

[Attorney Kathryn Hill for Hearing Officer Services]

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this 13th day of December, 2011, between THE SCHOOL BOARD OF ST. LUCIE COUNTY, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution (“Board”) and Attorney Kathryn Hill (“Contractor”).

WITNESSETH

1. **PURPOSE.** The Board is the governing body of the School District of St. Lucie County, Florida, which District is in turn a unit of government of the State of Florida. The Contractor agrees to provide certain professional services to the Board, and the Board agrees to compensate the Contractor for such services.

2. **AGREEMENT.** The Board agrees to accept from the Contractor, and the Contractor agrees to provide to the Board, professional services subject to the following terms and conditions:

(a) The Contractor agrees to provide professional services to the Board as described in the attached Schedule. All services provided by the Contractor in accordance with this Agreement shall be performed by the Contractor, unless the Board agrees, in writing, to the Contractor's substitution of another individual to perform such services.

(b) The Board agrees to pay to the Contractor for professional services provided in accordance with this Agreement, and for expenses incurred in the provision of such services, as follows: \$150.00 to prepare for a student expulsion hearing (flat fee if there is no hearing), \$250.00 for traveling to student expulsion hearing and settlement is reached prior to a hearing, \$150.00 for preparation plus \$150.00 per hour for a student expulsion hearing. Payment for services rendered shall not exceed \$10,000.00 annually.

Each payment obligation of the Board under this Agreement is subject to the availability of funds that are appropriated or allocated for the payment of such services. If funds are not allocated and available, this Agreement may be terminated by the Board, without penalty, at the end of the period for which funds are available, provided, however, that the Board shall be responsible for amounts due for services performed prior to such termination. The Board shall notify the Contractor in writing as soon as practicable prior to any such termination becoming effective.

(c) The Contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes. The Contractor, all employees of the Contractor, and all other individuals acting by or on behalf of the Contractor, who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of Board funds shall, prior to providing any services under this Agreement, file a complete set of fingerprints and receive clearance from a criminal background check, all in the same manner as required of Board employees whose positions involve direct contact with students. Verification of compliance

with these requirements shall be provided to the Contract Manager for the Board designated in paragraph 3 below. The Board shall be responsible for any costs associated with said background check if one is deemed to be necessary. The parties agree that the failure of the Contractor to perform any of the duties described in this paragraph shall immediately terminate this contract.

(d) The names and other identifying information of all individuals who are acting by or on behalf of the Contractor and who are not subject to the background screening requirements set forth in subparagraph (c) above shall be subject to search by the Board against the registration information maintained by the Florida Department of Law Enforcement under Section 943.043, Florida Statutes, and by the United States Department of Justice under 42 U.S.C. § 14071.

(e) The Contractor agrees that each individual providing services to the Board in accordance with this Agreement shall meet all professional certification, licensing, and/or registration requirements applicable to the services provided by such individual. Prior to the term of this Agreement commencing as provided in paragraph 4 below, and not less than annually thereafter, the Contractor shall provide to the Board such documentation as the Contract Manager for the Board shall reasonably require demonstrating compliance with the requirements stated herein applicable to each such individual. The Contractor shall hold the Board harmless from any loss or cost incurred as a result of (i) any lapse in such Professional Requirements or (ii) any other error attributable to the action or inaction of the Contractor and subsequently identified in any audit conducted respecting funding received by the Board for such services.

3. **CONTRACT MANAGER.** The Contract Manager for the Board is Bill R. Tomlinson. The Contract Manager for the Contractor is the Contractor. The parties shall direct all matters arising in connection with the performance of this Agreement, other than notices, to the attention of the Contract Managers for attempted resolution or action. The Contract Managers shall be responsible for overall resolution, action, coordination, and oversight relating to the performance of this Agreement.

4. **TERM; TERMINATION.** The term of this Agreement shall be from the date of execution by both parties through and including June 30, 2012, unless renewed in accordance with paragraph 9 below, provided, however, and notwithstanding any other provision, this Agreement may be terminated by either party with or without cause upon thirty (30) days' written notice to the other party.

5. **CONSIDERATION.** The parties agree that the consideration for this Agreement shall be, for the Board, the professional services provided by the Contractor, and for the Contractor, the sums paid by the Board.

6. **PUBLIC RECORDS.** The Contractor shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Board in conjunction with this Agreement.

7. **CONTRACTOR RESPONSIBILITY.**

(a) The Contractor is an independent contractor and is not an employee or agent of the Board. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Board, on the one hand, and the Contractor and the Contractor's employees, agents, or subcontractors, on the other, during or after the performance of this Agreement. The Contractor shall take the whole responsibility and shall bear all losses resulting to the Contractor on account of errors or omissions.

(b) The Contractor shall comply with all applicable provisions of safety laws, rules, ordinances, regulations, and orders of duly constituted public authorities and agencies exercising regulatory authority over the Contractor. The Contractor assumes all risk of loss, damage, and destruction to all of the Contractor's materials, tools, appliances, property of every description, and that of the Contractor's respective employees or agents or subcontractors and each of their respective employees or agents, and injury to or death of the Contractor's employees or agents, subcontractors, or their respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Agreement.

(c) In accordance with federal and state law, 20 U.S.C. § 1232g, 34 C.F.R. Part 99, and Sections 1002.22 and 1002.221, Florida Statutes, any and all personally identifiable records of a student are confidential, and the Contractor shall access such records in the course of providing professional services under this Agreement only if and to the extent the Contractor and the Contractor's employees have a legitimate educational interest in the information contained in such records. The Contractor shall implement operating practices and procedures that will (i) maintain the confidentiality and assure the physical security of all student records accessed and used in the course of providing professional services under this Agreement; (ii) prohibit the release or disclosure of such records to anyone except authorized Board personnel, (iii) prevent any unauthorized access to such records, and (iv) preclude the unauthorized use, release, or disclosure of the information contained in such records.

(d) The Contractor agrees forever to save and keep harmless and fully indemnify the Board, its officers, employees, and agents of and from all losses, liabilities, damages, claims, actions, legal proceedings, settlements, judgments, recoveries, costs, and expense because of or resulting from loss of, or damage to, property, or injury to or deaths of persons in any way arising out of or in connection with the performance of this Agreement and attributable to the negligence or other wrongful conduct of the Contractor or the Contractor's employees, agents, or subcontractors, including but not limited to any loss or action resulting from the failure of the Contractor to comply with the Contractor's obligations under this Agreement.

8. **INSURANCE.** The Contractor shall maintain insurance, through the term of this Agreement, as follows:

(a) The Contractor shall maintain during the term of this Agreement regular comprehensive general liability insurance for liability arising out of the use of automobiles, providing for bodily injury liability insurance with a limit of \$300,000 per occurrence and property damage of \$50,000 per occurrence.

(b) Worker's Compensation insurance with limits in accordance with Florida's statutory requirements.

(c) Professional liability coverage with limits of at least \$100,000 each claim and in the aggregate.

(d) Certificates of all insurance shall be provided to and approved by the Contract Manager for the Board prior to the term of this Agreement commencing as provided in paragraph 4 above.

9. **RENEWAL OR EXTENSION.** This Agreement may be renewed or extended for successive terms of one year each upon written agreement of the parties.

10. **NONDISCRIMINATION.** The Contractor covenants and agrees not to discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, or disability (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin, or ancestry.

11. **AUDIT.** The Contractor agrees that until the expiration of three years after expenditure of funds under this Agreement, the Board and any of the Board's duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees that payments made under this Agreement shall be subject to reduction for amounts charged that are found on the basis of audit examination not to constitute allowable fees or costs. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until five (5) years after completion of all work under this Agreement, whichever last occurs.

12. **VERIFICATION OF EMPLOYMENT STATUS.** The Contractor agrees to bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons the Contractor employs in the performance of this Agreement.

13. **ASSIGNMENT.** The Contractor shall not assign this Agreement to any other person or firm without first obtaining the Board's written approval.

14. **ATTORNEYS' FEES AND COSTS.** In the event either party defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the defaulting party agrees to pay all damages and costs incurred by the other party, including reasonable attorneys' fees.

15. **NOTICES.** All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to the Board:
Bill R. Tomlinson, Asst. Superintendent
Student Services and ESE
4204 Okeechobee Road
Ft. Pierce, FL 34947

With copies to:

If to the Contractor:
Attorney Kathryn Hill
1446 19th Place, Suite 200
Vero Beach, FL 32960

16. **INDULGENCE NOT WAIVER.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs, or at any time throughout the term of this Agreement.

17. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the parties. This Agreement may only be amended by written document, properly authorized, executed, and delivered by both parties.

18. **INTERPRETATION; VENUE.** This Agreement shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. Each party has had ample opportunity to seek the advice of legal counsel prior to entering this Agreement, which shall not be construed against the party responsible for drafting the instrument. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

19. **NO THIRD PARTY BENEFICIARY.** This Agreement does not confer any right or obligation enforceable by a third party. Nothing in this Agreement shall be construed as consent by an agency or subdivision of the State of Florida to be sued by a third party in any matter arising out of any contract.

20. **SEVERABILITY.** In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

21. **SURVIVAL.** The covenants, warranties, representations, indemnities, and undertakings of the parties that create obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement regardless of the reason for such expiration or termination.

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals on the date first above-written.

ATTEST:

**SCHOOL BOARD OF ST. LUCIE
COUNTY, FLORIDA**

MICHAEL J. LANNON, Superintendent
and Ex Officio Secretary

(Seal)

By: _____
KATHRYN HENSLEY, Chair

WITNESSES:

CONTRACTOR:

Attorney Kathryn Hill

Print Name: _____

Signature of Contractor *Date*

Print Name: _____

(Seal)

SCHEDULE OF PROFESSIONAL SERVICES

Student Hearing Officer services for the 2011-2012 school year, not to exceed \$10,000.00.