

EXHIBIT A

SCOPE OF WORK

I. GENERAL SCOPE:

The contractor will monitor, track, provide training, and manage cases of due process hearings and mediations in adherence with all Federal and State laws and regulations, as described herein.

II. PROJECT MONITORS:

The CDE assigns **Bradford Lacy, (916) 327-4559, blacy@cde.ca.gov**, as state project monitor to oversee this project. Said monitor is not authorized to make any commitments or make any changes which will affect the price, terms or conditions of this agreement without a formal contract amendment.

The contractor assigns **Bob Varma, (916) 263-0080, Bob.Varma@dgs.ca.gov**, as contractor project monitor to oversee this project. Said monitor is not authorized to make any commitments or make any changes which will affect the price, terms or conditions of this agreement without a formal contract amendment.

III. BACKGROUND:

The California Department of Education Special Education Division (CDE-SED) has entered into a three-year contract with the Department of General Services (DGS), Office of Administrative Hearings (OAH). OAH (the contractor) agrees to provide hearing and mediation services pursuant to and in accordance with the requirements of federal and state laws and regulations, including services specifically detailed in this agreement.

State and federal law provides that all children with disabilities are entitled to a free and appropriate public education under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. section 1400 et seq.) and Part 30 of the *Education Code*, commencing with *Education Code* section 56000. Eligible students and their parents are entitled to procedural safeguards with respect to disagreements concerning decisions about assessment, eligibility, placement, and a free appropriate public education. A request for due process, including mediations and due process hearings, may be made pursuant to title 20 U.S.C. section 1415 et seq. and *Education Code* section 56500 et seq.

The standard agreement between the CDE and the contractor will address the following exhibit areas:

The standard agreement between the CDE and the contractor will address the following tasks:

- Task 1 - Coordinating the Special Education Division
- Task 2 - Supervising Administrative Law Judges and Mediators
- Task 3 - Communicating and Sharing Information
- Task 4 - Collecting Data and Reporting
- Task 5 - Working With the Advisory Committee
- Task 6 - Ensuring Qualifications of Administrative Law Judges
- Task 7 - Ensuring Qualifications of Mediators
- Task 8 - Providing Training to Administrative Law Judges
- Task 9 - Providing Training to Mediators and Others
- Task 10 - Complying with Requirements for Conducting Mediations and Due Process Hearings

IV. TASKS

TASK 1 - COORDINATING THE SPECIAL EDUCATION DIVISION

The contractor agrees to maintain a Special Education Division (SED) for due process hearings and mediations. The contractor will work closely with the CDE. Unless specifically exempted, all newly created or revised definitions, policies, procedures, and materials developed by the contractor pursuant to this contract, must be reviewed and approved by the CDE before their implementation or publication. The contractor will provide the CDE with 20 business days to complete the review and approval process.

1.1 Supervisor of the Special Education Division

Pursuant to *California Code of Regulations*, title 5, section 3096–3096.2, the contractor shall appoint a supervisor of the SED who will have at least eight years of experience in the practice of law in civil or criminal trial courts, appellate courts, or quasi-judicial administrative proceedings, including significant experience in special education matters. This person will supervise the mediators and hearing officers dedicated to the mediations and due process hearings of special education disputes performed under this contract. The contractor will appoint the supervisor of the SED on an exclusive and full-time basis.

1.2 Regional Offices

The contractor will assign the Special Education Division Administrative Law Judges (ALJ) and mediators to regional offices throughout the State who will be supervised by a local Presiding ALJ. The contractor will publish its organization chart. The chart will be organized by regional offices and include the names of all special education ALJs and mediators who are the contractor's employees and assigned to each office. The contractor agrees to update the chart as needed. The contractor will assign Presiding ALJs on an exclusive and full-time basis to administer the hearing and mediation programs in their assigned offices.

1.3 Types of Staff

The contractor agrees to retain administrative, supervisory, information technology, and other support staff to operate the special education mediation and due process hearing program, including identified staff who will:

- a. Provide detailed information to callers, including information regarding hearing procedures.
- b. Receive, calendar monitor, and report on the status of cases for mediation and hearing.
- c. Issue notices, including notice of hearing date, mediation date, and pre-hearing conference date, as required by law or required to process mediations and hearings.
- d. Issue notice of reasonable accommodations and arrange for interpreters (including American Sign Language) or special accommodations as needed.
- e. Arrange for written and/or electronic transcription of administrative hearings and distribution of the record thereof.
- f. Prepare cases for storage and maintain a closed case file inventory system for paper files that are created as part of its case management process.
- g. Perform functions in connection with communication items identified in this agreement.
- h. Monitor, track, and manage cases in adherence with all federal and state laws and regulations.

1.4 Availability of Translated Documents

The contractor will comply with the requirements of *California Code of Regulations*, title 5, section 3095 concerning the availability of forms and documents in different languages for all special education mediations and hearings. The contractor will prepare forms and documents in English and, at minimum, the five foreign languages most commonly spoken in California schools as identified annually by the CDE. The contractor's Web site will include a feature for requesting, by language, available forms and documents. As forms and documents are translated into additional languages the contractor will post them on the Web site.

1.5 Archiving

The contractor will archive all paper case-related records at the State Records Center in a manner that ensures their confidentiality. The contractor is not required to create or maintain paper records, documents, or files that are not required as part of its case management processes. The contractor will maintain:

- a. Paperless records in the contractor's database.
- b. A seven-year retention schedule for these papers and paperless records and will cooperate and facilitate transfer authority over these records to the CDE upon completion or termination of this agreement.
- c. Paper case files, stored in approved archive boxes with an index provided for each box.

The contractor agrees, as necessary, to facilitate the CDE's access to mediation and due process hearing files stored in the State Records Center. The contractor also agrees to work with the CDE to resolve any accounting or billing issues related to the storage of records.

1.6 Hearing Records and Transcripts

The contractor will ensure that a verbatim record of each hearing is made and that a transcript of these proceedings is made available to parents or students as appropriate, according to state and federal laws and regulations. Pursuant to *Education Code* section 56505, subdivision (e)(4), the verbatim record of the proceedings may be written or electronic, at the option of parents or guardians.

The contractor will produce a transcript of the proceedings requested pursuant to *Education Code* section 56505, subdivision (e)(5) within 90 days of receiving the request for a transcript. The following applies:

- a. If a transcript is not available, the contractor will assist the parties in recreating the record.
- b. If a request for a transcript is made by a party to the matter other than the parents, the contractor will produce a transcript of the proceedings at a cost to the requestor not to exceed the actual cost to the contractor.
- c. If a transcript of the proceedings is already available, the contractor will provide a copy of the transcript to a non-parent party to the matter at the cost of duplicating and mailing the transcript to the non-parent party.

1.7 Contractor's Recommendations

The contractor will propose any suggested changes in the law regarding the special education dispute resolution program through the CDE, **except as provided in Government Code section 11370.5**. The contractor will develop, submit to the CDE for review and approval and implement approved recommendations for system improvement.

TASK 2 - SUPERVISING ADMINISTRATIVE LAW JUDGES AND MEDIATORS

2.1: Supervising Hearing Officers

Pursuant to *California Code of Regulations*, title 5, section 3096.2, subdivision (c), the supervisor of the division, or his or her designee, will:

- a. Determine when an ALJ meets the standards for ALJs as described in Task 6 of this agreement.
- b. Maintain a list of the names and a statement of qualifications of each ALJ who has met the requirements, as described in Task 6, pursuant to 34 *Code of Federal Regulations* part 300.511(c)(3) and *Education Code* section 56505, subdivision (m). The list and statement of qualifications for each ALJ shall be made available to the public upon request.
- c. Supervise the work of all ALJs.
- d. Review and approve the training and continuing education programs required herein for ALJs.
- e. Evaluate each ALJ not less than once every twelve months.

- f. Review the decisions of ALJs to ensure that they are clear, concise, logical, well-reasoned, supported by appropriate legal authority, and address all issues required to be decided.
- g. Maintain a description of the quality control mechanisms used by the supervisor to ensure that hearings are fair and decisions are accurate. The contractor will provide a copy of the description of the quality control mechanisms to CDE upon request and make the document available on the contractor Web site. The review of an ALJ's decision will not involve altering the findings of fact, conclusions of law or hearing outcomes.

2.2: Supervising Mediators

Pursuant to *California Code of Regulations*, title 5, section 3096.1, there shall be a supervisor of mediators, who shall have at least eight years of experience in the mediation of disputes arising before, during, or independently of, judicial or quasi-judicial administrative proceedings, including experience in special education matters. The contractor will appoint the supervisor of mediators of the SED on an exclusive and full-time basis to administer the mediations. The supervisor of the hearing officers in the SED may also serve in this capacity. The supervisor of mediators, or his or her designee, shall:

- a. Decide when a mediator meets the standards for mediators as described in Task 7 of this agreement.
- b. Maintain a list of the names and a statement of the qualifications of each mediator who has met the requirements described in Task 7, pursuant to title 20 *United States Code* section 1415(e)(2)(c) and 34 *Code of Federal Regulations* part 300.506(b)(3)(i). The list and statement of qualifications for each mediator shall be made available to the public upon request.
- c. Supervise the work of all mediators.
- d. Review and approve the initial training and continuing education programs required herein for mediators.
- e. Evaluate each mediator not less than once every twelve months.
- f. Review mediation results, to the extent practicable consistent with the need for confidentiality, to ensure that mediators perform competently in light of the standards and expectations set forth herein.

TASK 3 - COMMUNICATING AND SHARING INFORMATION

3.1 Requests for Hearing

The contractor will comply with the requirements of *Education Code* section 56502, subdivision (h). Upon receipt of a written request by a party for a due process hearing, the contractor will notify all parties of the request for the hearing and the scheduled date for the hearing and will further notify the parties of their rights relating to procedural safeguards by providing them with the CDE's "Notice of Procedural Safeguards."

3.2 Request Forms

The contractor will make available CDE-approved forms to the public to request mediation, due process hearing, or reasonable accommodations approved by the CDE. The forms will be available online and in print.

3.3 Monitoring, Tracking, and Management of Cases

The contractor will permit the CDE to audit, review, and inspect the contractor's activities, books, documents, papers, and records during the progress of the work and for five years following final payment. The contractor will also:

- a. Retain all records, both paper and electronic, associated with hearings and mediations, for seven years.
- b. Allow CDE staff to monitor ongoing work being performed under this agreement, including, but not limited to, training being provided to ALJs, mediators, administrative staff, supervisors, information technology and support staff operating the hearings and mediations programs.
- c. Maintain accounting records and other evidence pertaining to costs incurred and will make them available to CDE during the period of the contract and for five years after final payment.

3.4 Web Site

During the contract period, the contractor will maintain its Web site in accordance with the terms set forth herein. The contractor will, at minimum, update its SED site annually and allow the CDE to create applicable links. The contractor agrees to conduct monthly audits to ensure that all special education due process decisions have been uploaded to its Web site. The contractor will provide the CDE with a liaison for issues pertaining to the SED Web site. On the SED Web site, the contractor will publish, including but not limited to, the following:

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- a. Links to online legal resources including, but not limited to, applicable sections of the *United States Code*, *Code of Federal Regulations*, *Federal Register*, *California Education Code*, and the *California Code of Regulations*.
- b. A brief description of resources and their relevance to hearings and/or mediations, within each of its links.
- c. Additional language inviting the public to submit feedback and suggestions regarding the contractor's due process hearings and mediations on its 'Contact Us' feature.
- d. Pursuant to *California Education Code* section 56502, subdivision (h), a current list of persons and organizations providing free or reduced-cost representation or other assistance in preparing for due process hearings. The contractor will provide this list to parents or students who are not represented at the time they file a request for a due process hearing, or upon request; and publish this list by geographic area. Persons and organizations seeking to be added to the list shall self-certify that they meet the requirements of *Education Code* section 56502, subdivision (h).
- e. Notice that assistance is available to the public on its Web site, including but not limited to, filing for mediation and due process hearings pursuant to the provisions outlined in Task 3.10.
- f. All redacted decisions on its Web site by uploading them on a monthly basis (*Education Code* section 56505, subdivision (d)(5)).
- g. Information and instructions for inclusion regarding a listserv in which interested parties may receive electronic copies of redacted decisions (see paragraph "3.6. Listserv") on the contractor's SED Web site.
- h. A link to the CDE SED Web site.
- i. Rulings on procedural or dispositive motions that the Presiding ALJ of the SED deems to be of sufficient import to be of assistance to members of the public appearing before the contractor on special education matters and will upload such rulings on a monthly basis. Any such rulings may be cited as persuasive, but not binding authority.
- j. A list of all available and downloadable documents. The contractor shall prepare forms and documents in English and, at minimum, the

five foreign languages most commonly spoken in California schools as identified annually by the CDE. The contractor's Web site will include a feature for requesting, by language, available forms and documents. The contractor will also provide forms and documents in additional languages as requested and shall post them on the Web site.

3.5 CDE Distribution List

The contractor will maintain a distribution list to send electronic copies of hearing decisions, with the students' names and districts identified, to CDE personnel as they are issued. The e-mail distribution list for CDE will include the contract monitor and all CDE SED Administrators/Managers. CDE will inform the contractor of necessary updates to the CDE email distribution list.

3.6 Listserv

The contractor will maintain a listserv to allow interested parties to receive electronic copies of the redacted decisions as they are issued. The contractor will post information regarding this listserv and instructions for inclusion on the listserv on the contractor's SED Web site.

3.7 Brochure

The contractor will maintain and make available a consumer brochure. The consumer brochure will provide a general overview of the due process and mediation process and assist interested parties in accessing these services.

3.8 Special Education Due Process Hearings and Mediation Manual

Pursuant to *California Code of Regulations*, title 5, section 3091, the contractor will maintain and make available a Special Education Due Process Hearing and Mediation Manual ("Guide to Understanding Special Education Due Process Hearings" or "Manual"). The manual will provide a general overview of the due process and mediation process and assist interested parties to access these services. The Manual will provide, at a minimum, detailed guidance in areas related to due process hearings and mediations to include, but not be limited to, the following:

- a. How to file a due process complaint, including a model form to assist parents and guardians in filing a request for due process
- b. A description of the due process hearing process
- c. A description of the mediation process, including how to prepare for mediation and participate in mediation

- d. How to request a reasonable accommodation
- e. How to properly communicate with the mediator, ALJ, and other parties
- f. How to compel attendance of witnesses and compel production of documents
- g. How to prepare for a due process hearing
- h. How to properly present evidence
- i. How to access applicable statutes and regulations
- j. How to file and serve pre-hearing motions
- k. How to research and locate special education decisions issued by the contractor

3.9 Translations of Brochure and Manual

The contractor will prepare the consumer brochure and manual in English and, at a minimum, the five foreign languages most commonly spoken in California schools as identified annually by the CDE. The contractor will annually review the consumer brochure and manual and revise them as necessary.

3.10 Steps When a Party Inquires About Filing a Complaint

The contractor agrees that when a party inquires about filing a complaint, the contractor will:

- a. Inform the party of the form used to request mediation, reasonable accommodations, and/or a due process hearing. The request for mediation and due process hearing form will include a written statement that assistance is available for preparing the form.
- b. Upon request, provide assistance to the public that shall be limited to an explanation of the process and documentation required to file a request for mediation or a due process hearing. Such assistance shall not include providing legal advice.
- c. The contractor shall comply with *Education Code* section 56505, subdivision (e)(6), concerning providing mediator assistance to a parent who is not represented by an attorney.

3.11 Evaluation Forms

The contractor will provide evaluation forms to the parties of a mediation or due process hearing. The forms will contain questions aimed at assessing the contractor's timeliness and effectiveness and are to be completed on a voluntary basis by the parties. The contractor will review the forms and provide the CDE with a summary report of the evaluations, including cumulative information to date, on a quarterly basis.

3.12 California Public Records Act

The contractor will comply with California's requirements under the California Public Records Act pertaining to due process hearing and mediation information and records maintained by the contractor. If necessary, the contractor will work with and assist CDE personnel to ensure that requests under the California Public Records Act are responded to appropriately and within the required timeframes.

3.13 Complaints Against the Contractor

Complaints alleged against the contractor's procedures, policies, or practices received by the CDE will be directed to the CDE contract monitor for further review. The CDE will notify the contractor's supervisor of the SED of the complaint. Within 30 business days of receipt of a complaint or upon the CDE's request, the contractor will conduct an investigation of the alleged incident, systems, procedures, or policies in question and make a determination of the alleged events. Upon completion of the investigation, the contractor will provide the CDE with a written account of the investigation, findings, and appropriate next steps or corrective actions taken to resolve the issue. The CDE may provide additional corrective actions if appropriate.

3.14 Transition to a New Contract

The new contractor and subcontractors must cooperate fully with the CDE and the current contractor and any future contractor to allow for a smooth transition between administrations as well as to potential new contractors for future services. At the beginning of the contract, the new contractor will receive from the current contractor all reports, electronic data files, applications, supporting documentation, and other materials developed pursuant to the special education mediations and due process hearings contract, including data, publications, forms, and procedures specific to the hearings. At the end of the contract, the current contractor must deliver these items to the future contractor of the special education mediations and due process hearings and/or the CDE at a scheduled time determined by the CDE. The contractor must also have staff available to

work with the new contractor and establish regular meetings during the overlap of contracts.

TASK 4 - COLLECTING DATA AND REPORTING

The contractor will provide CDE with read-only access to the contractor's special education case management system. Access will be provided to designated CDE personnel and subject to compliance with contractor's security protocols. All data collected by the contractor will be made available to CDE for placement on the CDE Web site.

The contractor will comply with *California Code of Regulations*, title 5, section 3092, subdivision (f), concerning new reporting requirements. The contractor will report to CDE a timeline and mechanism to implement any new reporting requirements contained in the California or federal current year's Budget Act, or any information that is required to be reported to a federal or state agency including, but not limited to, the federal Office of Special Education Programs. The contractor must submit this report to the CDE within 60 calendar days from the postmark date of the CDE's written notification to the contractor of such a reporting requirement.

4.1 Hearing Decisions

The contractor will comply with the *California Education Code* section 56504.5, subdivision (d)(3), by providing electronic and, upon request, hard copies of all hearing decisions to CDE. The contractor will also provide a written index of the decisions being provided, organized by students' names and case numbers. The copies of the decisions and the index will be provided no later than the 15th of each month following the issuance of the decision.

4.2 Quarterly Reporting

The contractor will provide a quarterly report to the CDE. The contractor will comply with *Education Code* section 56504.5, subdivision (d), and *California Code of Regulations*, title 5, section 3092 concerning filing quarterly reports with CDE. Quarterly reports filed by the contractor will be received by CDE no later than 30 calendar days after the end of the quarter.

For the purposes of this contract, "quarter" refers to each one-fourth of the state fiscal year, which begins on July 1 of the previous calendar year and ends on June 30 of the immediately following year. Each quarterly report shall be sent to the CDE via electronic mail.

The contractor will make all aggregate data collected in the quarterly reports described by Task 4.3 of this agreement available on the contractor Web site, and make the data available for placement on the CDE's Web site.

Quarterly reports will reflect data from the reporting quarter and cumulative year-to-date data. The contractor will ensure that each quarterly report contains all required elements (see below) and will immediately correct omissions or mistakes once identified.

4.3 Elements of Quarterly Reports

Each quarterly report will include the following information:

- a. Mediations: (1) Number of mediation requests total; (2) number of mediations not related to hearing requests; (3) number of mediations related to hearing requests; (4) number of mediation agreements related to hearing requests; (5) number of mediation agreements not related to hearing requests; and (6) number of mediations not held, including number of mediations pending.
- b. Due process hearings: (1) Number of hearing requests total; (2) Number of resolution sessions; (3) number of settlement agreements; (4) number of hearings held (fully adjudicated); (5) number of decisions within timeline; (6) number of decisions within extended timeline; (7) number of decisions issued after timelines and extension expired; (8) number of hearings pending; (9) number of expedited hearings conducted; and (10) number of hearing requests resolved without a hearing.
- c. Expedited hearing requests (related to disciplinary decisions): (1) Number of expedited hearing requests total; (2) number of resolution sessions; (3) number of settlement agreements; (4) number of expedited hearings (fully adjudicated); and (5) number of changes of placement ordered.
- d. As required by *Education Code* section 56504.5, subdivision (d)(1), each quarterly report will contain data to provide CDE with information needed to comply with federal and state law for monitoring local programs. CDE will inform the contractor of the specific data required to comply with federal and state laws. Specifically, these reports will provide the following data as requested by the federal Office of Special Education Programs and any state laws imposing a requirement upon CDE to report data related to the above. The information shall include:
 - 1) The total number of cases won by each side.
 - 2) The number of issues decided in favor of each side in split decisions.

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- 3) How often schools and parents were represented by attorneys.
- 4) How many prehearing motions were filed by each side.
- 5) Which side won most of the prehearing motions.
- 6) How many parent-filed requests for due process were dismissed for insufficiency.
- 7) The number of students by race and ethnicity accessing the system.
- 8) How often non-English-speaking people used the system.
- 9) How long the hearings took.
- 10) How much of each hearing, on average, was consumed by the parent's, presentation of his or her case.
- 11) How much of each hearing, on average, was consumed by the district's presentation of its case.
- 12) How many of the hearing requests were from parents.
- 13) How many of the hearing requests were from school districts.
- 14) How many witnesses school districts called on average.
- 15) How many witnesses parents called on average.
- 16) From which districts parent-filed requests for due process came.
- 17) What issues, within special education, generated due process hearing requests during the quarter.
- 18) What disabilities generated due process hearing requests during the quarter.
- 19) What age groups (preschool, primary, junior high, high school) generated hearing requests during the quarter.
- 20) How many hearing decisions were appealed to court during the quarter.
- 21) How many cases were totally resolved in mediation by agreement.

- 22) How many cases were totally resolved in the mandatory resolution session.

4.4 Contractor Productivity

The contractor will report on a quarterly basis statistical data as determined and analyzed by the contractor on the productivity of ALJs and mediators. The contractor will use measurements as determined by the contractor to quantify the "productivity" of ALJs and mediators. The quarterly reports will also include costs of hearings and mediations on both an aggregate and individual basis.

4.5 Resolution Sessions

The contractor agrees to collect local resolution session outcome data on behalf of the CDE. The contractor will collect information regarding mandatory local resolution sessions that districts are required to hold prior to a due process hearing pursuant to 34 *Code of Federal Regulations*, part 300.510, and *Education Code* section 56501.5. The contractor will send a resolution session outcome reporting form, developed in consultation with CDE, to districts with the initial scheduling packet that the contractor disseminates to the parties upon receipt of a request for a due process hearing. The resolution session outcome reporting form will specify that CDE requires districts complete the form in its entirety and remit to the contractor within 5 calendar days of the resolution session. Upon receipt of the completed resolution session outcome reporting form, the contractor will enter the data into the Practice Manager System. Based on information collected from the districts, the contractor will generate a report upon the CDE's request, but not less than quarterly, containing the following information:

- a. Student name
- b. Case number
- c. District name
- d. Date district received notice of due process complaint
- e. Whether or not a resolution session was held and, if not, for what reason
- f. Date/s the resolution session meeting/s took place
- g. Whether or not the matter was resolved during the resolution session meeting
- h. Whether or not the resolution session resulted in a written settlement agreement

- i. Whether or not the resolution session was waived, in writing, by both parties

4.6 Costs for Independent Assessments and Expert Witnesses

The contractor agrees that for any costs associated with complying with *Education Code* section 56505.1, subdivisions (e) and (g), it will provide documentation to support the particular costs, including, but not limited to, the name of the case and the name and hourly rate of the expert or witness.

4.7 Federal Table 7

The CDE will submit Federal Table 7 (Office of Management and Budget (OMB) Circular No. 1820-0677) to the contractor. The Table, to be completed by the contractor, is due to CDE by September 1st of each year of this agreement. The completion of Table 7 is required by the federal Office of Special Education Programs (OSEP) for use in the State Performance Plan/Annual Performance Report (see <http://www2.ed.gov/fund/data/report/idea/sppapr.html>), which is written by the CDE SED, for submission to OSEP every year. Table 7 requires the following information:

Report of Dispute Resolution under Part B, of the Individuals with Disabilities Education Act

SECTION B: Mediation Requests

- (2) Total number of mediation requests received through all dispute resolution processes
 - (2.1) Mediations held
 - (a) Mediations held related to due process complaints
 - (i) Mediation agreements related to due process complaints
 - (b) Mediations held not related to due process complaints
 - (i) Mediation agreements not related to due process complaints
 - (2.2) Mediations pending
 - (2.3) Mediations withdrawn or not held

SECTION C: Due Process Complaints

- (3) Total number of due process complaints filed
 - (3.1) Resolution meetings
 - (a) Written Settlement agreements reached through resolution meetings
 - (3.2) Hearings fully adjudicated
 - (a) Decisions within timeline (include expedited)
 - (b) Decisions within extended timeline

- (3.3) Due process complaints pending
- (3.4) Due process complaints withdrawn or dismissed (including resolved without a hearing)

SECTION D: Expedited Due Process Complaints
(Related to Disciplinary Decision)

- (4) Total number of expedited due process complaints filed
 - (4.1) Resolution meetings
 - (a) Written settlement agreements
 - (4.2) Expedited hearings fully adjudicated
 - (a) Written settlement agreements
 - (4.3) Expedited due process complaints pending
 - (4.4) Expedited due process complaints withdrawn or dismissed

4.8 Confidentiality and Disclosure

CONFIDENTIALITY:

The contractor, its employees, agents, and subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information. The contractor, its employees, agents, and subcontractors will not copy, give or otherwise disclose such information to any other person unless the California Department of Education has on file a confidentiality agreement signed by the requesting party, and the disclosure is authorized and necessary. The contractor understands that the information to be kept confidential includes student names or any personally identifying information of students, in line with federal and California state laws as listed and defined below.

While working with the California Department of Education, the Parties may gather, process, or otherwise be intentionally or inadvertently exposed to Confidential Information. The Parties must use, disclose, manage, and protect Confidential Information in accordance with all applicable federal and California state laws. Applicable laws include, but are not limited to: the Family Educational Rights and Privacy Act of 1984 (FERPA; 20 U.S.C. Sec. 1232g), the Information Practices Act (California Civil Code Sec. 1798, et seq.), the Children's Online Privacy Protection Act (COPPA), and California Education Code sections 49069 to 49079.

The contractor shall ensure that all Personal Information, Sensitive Information, or Confidential Information are kept secure and confidential. The contractor must immediately report (within two hours of discovery) to the CDE any breach of security, as that phrase is used in California Civil Code section 1798.29(d). The CDE contact for such notification is as follows:

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Mark Lourenco, Information Security Officer
California Department of Education
Technical Services Division – Information Security Office
1430 N Street, Suite 3712
Sacramento, CA 95814-5901
Office phone: 916-322-8334

The contractor shall take prompt corrective action to cure any such breach of security. The contractor shall investigate such breach and provide a written report of the investigation to CDE, postmarked within thirty (30) working days of the discovery of the breach to the address above.

The contractor fully understands that any unauthorized disclosure made by the contractor, its employees, agents, and subcontractors may be a basis for civil or criminal penalties and/or disciplinary action (including dismissal for State employees). I agree to advise the Contract Monitor, at 916-327-4222, immediately in the event that the contractor, its employees, agents, and subcontractors either learn or have reason to believe that any person who has access to confidential information has or intends to disclose that information in violation of this agreement.

Unless otherwise specified herein, the contractor and its subcontractors, if any, shall return or confidentially destroy, at CDE's option, any and all Data: i) provided by CDE hereunder, or ii) owned by CDE, immediately upon CDE's request or immediately upon termination of this agreement. Unless otherwise agreed to in writing by the CDE, such destruction shall include Data that is publically available; however, nothing herein shall prevent the contractor or its subcontractor from thereafter obtaining such Data from publically available sources.

The contractor acknowledges that any and all Data that are collected, developed and/or generated by the work performed with the California Department of Education are the sole and exclusive property of the California Department of Education. Definitions: The following definitions apply for the purposes of this agreement:

"Public Information" means information maintained by state agencies that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6265) or other applicable state or federal laws, whether or not marked "confidential," "proprietary," "privileged" or with similar markings.

"Confidential Information" means information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act

(Government Code Sections 6250-6265) or other applicable state or federal laws, whether or not marked "confidential," "proprietary," "privileged" or with similar markings. Confidential Information includes Sensitive and Personal Information.

"Data" means any data or information, whether Confidential or publicly available.

"Sensitive and Personal Information" means information that is personally identifiable, whether or not marked in any manner, including, any name, telephone, e-mail address, street address, date of birth, social security number, government license or ID number, account or bank card number, security code, password, pupil information, educational record, medical information or record, health information or record. Sensitive and personal information may occur in public and/or confidential records. Files and databases containing sensitive and/or personal information require special precautions to prevent inappropriate disclosure.

TASK 5 - WORKING WITH THE ADVISORY COMMITTEE

Pursuant to *California Code of Regulations*, title 5, section 3094, the contractor will maintain an Advisory Committee composed of attorneys, advocates, parents, and representatives of the LEAs, including school districts, county offices of education, or other public educational agencies that have jurisdiction under the IDEA. The majority of the Advisory Committee must be any combination of parents, advocates for parents, and/or attorneys for parents. The contractor is encouraged to consider the wide range of disabilities, ethnicities, races, socioeconomic populations, and other variables within the special education population. The contractor will establish the total number of members and the terms of appointment for the advisory committee. The contractor will publish on the Web site the process for becoming a member of the Advisory Committee. The Advisory Committee is responsible for providing recommendations for mediations and due process hearing procedures. The committee's recommendations shall not be binding upon the contractor.

5.1 Meetings with Advisory Committee

The contractor will schedule four meetings with the committee, at a minimum, one in northern California and one in southern California, in the first half of the year, and one in northern California and one in southern California in the second half of the year. The contractor may conduct meetings of the Advisory Committee by videoconference simultaneously in northern and southern California. Meetings may include Web-based platforms to accommodate attendees. The contractor may consult with the Advisory Committee, as needed, between semiannual meetings.

5.2 Advisory Committee Members

The contractor agrees to publish and maintain a description of the role of the Advisory Committee on the contractor's Web site. The contractor may publish, with subsequent revisions as necessary, the names and status (e.g., parent, student, attorney, advocate, etc.) of Advisory Committee members.

5.3 Compliance with the Bagley-Keene Open Meeting Act

The Advisory Committee will comply with the Bagley-Keene Open Meeting Act, *Government Code* section 11120 et seq. The contractor will publish the dates, locations, agendas, and a summary of items discussed and outcomes from all Advisory Committee meetings on the contractor's Web site. Dates and locations of meetings will be published at least two months before meetings are held. The contractor will consult with the Advisory Committee in developing all applicable meeting agendas and distribute agendas to its members and interested others, in advance of meetings. All Advisory Committee meetings will include a public comment period.

5.4 Consulting with the Advisory Committee

The contractor will consult with the Advisory Committee in areas such as, but not limited to, revisions to the contractor's Web site, forms, documents, scheduling procedures, staff training, the Special Education Due Process Hearing and Mediation Manual, the consumer brochure, and outreach to families and students.

TASK 6 - ENSURING QUALIFICATIONS OF ALJS

Hearings shall be conducted by an ALJ who is knowledgeable in administrative hearings who satisfies the requirements set forth herein and who is employed by, or under contract with, the contractor.

6.1 Minimum ALJ Qualifications

ALJs shall be attorneys licensed to practice law in California for at least five years immediately preceding their appointments, of which at least two years shall have involved contested cases in a trial court or formal hearings or inquiries, and shall have involved experience in the presentation of evidence and examination of witnesses before trial courts or quasi-judicial administrative bodies. Experience acquired as a hearing officer in formal quasi-judicial administrative proceedings may be substituted year for year for the required two years of experience.

6.2 Additional ALJ Qualifications

In addition to the "Minimum qualifications" as set forth in Task 6.1 above, subdivision (c) of *Education Code* section 56505, and *California Code of Regulations*, title 5, section 3097, no ALJ may serve as an ALJ in a special education due process hearing until the Supervisor of the SED determines that the ALJ:

- a. Possesses knowledge of the provisions of title 20 *United States Code* section 1400 et seq., federal and state regulations pertaining to that title, and legal interpretations of that title by federal and state courts.
- b. Possesses knowledge of the provisions of *Education Code* sections 56000 et seq. and related state statutes and implementing regulations, and legal interpretations of those statutes and regulations by federal and state courts.
- c. Possesses the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.
- d. Possesses the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

TASK 7 - ENSURING QUALIFICATIONS OF MEDIATORS

A mediation conducted pursuant to this contract shall be conducted by an ALJ, pro tem ALJ, or mediator knowledgeable in the mediation of disputes who satisfies the requirements set forth herein and who is employed by, or under contract with, the contractor.

7.1 Minimum Mediator Qualifications

A mediator shall hold a minimum of a Bachelor of Arts or Bachelor of Science degree from an accredited college or university and shall have completed the minimum training as provided in this agreement before serving as a mediator.

7.2 Additional Mediator Qualifications

No ALJ or mediator may serve as a mediator in a special education mediation until the Supervisor of the Division determines that the ALJ or mediator possesses the skills and knowledge necessary to serve as a mediator, pursuant to the *California Code of Regulations*, title 5, section 3097.

A mediator of a special education dispute as described in this contract shall be knowledgeable in all laws and regulations relating to the provision of special

education and related services, and in the process of reconciling differences in a non-adversarial manner.

TASK 8 - PROVIDING TRAINING TO ALJS

The contractor will ensure that ALJs are trained to conduct special education due process hearings.

8.1 Subjects of ALJ Training

Pursuant to *California Code of Regulations*, title 5, section 3098.2, subdivision (a), the contractor shall ensure every ALJ has completed at least 80 hours of training before conducting a due process hearing which shall include, but not be limited to, the following subjects:

- a. Due process and the role of the hearing officer
- b. Ethical requirements for hearing officers
- c. Creating and maintaining a bias-free proceeding
- d. Case management
- e. Motions and other pre-hearing practices and procedures
- f. Settlement practice
- g. Hearing preparation
- h. Making, completing, supplementing, and preserving a record
- i. Opening and closing a hearing
- j. Hearing room control and demeanor
- k. Strategies for protecting the rights of parties not represented by attorneys
- l. Dealing with a party's default
- m. Handling and preserving documents and exhibits
- n. Credibility of witnesses
- o. Qualifying and evaluating expert witnesses
- p. Common evidentiary issues in administrative proceedings
- q. Closing briefs and arguments and submission
- r. Writing decisions
- s. Resources for hearing officers
- t. Americans with Disabilities Act (ADA) and Rehabilitation Act, Section 504 requirements, including, but not limited to, ADA accessibility at locations where due process hearings are conducted

8.2 ALJ Training in the Adjudication of Special Education Disputes

Pursuant to *California Code of Regulations*, title 5, section 3098.2, subdivision (b), as part of the 80 hours of training set forth in Task 8.1 above, an ALJ's initial training will include at least 20 hours of training in the adjudication of special education



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disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, the following subjects:

- a. The substantive and procedural laws relating to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) (20 U. S.C. § 1400 et seq.)
- b. The substantive and procedural laws relating to 34 *Code of Federal Regulations*, part 300, commencing with part 300.1
- c. The substantive and procedural laws relating to *Education Code*, title 2, division 4, part 30, commencing with section 56000
- d. The substantive and procedural laws relating to *California Code of Regulations*, title 5, division 1, chapter 3, subchapter 1, commencing with section 3000
- e. Federal and state statutes and regulations related to the laws and regulations identified in Task 8.2(1)-(4) of this agreement
- f. Court and administrative rulings interpreting or implementing all of the above
- g. Common disabilities and their impact on human functioning
- h. The impact of common disabilities on student academic, developmental and functional needs in an educational environment
- i. Disability awareness
- j. Options for the accommodation of disabilities in education and elsewhere
- k. Services and supports available to students with exceptional needs
- l. Adaptation of general education strategies for students with disabilities
- m. Participation of children with exceptional needs in special education disputes
- n. Participation of parents, guardians, and representatives of children with exceptional needs in special education disputes
- o. Participation of teachers, instructional assistants, educational support personnel, and administrators in special education disputes



8.3 ALJ Continuing Education

Pursuant to *California Code of Regulations*, title 5, section 3098.2, subdivision (c), in addition to the initial 80 hours of training, an ALJ annually shall complete at least 20 hours of continuing education during each fiscal year. This continuing education shall include continuing education in the adjudication of administrative disputes and special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, the subjects set forth in the immediately preceding Tasks 8.1 and 8.2.

TASK 9 - PROVIDING TRAINING TO MEDIATORS AND OTHERS

The contractor will ensure that mediators, ALJs, and pro tem ALJs are trained to conduct special education mediations and support personnel are also trained to perform their duties as outlined in Task 1.3 of this contract.

9.1 Mediation Training

Pursuant to *California Code of Regulations*, title 5, section 3098.1, subdivision (a), an ALJ or mediator shall have completed at least 20 hours of training in mediation theory, techniques, and practices, which may include practical, clinical, or simulated training, and shall include, but not be limited to:

- a. Mediation purposes
- b. Evaluating cases for mediation
- c. Mediation and mediator's ethics
- d. Confidentiality in and after mediation
- e. Negotiation theory
- f. Approaches to conflict resolution
- g. Preparation for mediation
- h. Mediator's opening
- i. Stages of mediation
- j. Identification and narrowing of issues
- k. Communications skills
- l. Use of caucuses
- m. Strategies for dealing with recurring mediation problems
- n. Recognizing opportunities in mediation
- o. Recognizing and dealing with impasse and closure
- p. Multi-party mediation
- q. Post-mediation issues
- r. Resources for mediators
- s. Americans with Disabilities Act (ADA) and Rehabilitation Act, and Section 504 requirements, including, but not limited to, ADA accessibility at locations where mediations are conducted

9.2 Mediator Training in Special Education Disputes

Pursuant to *California Code of Regulations*, title 5, section 3098.1, subdivision (b), in addition to the initial training identified in Task 9.1 of this agreement and prior to conducting a mediation, a mediator shall have completed at least 20 hours of initial training in special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, those subjects identified in Task 8.2 of this agreement.

9.3 Mediation-Related Continuing Education

Pursuant to *California Code of Regulations*, title 5, section 3098.1, subdivision (c), in addition to the initial 40 hours of training described in Tasks 9.1 and 9.2 of this agreement, an ALJ or mediator shall complete at least 20 hours of continuing education during each fiscal year. This continuing education shall include training in mediation and the mediation of special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, further study of, and developments in, those subjects identified in Tasks 9.1 and 9.2 of this agreement.

9.4 Training Logs

The contractor agrees to provide the CDE, quarterly, with training logs for each ALJ, pro tempore ALJ (pro tem ALJ), and mediator, covering training and continuing education programs taken during the previous quarter. Logs for all trainings will include the name of each ALJ, pro tem ALJ, and mediator who attended the program, the title and description of each program, the date of each program, and the number of hours of each program. The contractor shall maintain sufficient documentation that each ALJ has received the required training and continuing education programs and the contractor will provide supporting documentation to CDE upon request. The documentation retained by the contractor may include, but is not limited to, evidence of ALJ and mediator attendance at the programs, program agendas, program descriptions, etc. The contractor will make all required documentation and evidence of training and continuing education programs available to CDE for periodic review and reconciliation.

9.5 Annual Training for Other Staff Members

The contractor will also provide annual training to administrative, supervisory, information technology, and other support staff in the above areas. The training will include, but not be limited to, confidentiality of students' and parents' identities and information as provided for in *Education Code* section 56515.

TASK 10 - COMPLYING WITH REQUIREMENTS FOR CONDUCTING MEDIATIONS AND DUE PROCESS HEARINGS

10.1 Timelines

The contractor, its ALJs, and mediators shall comply with all federal and state laws and regulations and legal authorities related to the timing and conduct of due process hearings and mediations, including the timing of expedited hearings, and the timeline for issuance of due process hearing decisions and their contents.

10.2 Separation of Task Assignments

The contractor will assign a qualified ALJ to the hearing and a different ALJ or mediator to the mediation. In no case will the contractor assign an ALJ who facilitated a mediation to preside over a hearing in the same case.

10.3 Conflicts of Interest

Pursuant to *California Code of Regulations*, title 5, section 3090.1, subdivision (b) a conflict of interest is a dealing or relationship that reasonably raises a question of bias. Pursuant to the *California Code of Regulations*, title 5, section 3099, the contractor shall require mediators and ALJs to prevent conflicts of interest. Any involvement by an ALJ or mediator with the subject matter of the dispute or any relationship between an ALJ or mediator with any party, prospective participant, or prospective witness, whether past or present, personal or professional, that reasonably raises a question of the ALJ's or mediator's impartiality, whether an actual or potential conflict of interest, shall be disclosed to the parties as soon as practicable after the ALJ or mediator becomes aware of such circumstance. After disclosure, the mediator or ALJ shall decline to mediate or adjudicate the dispute unless all parties choose to retain the mediator or ALJ. The contractor agrees to submit written reports to the CDE pertaining to instances of conflict of interest under *Government Code* section 11425.40 that have been substantiated after an ALJ has been assigned to a case. Reports will be submitted within five business days of conflicts being substantiated.

10.4 Ex Parte Communication

Pursuant to the *California Code of Regulations*, title 5, section 3084 there shall be no communication to a hearing officer, direct or indirect, while special education due process hearing proceedings are pending, regarding any issue in the proceeding, from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing. A proceeding is pending from the date of receipt by the contractor of the request for hearing. If an ALJ receives a communication in violation of this section, the ALJ shall follow the procedures set forth in section 3084.

10.5 Disqualification

An ALJ assigned to a hearing is subject to disqualification for bias, prejudice, or conflict of interest in the proceeding as provided by *Government Code* section 11425.40. An ALJ assigned to a hearing is also subject to disqualification for receipt of an ex parte communication in violation of the provisions contained in *California Code of Regulations*, title 5, section 3084.

Pursuant to *Government Code* section 11425.40, subdivision (b), it is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the ALJ:

- a. Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group;
- b. Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding; or
- c. Has, as a lawyer or public official, participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

10.6 Notice to Parties

The contractor will provide notice to the parties of the identity of the ALJ assigned to conduct a hearing at least five business days before the hearing, unless operational needs require otherwise, so that any motions regarding a conflict of interest may be timely made and heard.

10.7 Peremptory Challenges

Pursuant to *California Code of Regulations*, title 1, section 1034, a party to a special education due process proceeding is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to the due process hearing. Peremptory challenges, however, are not allowed in proceedings involving temporary or interim relief, including requests for stay put, and in no event shall a party be permitted to make a peremptory challenge after a due process hearing has commenced. If at the time of a scheduled prehearing conference an ALJ has been assigned to the hearing, any challenge to the assigned ALJ shall be made no later than the commencement of that prehearing conference. If the contractor reassigns the hearing to another ALJ for a reason other than after granting a peremptory challenge, a peremptory challenge shall be made no later than noon the business day prior to the first scheduled day of hearing.

10.8 Mediation Outcomes

An ALJ or mediator assigned to a particular case will be responsible for managing mediation of the case through to either impasse or resolution and, if to a resolution, will be responsible for facilitating the process by which a written agreement of the parties can be prepared. A single paper or paperless case file may be maintained and may include materials related to both the mediation and hearing, but all materials related to the mediation will be sealed and not reviewed by or discussed

with the ALJ presiding over a subsequent due process hearing if the matter fails to reach resolution during mediation.

10.9 Reasonable Accommodations and Locations for Due Process Hearings

The OAH will conduct mediation and due process hearings at locations, certified by the school districts that the facilities to be provided are accessible pursuant to federal and state laws, that are convenient to the parents or guardians of students as required by *Education Code* section 56505, subdivision (b), concerning the time and location of hearings.

The OAH will maintain policies, procedures, practices, and notices to ensure that special education hearings and mediations are conducted in facilities that have been certified by school districts as accessible and usable to qualified individuals with disabilities and others requiring reasonable accommodations as required by law. The OAH will meet its obligations to ensure hearings and mediations are conducted in accessible and usable facilities in accordance with Items a through d, as required by law, as listed:

- a. Maintain its policies, procedures, practices, and notices to ensure special education hearings and mediations are conducted in facilities accessible and usable to individuals with disabilities and others requiring reasonable accommodations, as required by law.
- b. Maintain a procedure to ensure special education hearing and mediation participants are informed of the process by which they can request and receive reasonable accommodations. OAH will:
 - 1) Communicate the requirements to school districts and other entities that provide facilities, prior to the scheduling of proceedings; and
 - 2) Notify the proceeding participants in advance that the facility will be accessible, and how the OAH will respond if they (the

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participants) arrive at a proceeding and find the facility is not accessible.

- c. Maintain a policy that any facility where it (OAH) conducts special education hearings or mediations must be accessible to individuals with disabilities, and maintain a procedure for ensuring this requirement is met; and
- d. Notify the public of its obligation to conduct special education proceedings in accessible facilities and provide reasonable accommodations.

The OAH will notify students, parents/guardians, and other special education hearing and mediation participants with disabilities as to how to request accommodations; and how OAH will respond to such requests; and how OAH will provide reasonable accommodations as required by law.

This procedure will include a means for OAH:

- a. To notify participants in advance of the availability of accommodations and a process to request them; and
- b. To respond and appropriately resolve any situation in which participants arrive at a proceeding and find that previously requested accommodations are not available.

The OAH will ensure complaints alleging failure to conduct proceedings in accessible facilities or provide reasonable accommodations are reviewed and responded to in accordance with Task 3.13 (Complaints Against the Contractor) of the Standard Agreement between CDE and OAH dated July 1, 2015 (Standard Agreement).

This procedure will include a means to:

- a. Review and monitor OAH's investigations, findings and corrective actions by CDE, consistent with Task 3.13 (Complaints Against the Contractor) of the Standard Agreement between CDE and OAH dated July 1, 2015 (Standard Agreement); and
- b. Inform the public of OAH's obligation to conduct special education proceedings in accessible facilities and provide reasonable accommodations, the process for requesting reasonable accommodations, and how to obtain the policies and procedures, including:

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- 1) Updating the OAH's SED Web site to include this information and links to any related forms;
- 2) Providing the information and forms in the OAH's printed literature, such as its consumer brochure and Special Education Due Process Hearing and Mediation Manual; and
- 3) Providing instructions for requesting accommodations in the notice of the date and time of hearings/mediations sent to parents/guardians and districts.

The OAH will submit to CDE the policies, notices, and procedures referenced in this contract amendment, within thirty (30) calendar days of execution of the amendment.

10.10 Location of Hearings

As stated in 10.9, the contractor will conduct hearings and mediations in ADA accessible facilities and provide reasonable accommodations. The contractor will conduct mediations and due process hearings at locations convenient to the parents or guardians and students as required by *Education Code* section 56505, subdivision (b), concerning the time and location of hearings and must be ADA accessible.

10.11 Interpreters

The contractor shall comply with the requirements of *California Code of Regulations*, title 5, section 3095 concerning the availability of interpreters, including sign language interpreters, for due process participants as appropriate. Hearings and mediations shall be conducted in the English language. When the primary language of a party or a witness to a hearing is other than English, an interpreter shall be provided by the contractor and shall be competent as determined by the ALJ or mediator. Cost for an interpreter shall be borne by the CDE. Interpreters shall take an oath to interpret the hearing fully and accurately.