capstone courses require that the students apply business knowledge and skill through class discussions, including online discussions, and through Capstone's simulated competition.

COMMUNITY AND PROFESSIONAL AFFILIATIONS:

New Hampshire Conflict Resolution Association, Board of Directors (2016-Present)
Children's Museum of New Hampshire, Chair Legal Governance Committee (2015-Present)
Children's Museum of New Hampshire, Board of Directors (2013-Present)
American Inns of Court (2002-2013)
Rotary Club of Portsmouth, New Hampshire (2001-2008)
New Hampshire Bar Association (2002-Present)
National Alliance for the Mentally Ill, Volunteer (2000)
Sexual Assault Support Services, Crisis Advocate (1993-1994)
MSL, Student Bar Association, President (1999-2000)
MSL, Student Bar Association, Director (1998-1999)
MSL, Student Bar Association, Representative (1997-1998)
American Trial Lawyers Association (1998-2000)
ATLA, Student Attorney, Regional Trial Competitions (2nd Place 1999 & 2000)
UNH, Memorial Union Board of Governors (1993-1996)

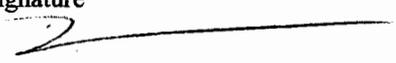
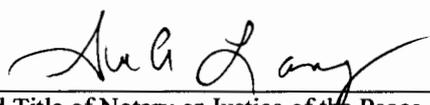
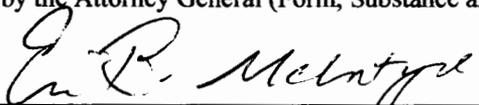
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Amy B. Davidson, Esquire		1.4 Contractor Address P.O. Box 625, Contoocook, NH 03229	
1.5 Contractor Phone Number (603) 496-6730	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$103,000.00
1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education		1.10 State Agency Telephone Number 271-3801	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Amy B. Davidson, Esquire	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>April 14, 2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sue A. Lang, Notary Public</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Date: <u>4-19-17</u> <u>FRANK EDELBLUT, COMMISSIONER OF EDUCATION</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>4/21/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			



2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Exhibit A

Scope of the Work:

Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format Hearing Officer Orders in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.

Contractor Initials

Date

MMJ
Date 5/14/17

EXHIBIT A – PAGE 2

16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
23. Ensure timely responses to all inquiries of the parties.
24. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
25. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
26. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

Contractor Initials
Date 4/24/12

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2019. This schedule was developed based on the median and average costs of all hearings and mediations held during a one year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$275; Less than 3 hours - \$155 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$155 			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			Not Applicable
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 			
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials ASW
Date 4/14/17

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if, and only if, a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Limitation on Price: This contract will not exceed \$103,000.00.

Source of Funding: Funding for this contract is 34% Federal Funds from the accounts titled Field Programs-Match and Special Education and 66% General Funds from Governance & Standards as follows:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Contractor Initials SM
Date 4/14/17

Exhibit C

Special Provisions:

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policy:

Allstate Fire and Casualty Insurance Company

Terms and Conditions:

Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$103,000 for the biennium - \$51,500 for FY 18 and \$51,500 for FY 19.

Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.

When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.

At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination:

All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

Contractor Initials

Date

AWD

4/14/17

EXHIBIT C – PAGE 2

Termination cont.:

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials MM
Date 4/17/17

Policy number:

Policy effective date: December 4, 2016

Coverage detail for 2000 Honda Civic

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance		Not applicable	\$375.12
 Bodily Injury	\$100,000 each person \$300,000 each occurrence		
 Property Damage	\$200,000 each occurrence		
 Automobile Medical Payments	\$25,000 each person	Not applicable	\$45.34
 Auto Collision Insurance	Not purchased*		
 Auto Comprehensive Insurance	Not purchased*		
 Rental Reimbursement	Not purchased*		
 Towing and Labor Costs	Not purchased*		
 Sound System	Not purchased*		
Tape	Not purchased*		
Total premium for 2000 Honda Civic			\$420.46

** This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.*

VIN

Rating information

- This vehicle is driven over 7,500 miles per year, 3-9 miles to work/school

Coverage detail for 1999 Audi A4 Avant

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance		Not applicable	\$166.54
 Bodily Injury	\$100,000 each person \$300,000 each occurrence		
 Property Damage	\$200,000 each occurrence		
 Automobile Medical Payments	\$25,000 each person	Not applicable	\$27.81
 Auto Collision Insurance	Not purchased*		
 Auto Comprehensive Insurance	Not purchased*		
 Rental Reimbursement	Not purchased*		
 Towing and Labor Costs	Not purchased*		
 Sound System	Not purchased*		

(continued)

Amended auto policy declarations
 Policy number:
 Policy effective date: December 4, 2016



Allstate
 You're in good hands.

Coverage	Limits	Deductible	Premium
Tape	Not purchased*		
Total premium for 1999 Audi A4 Avant			\$194.35

** This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.*

VIN **Rating information**
• This vehicle is driven over 7,500 miles per year, for pleasure

Additional coverage

The following policy coverage is also provided.

Coverage	Limits	Deductible	Premium
Uninsured Motorists Insurance for Bodily Injury	\$100,000 each person \$300,000 each accident	Not applicable	\$68.69
Automobile Death Indemnity Insurance	Not purchased*		
Automobile Disability Income Protection	Not purchased*		
Total			\$68.69

** This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.*

Your policy documents

Your automobile policy consists of this Policy Declarations and the documents in the following list. Please keep these together.

- New Hampshire Allstate Fire and Casualty Insurance Company Insurance Policy -
- New Hampshire Auto Policy - Amendatory Endorsement -
- Drivewise® Enrollment Endorsement -

Important payment and coverage information

Here is some additional, helpful information related to your coverage and paying your bill:

- ▶ Your Gold Protection package contains the following features:
 - Accident Waiver Enhancement feature
 - Safe Driving Deductible Reward feature

Allstate Fire and Casualty Insurance Company's Secretary and President have signed this policy with legal authority at Northbrook, Illinois.


 Steven P. Sorenson
 President


 Susan L. Lees
 Secretary



AMY B. DAVIDSON

PROFESSIONAL

LAW OFFICE OF AMY B. DAVIDSON, Contoocook, NH, March 1992 – present; Private practice with concentration in juvenile, family and mental health law; New Hampshire Bar Association Domestic Violence Emergency (DOVE) Project panel attorney (1993 to present).

NEW HAMPSHIRE DEPARTMENT OF EDUCATION, Concord, NH, July 2001 – present; Hearing Officer/Alternative Dispute Resolution Officer. Preside over Impartial Due Process Hearings and State Board hearings and serve as a mediator and neutral evaluator in cases involving special education, student discipline, bullying, teacher contracts and other matters which come before the Department.

Guardian *ad litem* in New Hampshire courts, 1994 to 2014 (Board certified, 2004 – 2014); faculty for guardian *ad litem* training in the Probate Courts, 2004 to 2014.

RIVIER COLLEGE, Nashua, NH, January 1999 – May 2001; Adjunct Faculty, Family Law Instructor, Paralegal Studies Program.

COLLEGE FOR LIFELONG LEARNING, Manchester, NH, April 1997 – May 1997; Adjunct Faculty. Family Law Instructor, Paralegal program.

DISABILITY RIGHTS CENTER, INC., Concord, NH, March 1985 – October 1991; Staff Attorney. Represented individuals with disabilities in federal and state courts and before administrative agencies, in matters involving special education, rights to treatment and services, housing and benefits; participated in workshops, conferences and legislative activities which addressed disability-related issues.

SOUTHERN TIER LEGAL SERVICES, Bath, NY, August 1982 – March 1985; Reginald Heber Smith Community Lawyer Fellow/Staff Attorney. Represented low-income clients in cases involving housing, public benefits, education, disability and mental health; organized and conducted Social Security/SSI and special education workshops for community groups.

CORNING COMMUNITY COLLEGE, Corning, NY, fall 1982; Visiting Lecturer. Taught a course entitled “Wills and Trusts for the Layperson”.

FRANKLIN PIERCE LAW CENTER, Concord, NH, August, 1980 – March 1982; Civil Procedure Teaching Assistant. Prepared and taught weekly sessions for first year law students.

A BETTER CHANCE, INC., Concord, NH, September 1980 – June 1981, Tutor. Worked with inner city students in a residential setting; assisted with academics and college preparation.

CENTER FOR EVALUATION AND RESEARCH OF RHODE ISLAND COLLEGE, Providence, RI, May 1978 – May 1979; Graduate Research Assistant. Evaluated compensatory education programs throughout Rhode Island; responsibilities included conducting interviews, classroom observations, development of testing and survey instruments, report preparation and data analysis.

SOUTH NORFOLK COUNTY ARC, INC., Sharon, MA, August 1978 – June 1979; Assistant House Manager. Provided community-based services to eight women with developmental challenges.

EDUCATION

FRANKLIN PIERCE LAW CENTER
(now **University of New Hampshire School of Law**), Concord, NH, Juris Doctor, 1982.

RHODE ISLAND COLLEGE, Providence, RI, Master of Arts, Social Psychology and Personality, 1979.

BOSTON UNIVERSITY, Boston, MA, Bachelor of Arts, Psychology, 1974.

BAR ADMISSIONS

STATE: New Hampshire – 1985
Massachusetts – 1984
New York – 1983

FEDERAL: U.S. District Court, District of Massachusetts - 1994
U.S. Court of Appeals for the First Circuit – 1989
U.S. District Court, District of New Hampshire – 1985
U.S. District Court, Western District of New York – 1983

PROFESSIONAL MEMBERSHIPS

New Hampshire Bar Association
NHBA Mental & Physical Disabilities Law Section

MISCELLANEOUS INTERESTS

Animal welfare and rescue; volunteering for local animal shelters and rescue organizations;

Conservation and environmental concerns;

Professional musician/piano teacher;

Competitive triathlete and runner; also enjoy trail and road biking, kayaking, Nordic and alpine skiing, snowshoeing, swimming, hiking, volleyball, tennis, badminton, skating.

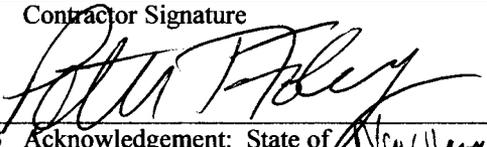
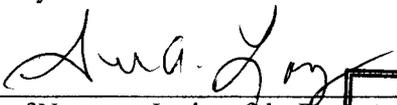
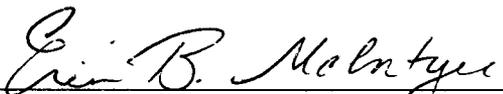
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Peter T. Foley, Esquire		1.4 Contractor Address P.O. Box 2753, Concord, NH 03302	
1.5 Contractor Phone Number (603) 224-6368	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$103,000.00
1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education		1.10 State Agency Telephone Number 271-3801	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Peter T. Foley, Esquire	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>April 14, 2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace Sue A. Lang <div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> SUE A. LANG ★ NOTARY PUBLIC - NEW HAMPSHIRE ★ My Commission Expires May 6, 2020 </div>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory FRANK EDELBLUT, COMMISSIONER OF EDUCATION	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>4/20/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials PPF
Date 4/19/17

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Exhibit A

Scope of the Work:

Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format Hearing Officer Orders in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.

Contractor Initials
Date


4/11/17

EXHIBIT A – PAGE 2

16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
23. Ensure timely responses to all inquiries of the parties.
24. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
25. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
26. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

Contractor Initials
Date

APR
4/17/17

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2019. This schedule was developed based on the median and average costs of all hearings and mediations held during a one year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$275; Less than 3 hours - \$155 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$155 			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 			Not Applicable
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials

Date

[Handwritten Signature]
4/14/17

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if, and only if, a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Limitation on Price: This contract will not exceed \$103,000.00.

Source of Funding: Funding for this contract is 34% Federal Funds from the accounts titled Field Programs-Match and Special Education and 66% General Funds from Governance & Standards as follows:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Contractor Initials
Date


4/19/17

Exhibit C

Special Provisions:

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policy:

Amica Mutual Insurance Company

Terms and Conditions:

Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$103,000 for the biennium - \$51,500 for FY 18 and \$51,500 for FY 19.

Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.

When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.

At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination:

All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

Contractor Initials

Date


4/14/17

EXHIBIT C – PAGE 2

Termination cont.:

In the event that the Contractor fails to complete a case or where the Contractor has recused himself/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials 
Date 4/14/17



Sales and Client Services
Amica Scan Center
PO Box 6700
Providence, RI 02940-6700

Toll Free: 1-800-242-6422
Fax: 1-866-602-6716

AMICA MUTUAL INSURANCE COMPANY
COVERAGE CONFIRMATION

April 6, 2017

NAME: Mr. Peter T. Foley

POLICY NUMBER:

NON-DIVIDEND POLICY

VEHICLE: 2004 VOLVO XC70 AWD
VEHICLE IDENTIFICATION NUMBER:
VEHICLE USE: Other
PARKING: Off Street

EFFECTIVE DATE OF COVERAGE: June 15, 2016

POLICY EFFECTIVE DATE: June 15, 2016 POLICY EXPIRATION DATE: June 15, 2017

COVERAGES

LIMITS

Bodily Injury	\$ 100,000 Each Person / \$ 300,000 Each Accident
Property Damage	\$ 50,000 Each Accident
Medical Payments	\$ 5,000 Each Person
Collision Loss	ACV Less \$ 1,000 Deductible
Uninsured Motorists	\$ 100,000 Each Person / \$ 300,000 Each Accident
Other than Collision Loss	ACV Less \$ 100 Deductible
Towing and Labor Costs	\$ 100 Per Disablement
Transportation Expenses	COVERED
Optional Trans Expenses	NOT COVERED

PETER T. FOLEY

EDUCATION

Georgetown University Law Center, Washington, D.C.
J.D. *cum laude*, 1981

Honors: **Law Review:** American Criminal Law Review
Editor, 1980-81
Member, 1979-80

Stonehill College, North Easton, Massachusetts
A.B. *magna cum laude*, 1978, *Political Science*

Honors: Lambda Epsilon Sigma Honor Society
Phi Alpha Theta Honor Society

EMPLOYMENT

LEGAL

Foley Law Office, Concord, New Hampshire

Solo Practitioner, July 1991 - present

Established and maintain private law practice specializing in administrative/government law, mediation/hearing officer services and election law. Representative clients: New Hampshire Department of Education, New Hampshire Department of Justice, New Hampshire Retirement System.

GOVERNMENTAL

State of New Hampshire, Office of the Attorney General, Concord, NH
Senior Assistant Attorney General, December 1986 - January 1991

Member of management team of fifty-attorney law office with emphasis on supervision of professional and support staff of the Office's Civil Bureau.

As Civil Litigation Coordinator, organized and oversaw all aspects of twelve-attorney Civil Bureau's state and federal litigation, including case assignment, discovery, pretrial practice, settlement negotiation and jury trial preparation and presentation.

Assistant Attorney General, August 1983- December 1986

Attorney, September 1981 - August 1983

Advised state agencies and officials regarding legal aspects of departmental administration including statutory interpretation, administrative rulemaking, contract negotiation and contract drafting. Maintained individual litigation caseload in state and federal courts with extensive involvement in the defense of medical negligence claims and Section 1983 civil rights actions. Represented state agencies and officials in civil actions in state superior and probate court, federal district court and before state administrative bodies. Wrote legal briefs and orally argued on behalf of state agencies and officials in civil appellate proceedings in the New Hampshire Supreme Court and the First Circuit Court of Appeals. State agency clients included Department of Revenue, Department of Health and Human Services, New Hampshire Hospital and Laconia State School.

EMPLOYMENT

HIGHER EDUCATION

**University of New Hampshire School of Law, Concord, New Hampshire
Adjunct Professor - Sports Law, August 1991 – present**

Develop, design and teach curriculum for two law school courses that use professional and amateur sports case studies to teach principles of contract, labor, antitrust, constitutional and individual rights law.

Adjunct Professor - Advanced Legal Writing, August 1996 - May 1998

Designed and taught curriculum that used “real life” court cases to teach advanced legal writing skills to second and third year law students.

POLITICAL

Kerry-Edwards Campaign, Manchester, New Hampshire

July 2004-November 2004

Associate New Hampshire Counsel

Member of five-person core legal team of New Hampshire Democratic State Party Coordinated Campaign with individual specialty in student voting legal intervention and protection. Unprecedented college student registration, turnout and poll access provided margin of Democratic victory in 2004 NH Presidential and Gubernatorial elections.

Dean for America, November 2003 - March 2004

Co-Legal Counsel, New Hampshire, Maine and Wisconsin GOTV Program.

Established and coordinated a network of volunteer attorneys and law students to provide Election Day registration information and legal protection to college students and other individuals seeking to register to vote in 2004 Democratic primaries.

Shaheen for Senate, September – November 2002

Gore/Lieberman 2000, October – November 2000

On-Site Legal Coordinator, Student GOTV

Student Legal Advocate and Observer of Election Day student voter registration process at Durham, NH (University of New Hampshire) and Plymouth, NH (Plymouth State University) polling centers.

MEDIA

New Hampshire Public Radio, Concord, New Hampshire

Commentator, April 1998 - 2004

Wrote, produced and recorded sports humor essays for NHPR's local segments of National Public Radio's daily news programs, *Morning Edition* and *All Things Considered*.

KUSC Radio, Los Angeles, California

Commentator, *Marketplace*, September 1997 – 2001

Monitor Radio, Boston, Massachusetts

Commentator, March 1995 - July 1997

Wrote, produced and recorded sports law and sports business essays for two nationally syndicated daily news programs.

BAR MEMBERSHIP

State of New Hampshire (1981)

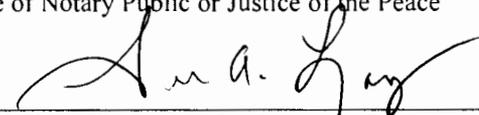
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name John P. LeBrun, Esquire		1.4 Contractor Address 25 Pearl Street, Henniker, NH 03242	
1.5 Contractor Phone Number (603) 496-5215	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$103,000.00
1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education		1.10 State Agency Telephone Number 271-3801	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory John P. LeBrun, Esquire	
1.13 Acknowledgement: State of <u>New Hampshire</u> County of <u>Merrimack</u> On <u>April 14, 2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sue A. Lang, Notary Public</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Date: <u>4-19-17</u> <u>FRANK EDELBLUT, COMMISSIONER OF EDUCATION</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Elin B. Melutye</u> On: <u>4/21/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials JPL
Date 4/14/17

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

Contractor Initials JPL
Date 4/14/17

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials JPL
Date 4/24/17

Exhibit A

Scope of the Work:

Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format Hearing Officer Orders in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.

Contractor Initials JPL
Date 7/14/17

EXHIBIT A – PAGE 2

16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
23. Ensure timely responses to all inquiries of the parties.
24. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
25. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
26. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

Contractor Initials JPL
Date 4/24/17

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2019. This schedule was developed based on the median and average costs of all hearings and mediations held during a one year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$275; Less than 3 hours - \$155 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$155 			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 			Not Applicable
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials JPL
Date 4/4/17

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if, and only if, a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Limitation on Price: This contract will not exceed \$103,000.00.

Source of Funding: Funding for this contract is 34% Federal Funds from the accounts titled Field Programs-Match and Special Education and 66% General Funds from Governance & Standards as follows:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Contractor Initials JPL
Date 4/14/17

Exhibit C

Special Provisions:

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policy:

State Farm Mutual Automobile Insurance Company

Terms and Conditions:

Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$103,000 for the biennium - \$51,500 for FY 18 and \$51,500 for FY 19.

Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.

When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.

At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination:

All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

Contractor Initials JPL
Date 4/12/17

EXHIBIT C – PAGE 2

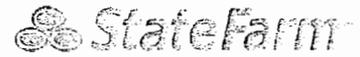
Termination cont.:

In the event that the Contractor fails to complete a case or where the Contractor has recused himself/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials JPC
Date 4/14/17



AT2
LEBRUN, JOHN I

A-2018 A

AUTO RENEWAL

AMOUNT DUE: \$613.75

Payment is due by January 20, 2017

Your State Farm Agent

RICH YACYSHYN

Office: 603-224-5298

Address: 171 N MAIN ST STE 1

CONCORD, NH 03301-5070

If you have a new or different car, have added any drivers, or have moved, please contact your agent.

Policy Number:

Policy Period: January 20, 2017 to July 20, 2017

Vehicle:

2015 TOYOTA CAMRY

Principal Driver:

JOHN P LEBRUN

CONVENIENT PAYMENT OPTION: You may use one of State Farm's alternate payment plans which divides your present premium into two separate payments.

You may pay one half of the amount due, \$306.87, plus a handling charge of \$2.00. The amount due on JAN 20 2017 will be \$308.87.

The remaining half will be due on MAR 21 2017. We'll send you a reminder notice.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Policy Number
Prepared November 14, 2016
1004583

Page number 1 of 4

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143562 201 11-12-2014

**Power To Pay
Your Way**



Online
PC or
mobile devices



Mobile
Download our
Pocket Agent App



Mail
Send us
a check



Call your Agent 603-224-5298
Automated line: 1-800-440-0998
Key code: 9475577686



Walk In
See your
State Farm Agent



Insured: LEBRUN, JOHN

Policy Number:

Amount Due: \$613.75

Please pay by January 20, 2017

Make payment to State Farm

2809702084

Insurance Support Center
P.O. Box 588002
North Metro, GA 30029-8002



For Office Use Only

AUTO REN	\$613.75	0208
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2-A2 A
APP DT 03-01-2017

2018-FBC4
MUTL VOL

00030887 759702000061375 329200051238411128>

Principal Driver & Assigned Drivers

For each automobile, the **Principal Driver** is the individual who most frequently drives it.

Each driver is designated as an **Assigned Driver** on the household automobile that he or she most frequently drives.

Your premium may be influenced by the information shown for these drivers.

COVERAGE AND LIMITS See your policy for an explanation of these coverages.

A	Liability	
	Bodily Injury 250,000/500,000	
	Property Damage 100,000	\$237.62
C	Medical Payments 10,000	\$32.66
D	Comprehensive	\$60.63
G	250 Deductible Collision	\$218.58
R1	Auto Rental & Travel Expense	
	80% Per Day, \$500 Max	\$10.45
U	Uninsured Motor Vehicle	
	Bodily Injury 250,000/500,000	\$53.81
Amount Due		\$613.75

The claim experience on your make and model of vehicle has resulted in a reduction to your vehicle rating group for comprehensive coverage.

If any coverage you carry is changed to give broader protection with no additional premium charge, we will give you the broader protection without issuing a new policy, starting on the date we adopt the broader protection.

DISCOUNTS These adjustments have already been applied to your premium.

Multiple Line	✓
Safe Driver	✓
See enclosed notice for more information about this discount.	
Total Discounts	\$195.46

SURCHARGES AND DISCOUNTS

Your Vehicle Safety Discount has been reduced for your medical payments coverage.

ADDITIONAL INFORMATION

If the above information is incomplete or inaccurate, or if you want to confirm the information we have in our records please contact your agent.

RESUME

John P. LeBrun

EDUCATION:

- 1983 - J.D. - Franklin Pierce Law Center
Concord, N.H.
- 1976 - M.A. - University of Rhode Island
Kingston, R.I.
Major in Economics
- 1975 - B.A. - Rhode Island College
Providence, R.I.
Major in Economics

WORK EXPERIENCE:

- 2015-Present** **Law Office John P. LeBrun, PLLC**
- 1990-2015 Goldman & LeBrun, PA
Concord, New Hampshire
Partner - General Practice Law Firm
- 1984 - 1990 Law Office of Stephen R. Goldman, P.A.
Concord, New Hampshire
Associate - General Practice Law Firm
- 1975 - 1976 Instructor of Economics (part-time)
Fisher Junior College
- 1982 - 1994 Instructor of Economics, Business Law
and Real Estate Law (part-time)
New Hampshire College
- 1985 - 1990 Instructor (part-time) Notre Dame College

HEARING OFFICER EXPERIENCE:

- 1990 - Present Hearing Officer – State of New Hampshire
Department of Education
- Due Process Hearings

- State Board Hearings
- Mediations
- Vocational Rehabilitation Fair Hearings

2.

OTHER ADMINISTRATIVE EXPERIENCE

1996 - Present	Defense Counsel, Concord District Court Involuntary Emergency Admission (IEA) Hearings
1986 - 1996	Special Justice, Concord District Court Involuntary Emergency Admission (IEA) Hearings

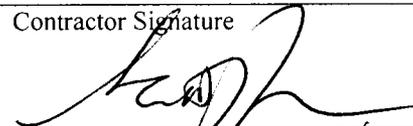
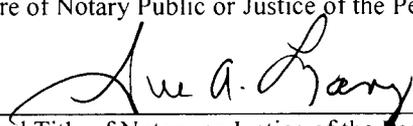
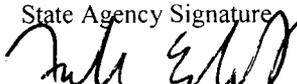
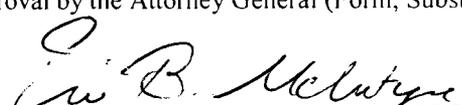
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Scott F. Johnson, Esquire		1.4 Contractor Address P.O. Box 549, Warner, NH 03278	
1.5 Contractor Phone Number (603) 456-2937	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$103,000.00
1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education		1.10 State Agency Telephone Number 271-3801	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Scott F. Johnson, Esquire	
1.13 Acknowledgement: State of <u>New Hampshire</u> County of <u>Merrimack</u> On <u>April 14, 2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace Sue A. Lang, Notary Public <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> SUE A. LANG ★ NOTARY PUBLIC - NEW HAMPSHIRE ★ My Commission Expires May 6, 2020 </div>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Date: <u>4-19-17</u> <u>FRANK EDELBLUT, COMMISSIONER OF EDUCATION</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>4/21/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials 
Date 4/19/17

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

Handwritten signature and date. The signature is a stylized cursive mark. The date is written as 9/12/17.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Exhibit A

Scope of the Work:

Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format Hearing Officer Orders in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.

Contractor Initials
Date

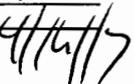



EXHIBIT A – PAGE 2

16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
23. Ensure timely responses to all inquiries of the parties.
24. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
25. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
26. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

Contractor Initials
Date 4/12/17

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2019. This schedule was developed based on the median and average costs of all hearings and mediations held during a one year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$275; Less than 3 hours - \$155 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$155 			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 			Not Applicable
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials _____
Date _____

[Handwritten Signature]
4/7/17

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if, and only if, a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Limitation on Price: This contract will not exceed \$103,000.00.

Source of Funding: Funding for this contract is 34% Federal Funds from the accounts titled Field Programs-Match and Special Education and 66% General Funds from Governance & Standards as follows:

<u>ACCOUNT NUMBER</u>		<u>FY 18</u>	<u>FY 19</u>
06-56-56-560510-20220000-046-500464	Consultants	\$34,000.00	\$34,000.00
06-56-56-565510-40200000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562510-41100000-046-500464	Consultants	<u>\$10,000.00</u>	<u>\$10,000.00</u>
		\$51,500.00	\$51,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Contractor Initials _____
Date _____

[Handwritten Signature]
9/19/17

Exhibit C

Special Provisions:

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policy:

Concord General Mutual Insurance Company

Terms and Conditions:

Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$103,000 for the biennium - \$51,500 for FY 18 and \$51,500 for FY 19.

Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.

When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.

At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination:

All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

Contractor Initials _____
Date _____

[Handwritten Signature]
9/14/17

Termination cont.:

In the event that the Contractor fails to complete a case or where the Contractor has recused himself/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials
Date

[Handwritten signature]
[Handwritten date: 4/14/12]



NEW BUSINESS DECLARATIONS

THIS IS NOT A BILL. Your bill will be sent separately.

Refer billing, policy or coverage questions to: **Named Insured and Address:** **Online Access#:**
 Davis & Towle Group, Inc. ---
 PO Box 1260
 Concord, NH 03302 Scott Johnson
 (603) 224-9551

A Valued Customer Since 2016

POLICY NUMBER	POLICY TYPE	POLICY PERIOD	EFFECTIVE DATE	PAYMENT PLAN	BILL TO
	Advantage Plus Homeowners HO 00 05	06/30/2016 TO 06/30/2017 12:01 AM Standard Time	06/30/2016	Monthly	Insured

LOCATION OF PREMISES

SECTION I COVERAGES	Limit	Premium
A. Dwelling	\$445,000	\$1,771.00
B. Other Structures	\$44,500	Included
C. Personal Property	\$311,500	Included
D. Loss of Use	\$133,500	Included
Section I losses are subject to a \$2500 deductible		-\$375.00

SECTION II COVERAGES	Limit	Premium
E. Personal Liability	\$500,000	\$20.00
F. Medical Payments To Others	\$5,000	\$10.00

ADDITIONAL COVERAGES and ENDORSEMENTS See following page(s) for details.	Premium
Additional Coverages	\$103.00
Personal Umbrella Liability	\$600.00

YOUR CREDITS, DISCOUNTS and CHARGES	Amount
Advantage Loss Free	25% -\$443.00
Account Credit for auto policy 999	
Wood/Coal/Pellet Device	\$50.00
Protective Devices	2% -\$35.00
Smoke Fire Alarm	

TOTAL ANNUAL PREMIUM \$1,701.00

ADDITIONAL COVERAGES	Limit	Premium
HO 04 20 Specified Additional Amount of Insurance For Coverage A - Dwelling	25%	\$10.00
HO 04 27 Limited Fungi, Wet Or Dry Rot, Or Bacteria Coverage		
Section I Property Coverage Limit of Liability:	\$10,000	Included
Section II E Coverage Aggregate Sublimit of Liability:	\$50,000	
HO 04 55 Identity Fraud Expense Coverage		\$30.00
HO 04 90 Personal Property Replacement Cost Loss Settlement		\$35.00
HO 05 13 Extra Security and Protection Plus-ESP+		\$25.00
HO 05 14 Renewal Automatic Increase Provision	Annual Increase: 4%	No Charge
HO 05 17 Concord Homeowners Enhancement Coverage (CHEC)		Included
HO 24 91 Workers' Compensation And Employers' Liability Coverage For Residence Employees - New Hampshire		\$3.00
ADDITIONAL COVERAGES Premium		\$103.00

PERSONAL UMBRELLA LIABILITY ENDORSEMENT		
Limit: \$1,000,000	Deductible: \$250	
Schedule of required underlying insurance and limits that must be maintained:		
UNDERLYING INSURANCE	MINIMUM RETAINED POLICY LIMITS	
Auto Liability	\$250,000	Bodily Injury per Person
Including recreational vehicles	\$500,000	Bodily Injury per Occurrence
	\$100,000	Property Damage per Occurrence, or
	\$500,000	Combined Single Limits
Personal Liability--Homeowners Policy	\$300,000	Each Occurrence
Watercraft Liability	\$300,000	Each Occurrence, or
	* \$500,000	Each Occurrence
* Required if sailboat over 25 feet, Outboard over 100 horsepower, Inboard or Inboard/Outboard over 180 horsepower, or Personal Watercraft over 24 horsepower.		

Additional Umbrella Endorsements	
DL 98 85 Excess Uninsured Motorists Coverage - New Hampshire	Limit of Liability: \$1,000,000 each accident

Rating Information									
Exposure	Autos	Motorcycles	Motorhomes	Snowmobiles, Miscellaneous Vehicles	Operators Under Age 22	Owner occupied residences	Rental residences	Office or business pursuit	Watercraft
Number of units	4	0	0	0		1	0	0	0
1st Million Premium									\$600.00
Increased Limit Premium									
PERSONAL UMBRELLA LIABILITY Premium									\$600.00

Scott F. Johnson, Esq.

Experience

- 2000 - Present **Concord University School of Law**
Professor of Law. Develop and teach Administrative Law, Education Law, Health Law, Civil Procedure, ADR and Technology, and Medical Products Liability courses. Create and grade student assessments and exams. Serve on various academic committees.
- 2006- Present **New Hampshire Department of Education**
Hearing Officer. Serve as a hearing officer and alternative dispute resolution officer for special education and State Board of Education cases. Duties include presiding over administrative hearings, ruling on various motions, issuing decisions, and conducting mediation sessions.
- 2003 - 2008 **Franklin Pierce Law Center, Concord, NH**
Adjunct Professor/Visiting Professor. Developed and taught Education Law, Special Education Law, and Administrative Law classes.
- 1997-2004 **Stein, Volinsky & Callaghan, Concord, NH**
Attorney. Represented clients in civil and criminal litigation including administrative, trial and appellate practice before the New Hampshire Supreme Court and First Circuit Court of Appeals. Practice focused in education law, employment law, health law and constitutional law.

Education

- Franklin Pierce Law Center, Concord, NH**
J.D. May, 1997 Class rank: Top 5%
• Scholar's Paper Award, First Annual Academic Convocation for Law Students, Suffolk University Law School
• Quarter-finalist, National Health Law Moot Court Competition, Southern Illinois University School of Law
• Annual Survey of New Hampshire Law, Editor

- University of North Carolina at Charlotte, Charlotte, NC**
B.A., Political Science, Minor in American Studies, 1992

Bar

- Admitted to New Hampshire Bar November, 1997

Publications

- *Education Law: A Problem Based Approach 3rd^d Edition*, with Sarah E. Redfield, Lexis-Nexis Publishing (2015).
- *Rowley Forever More? A Call for Clarity and Change*, Vol 41, Journal of Law & Education 25 (2012)
- *Education Law: A Problem Based Approach 2nd Edition*, with Sarah E. Redfield, Lexis-Nexis Publishing (2012).
- *Special Education Law, 5th Edition*, with Laura Rothstein, Sage Publications (20012)
- *New Hampshire Special Education Law Manual: A Guide for Parents, Educators, Advocates & Attorneys*, 4th Edition, NHedLaw, LLC (2008).
- *Administrative Agencies: A Comparison of New Hampshire and Federal Agencies History, Structure and Rulemaking Requirements*, 4 Pierce L. Rev. 435 (2006)
- *Preventing Physical Restraints in Schools: A Guide for Parents, Educators & Professionals*, Education Law Resource Center (2005)
- *Focus on Equality Shifts to Adequacy as Brown v. Board Turns 50*, Vol. 34 Your School and the Law Issue 34 (2004).
- *Reexamining Rowley: A New Focus in Special Education Law*, 2 BYU Education Law Journal 561 (2003).
- *Bragdon v. Abbott: Analysis and Implications for People Living with HIV/AIDS and Other Disabilities*, 40 New Hampshire Bar Journal 1 (1999).
- *HB 117: The State's Plan to Fund Educational Adequacy is Too Little Too Late*, Vol 2. Issue 3 New Hampshire Law Bulletin (June 1999).
- *Suing Under the Americans With Disabilities Act or Seeking Disability Benefits: A Hobson's Choice for People With Disabilities*. Vol. 6, No. 1 Journal of Individual Employment Rights 49 (1997-98).
- *Opening Up Attorney Disciplinary Proceedings: Here comes the sun. It's all right?* 37 New Hampshire Bar Journal 10 (1996).

Activities/Associations/Interests

- American Red Cross, Concord Area Chapter, Chair of Board of Directors, 2000-2003.
- Education Law & Policy Consortium, Board of Directors.
- New Hampshire Children's Action Network, Steering Committee, 2002-2006.
- Volunteer Arbitrator for the Better Business Bureau.