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Virginia M. Barry, Ph.D.
Commissioner of Education
Tel. 603-271-3144

Paul K. Leather
Deputy Commissioner of Education
Tel. 603-271-3801

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

July 19, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Education to contract with Kevin M. Fay of Marlow, New Hampshire (vendor code 251985) to conduct impartial special education complaint investigations and authorize unencumbered payments for services to a total cumulative amount not to exceed \$20,000.00 from the date of Governor and Council approval through June 30, 2015. These are 100% Federal Funds.

Funding is available for this contract from:

	<u>FY'14</u>	<u>FY'15</u>
06-56-56-562510-4110-046-500464	\$10,000.00	\$10,000.00

EXPLANATION

The Department of Education, Bureau of Special Education, is required by RSA 21-N:4 V and U.S. Code Title 20 U.S.C. 122/e-3 to provide a process to resolve complaints between any local education agency and individuals or organization who believe federal law(s) or regulation(s) have been violated. Contractors will provide the investigation reports for the process of complaints received by the Department.

An advertisement was placed in the Union Leader on February 25th, 26th, and 27th seeking individuals to conduct impartial special education complaint investigations. Twelve (12) individuals submitted a letter of interest and proposal in response to the notice for five (5) part-time positions.

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Page Two
July 19, 2013

The criteria used in reviewing the applications were:

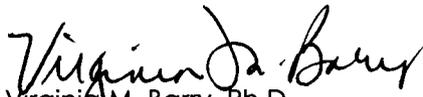
1. Experience investigating public or private agency misconduct
2. Experience and knowledge of special education law
3. Experience reviewing special education documents
4. Experience determining facts and reaching conclusions based upon the facts; and
5. Experience interviewing to gather information

Of the twelve applicants, seven (7) were selected for an interview based on their experience and resume. The committee interviewed all qualifying applicants and two (2) were selected. Mr. Fay was one of the successful candidates selected based on his interview, resume and overall experience (rubric attached).

The investigation process is evaluated by the Department on an individual complaint case basis.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,


Virginia M. Barry, Ph.D.
Commissioner of Education

VMB:BJR
Attachments

Complaint Investigator Rating Sheet FY 2013

Name	Experience investigating public or private agency misconduct (40 points)	Experience and knowledge of special education law (25 points)	Experience reviewing special education documents (15 points)	Experience determining facts and reaching conclusions based upon the facts (10 points)	Experience interviewing to gather information (10 points)	Total	Recommend for contract?
Anne Catell							
Kevin M. Fay	40	25	15	10	10	100	Yes
Sue M. Hagerman	0	15	10	7	7	39	No
Mary M. Lauzon	40	25	15	10	10	100	Yes
Mary Jane Proulx	0	25	15	0	0	40	No
Mark S. Richmond	15	25	15	5	0	60	No
Vanessa M. Wilson, Esq.	30	10	5	10	10	65	No

The committee members responsible for the review of the Special Education Complaint Investigator proposals include the following individuals:

Santina Thibedeau – Administrator – Special Education
 Bridget Brown – Education Consultant – Special Education
 McKenzie Harrington – Education Consultant – Special Education
Mary Steady – Education Consultant – Special Education

The scoring for this proposal was conducted employing a consensus model.

The role of the committee members was advisory in nature. They provided information, analysis, and recommendations that were presented to the Commissioner of Education.

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

Subject:

COMPLAINT INVESTIGATOR

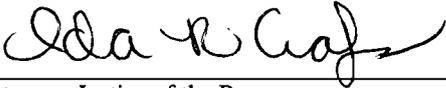
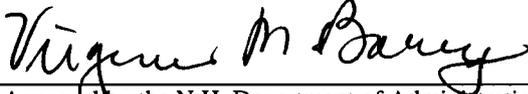
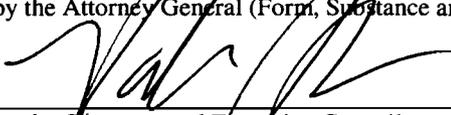
FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name EDUCATION, BUREAU OF SPECIAL EDUCATION		1.2 State Agency Address 101 PLEASANT STREET	
1.3 Contractor Name KEVIN M. FAY		1.4 Contractor Address 123 GUSTIN POND ROAD, MARLOW NH 03456	
1.5 Contractor Phone Number 603-446-3602	1.6 Account Number SEE EXHIBIT B	1.7 Completion Date June 30, 2015	1.8 Price Limitation \$20,000.00
1.9 Contracting Officer for State Agency SANTINA THIBEDEAU		1.10 State Agency Telephone Number 603-271-6693	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Kevin Fay	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsboro</u> On <u>7/3/2013</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 IDA R. CRAFTS, Notary Public My Commission Expires August 24, 2016			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Virginia M. Barry, Ph.D., Commissioner of Education	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By:  Director, On: 7-31-13			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: 8/7/13			
1.18 Approval by the Governor and Executive Council By: On:			

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 consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and
 - 14.1.2 fire and extended coverage insurance 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials KL
Date 6/27/2013

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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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. 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.

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.

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

Services to be Performed

- Contact and interview complainant and public agency
- Review all pertinent documents necessary for complete investigation
- Provide written report to NHDOE, Bureau of Special Education, including:
 - Background Information
 - Information gathered for each allegation
 - Source of information
 - Finding of facts for each allegation
 - Conclusion for each allegation

Initials R
Date 6/27/2013

EXHIBIT B

Estimated budget and payment method

General Expenses:

Budget (period ending June 30, 2015)
Account: 06-56-56-562510-4110-046-500464

Investigator @ \$50.00/hour
Mileage at current Federal Rate

	<u>FY2014</u>	<u>FY2015</u>
Professional services (\$50.00 per hour) (including travel time)	\$10,000.00	\$10,000.00
Total	\$10,000.00	\$10,000.00

Limitation on Price: Upon mutual agreement between the State contracting officer and the contractor, line items in this budget may be adjusted one to another but in no case shall the total budget exceed the price limitation of \$20,000.00.

Method of Payment: Payment will be made on the basis of monthly invoices received by the 10th of the following month which are supported by a summary of activities that have taken place in accordance with the terms of the contract. If otherwise correct and acceptable, payment will be made.

Invoices will be submitted to:

Barbara Raymond
NH Department of Education
Bureau of Special Education
101 Pleasant Street
Concord New Hampshire 03301

Initials 
Date 4/27/2013

EXHIBIT C

The provisions of items 14.1, 14.1.1, and 14.1.2 of the general provisions are not applicable.

Contractors will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels set forth in the attached auto insurance declaration page.

Initials 
Date 6/27/2013

Objective

To work as a Special Education Complaint Investigator.

Experience

Lead Teacher

1998-2003 SHINES Education Ltd. Orchard Rd. Singapore

- Taught Chinese, Thai, and Vietnamese high school students.
- Supervised 9 teachers in a private school setting.
- Developed ESL curriculum, and went to Guilin, China to help set-up a school there.

Special Education Teacher, Alternative Program

2003-2008 Keene Middle School, Keene, NH

- Taught Language Arts to students from grades 6-8.
- Developed and implemented IEP's.
- Facilitated meetings and correlated paperwork; monitored compliance.

Special Education Teacher, Claremont School District

2008-Present SAU-8, Claremont, NH 03743.

- Taught Language Arts and Math to identified students grades 4-5.
- Developed and monitored IEP's. Monitored compliance.
- Mentored new teachers.
- Teacher of the Year 2011-2012.

Prison Teacher, SAU-39

2007-Present, Monadnock School District, Old Homestead Hwy, Swanzey, NH

- Taught prisoners English, Math and Writing. Taught GED courses.
- Helped prisoners earn their diplomas while incarcerated.
- Carried out and monitored IEP's for compliance.

Education

Oxford University, Oxford, England.

1996-1997

- Diploma, Economics and European Politics
- 2d Class Honors Degree

Greenwich University, Greenwich, London, UK

1997-1999

B.A. (Honors) Economics and European Politics
2d class honors degree

The College of New Jersey, Ewing, NJ. USA.

1999-2003

M.Ed. Education

Keene State College, Keene, NH. USA.

2005-2006

Post-Graduate Certification in Special Education

Southern New Hampshire College, Manchester, NH. USA.

CAGS (Educational Leadership) 2011-Present

Nearly complete.



Virginia M. Barry, Ph.D.
Commissioner of Education
Tel. 603-271-3144

Paul K. Leather
Deputy Commissioner of Education
Tel. 603-271-3801

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

July 19, 2013

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2. Experience and knowledge of special education law
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4. Experience determining facts and reaching conclusions based upon the facts; and
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Respectfully submitted,


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Commissioner of Education

VMB:BJR
Attachments

**Complaint Investigator Rating Sheet
FY 2013**

Name	Experience investigating public or private agency misconduct (40 points)	Experience and knowledge of special education law (25 points)	Experience reviewing special education documents (15 points)	Experience determining facts and reaching conclusions based upon the facts (10 points)	Experience interviewing to gather information (10 points)	Total	Recommend for contract?
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The committee members responsible for the review of the Special Education Complaint Investigator proposals include the following individuals:

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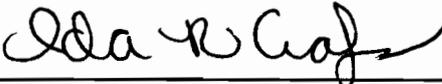
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Subject: **COMPLAINT INVESTIGATOR** FORM NUMBER P-37 (version 1/09)

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1.3 Contractor Name KEVIN M. FAY		1.4 Contractor Address 123 GUSTIN POND ROAD, MARLOW NH 03456	
1.5 Contractor Phone Number 603-446-3602	1.6 Account Number SEE EXHIBIT B	1.7 Completion Date June 30, 2015	1.8 Price Limitation \$20,000.00
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1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Kevin Fay	
1.13 Acknowledgement: State of NH , County of Hillsboro On 7/3/2013 , 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 IDA R. CRAFTS, Notary Public My Commission Expires August 24, 2016			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Virginia M. Barry, Ph.D., Commissioner of Education	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By:  Director, On: 7-31-13			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: 8/7/13			
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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 consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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. 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.

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.

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

Services to be Performed

- Contact and interview complainant and public agency
- Review all pertinent documents necessary for complete investigation
- Provide written report to NHDOE, Bureau of Special Education, including:
 - Background Information
 - Information gathered for each allegation
 - Source of information
 - Finding of facts for each allegation
 - Conclusion for each allegation

Initials R
Date 6/27/2013

EXHIBIT B

Estimated budget and payment method

General Expenses:

Budget (period ending June 30, 2015)
Account: 06-56-56-562510-4110-046-500464

Investigator @ \$50.00/hour
Mileage at current Federal Rate

	<u>FY2014</u>	<u>FY2015</u>
Professional services (\$50.00 per hour) (including travel time)	\$10,000.00	\$10,000.00
Total	\$10,000.00	\$10,000.00

Limitation on Price: Upon mutual agreement between the State contracting officer and the contractor, line items in this budget may be adjusted one to another but in no case shall the total budget exceed the price limitation of \$20,000.00.

Method of Payment: Payment will be made on the basis of monthly invoices received by the 10th of the following month which are supported by a summary of activities that have taken place in accordance with the terms of the contract. If otherwise correct and acceptable, payment will be made.

Invoices will be submitted to:

Barbara Raymond
NH Department of Education
Bureau of Special Education
101 Pleasant Street
Concord New Hampshire 03301

Initials 
Date 5/27/2013

EXHIBIT C

The provisions of items 14.1, 14.1.1, and 14.1.2 of the general provisions are not applicable.

Contractors will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels set forth in the attached auto insurance declaration page.

Initials 
Date 6/27/2013

**SAFECO INSURANCE COMPANY OF AMERICA
AUTOMOBILE POLICY DECLARATIONS**

(CONTINUED)

NAMED INSURED: _____

POLICY CHANGE

CHANGED EFFECTIVE: JUNE 24 2013
POLICY PERIOD FROM: MAR. 1 2013
TO: MAR. 1 2014

at 12:01 A.M. standard time at the address of the insured as stated herein.

AGENT:
CLARK-MORTENSON AGENCY INC
PO BOX 606
KEENE NH 03431-0606

AGENT TELEPHONE:
(603) 352-2121

RATED DRIVERS KEVIN FAY,

2013 SUBARU OUTBACK 2.5I 4 DOOR STATION WAGON ID#
LOSS PAYEE

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGES

LIABILITY:			
BODILY INJURY	\$250,000	Each Person	\$ 285.70
	\$500,000	Each Occurrence	
PROPERTY DAMAGE	\$250,000	Each Occurrence	214.20
		Each Occurrence	
MEDICAL PAYMENTS	\$5,000		47.70
UNINSURED AND UNDERINSURED MOTORISTS:			
BODILY INJURY	\$250,000	Each Person	67.90
	\$500,000	Each Accident	
PROPERTY DAMAGE	\$25,000	Each Accident	INCLUDED
		Each Accident	
COMPREHENSIVE	Actual Cash Value		86.40
	Less \$500 Deductible		
COLLISION	Actual Cash Value		467.80
	Less \$500 Deductible		
ADDITIONAL COVERAGES:			
LOSS OF USE	\$50 Per Day/\$1500 Max		37.40
ROADSIDE ASSISTANCE PACKAGE			5.40
AUTO ENHANCED ENDORSEMENT - ULTRA			58.90
		TOTAL	\$ 1,271.40

TOTAL EACH VEHICLE:	2001 TOYT	\$ 596.30
	2002 TOYT	588.60
	2013 SUBA	1,271.40

PREMIUM SUMMARY		PREMIUM
VEHICLE COVERAGES		\$ 2,456.30
DISCOUNTS & SAFECO SAFETY REWARDS	You saved \$662.30	Included
TOTAL 12 MONTH PREMIUM FOR ALL VEHICLES		\$ 2,456.30

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051

UUUUU72UUUUUU112273882657

**SAFECO INSURANCE COMPANY OF AMERICA
AUTOMOBILE POLICY DECLARATIONS**

NAMED INSURED:

KEVIN FAY

POLICY CHANGE

**CHANGED EFFECTIVE: JUNE 24 2013
POLICY PERIOD FROM: MAR. 1 2013
TO: MAR. 1 2014**

at 12:01 A.M. standard time at the address of the insured as stated herein.

AGENT:

**CLARK-MORTENSON AGENCY INC
PO BOX 606
KEENE NH 03431-0606**

**AGENT TELEPHONE:
(603) 352-2121**

RATED DRIVERS		KEVIN FAY,	
2001 TOYOTA	COROLLA CE/LE/S	4 DOOR SEDAN	ID#
2002 TOYOTA	CAMRY LE/XLE/SE	4 DOOR SEDAN	ID#

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGE	AMOUNT	PREMIUM	COVERAGE	AMOUNT	PREMIUM
LIABILITY:					
BODILY INJURY	\$250,000	\$ 265.50	\$250,000	\$500,000	\$ 273.10
	Each Person		Each Person		
	\$500,000		\$500,000		
	Each Occurrence		Each Occurrence		
PROPERTY DAMAGE	\$250,000	191.20	\$250,000		180.40
	Each Occurrence		Each Occurrence		
MEDICAL PAYMENTS	\$5,000	55.40	\$5,000		51.90
UNINSURED AND UNDERINSURED MOTORISTS:					
BODILY INJURY	\$250,000	67.90	\$250,000		67.90
	Each Person		Each Person		
	\$500,000		\$500,000		
	Each Accident		Each Accident		
PROPERTY DAMAGE	\$25,000	INCLUDED	\$25,000		INCLUDED
	Each Accident		Each Accident		
ADDITIONAL COVERAGES:					
AUTO ENHANCED COVERAGE ENDORSEMENT - ULTRA		16.30			15.30
TOTAL		\$ 596.30	TOTAL		\$ 588.60

You may pay your premium in full or in installments. There is no installment fee for the following billing plans: Full Pay, Annual 2-Pay. Installment fees for all other billing plans are listed below. If more than one policy is billed on the installment bill, only the highest fee is charged. The fee is:
 \$0.00 per installment for recurring automatic deduction (EFT)
 \$2.00 per installment for recurring credit card or debit card
 \$5.00 per installment for all other payment methods

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051

0009072000000112273882656

Objective To work as a Special Education Complaint Investigator.

Experience

Lead Teacher

1998-2003 SHINES Education Ltd. Orchard Rd. Singapore

- Taught Chinese, Thai, and Vietnamese high school students.
- Supervised 9 teachers in a private school setting.
- Developed ESL curriculum, and went to Guilin, China to help set-up a school there.

Special Education Teacher, Alternative Program

2003-2006 Keene Middle School, Keene, NH

- Taught Language Arts to students from grades 6-8.
- Developed and implemented IEP's.
- Facilitated meetings and correlated paperwork; monitored compliance.

Special Education Teacher, Claremont School District

2006-Present SAU-6, Claremont, NH 03743.

- Taught Language Arts and Math to identified students grades 4-5.
- Developed and monitored IEP's. Monitored compliance.
- Mentored new teachers.
- Teacher of the Year 2011-2012.

Prison Teacher, SAU-39

2007-Present, Monadnock School District, Old Homestead Hwy, Swanzey, NH

- Taught prisoners English, Math and Writing. Taught GED courses.
- Helped prisoners earn their diplomas while incarcerated.
- Carried out and monitored IEP's for compliance.

Education

Oxford University, Oxford, England.

1996-1997

- Diploma, Economics and European Politics
- 2d Class Honors Degree

Greenwich University, Greenwich, London, UK

1997-1999

B.A. (Honors) Economics and European Politics
2d class honors degree

The College of New Jersey, Ewing, NJ. USA.

1999-2003

M.Ed. Education

Keene State College, Keene, NH. USA.

2005-2006

Post-Graduate Certification in Special Education

Southern New Hampshire College, Manchester, NH. USA.

CAGS (Educational Leadership) 2011-Present
Nearly complete.

