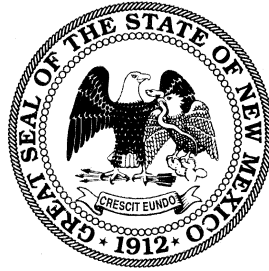


**STATE OF NEW MEXICO**  
**PUBLIC EDUCATION DEPARTMENT**



**REQUEST FOR APPLICATIONS**  
**SPECIAL EDUCATION HEARING OFFICERS**

**April 15, 2024**

## I. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR APPLICATIONS

The New Mexico Public Education Department ("the Agency") requests applications from licensed New Mexico attorneys to serve as hearing officers for disputes between parents and public education agencies in the public school special education system under the federal Individuals with Disabilities Education Act (IDEA) as well as other possible hearings required by the IDEA and state special education rules.

The Agency administers Part B of the IDEA, which provides federal funds to assist states in making special education and related services available to eligible children aged 3 through 21. Part B requires states to ensure that a due process hearing before an impartial administrative hearing officer is available when parents and public schools cannot resolve disagreements over special education services for children who have or are suspected of having IDEA-eligible disabilities. The IDEA and state special education rules also provide for administrative hearings for other purposes including appeals of decisions by the state education agency related to grant funding provided through the IDEA.

During recent years, there have been between 20 and 30 requests for due process hearings filed each year. More than 80% of the due process hearing cases settle without a hearing. The Public Education Department expects the hearing officers who are awarded contracts under this RFA to manage the cases assigned to them as efficiently as is consistent with allowing the parties a fair opportunity to present and support their claims and defenses. In this regard, see particularly Paragraph (I)(9) of 6.31.2.13 NMAC in Appendix B to this RFA.

### B. SCOPE OF WORK

The scope of work consists of the contractor serving as a hearing officer pursuant to Appendix A. See Appendix A, Contract Terms and Conditions, and Appendix B, containing relevant excerpts from the state special education rules which incorporate the due process and dispute resolution requirements of the IDEA 2004.

### C. SCOPE OF PROCUREMENT

To ensure that qualified impartial hearing officers are available, the Agency proposes to award multiple contracts to Applicants from New Mexico. The Agency proposes to award each successful Applicant a one-year contract, renewable at the Agency's option in one-year increments for three additional years, to provide services as needed at a fixed hourly rate to be determined through this procurement process, with travel expenses compensated for hearing related travel, plus applicable gross receipts tax. Additional compensable items are discussed below under "Compensation" in the section on "Additional Contractual Terms and Conditions." Qualifications, evaluation criteria and the selection process are discussed below under "Qualifications and Selection."

#### D. POINT OF CONTACT

Any inquiries or requests regarding this request for applications should be submitted to the following Point of Contact: Sharyn Perea, ADR Coordinator, (505) 469-6100, [Sharyn.Perea@ped.nm.gov](mailto:Sharyn.Perea@ped.nm.gov).

#### II. APPLICATION DEADLINE

The deadline to submit an application is May 22, 2024. Late applications may be submitted but it is possible that they would not be reviewed.

#### III. APPLICATION FORMAT

1. Applications submitted must not exceed 10 pages, **excluding** the cover page, acceptance/authorization form (Attachment C to this RFA), writing sample(s), any letters of reference submitted pursuant to Item 4 below and the statement required under Item 5 below. Applications that exceed this page limit may be eliminated from consideration.
2. Cover Page. Applications must include a cover page that clearly states the name, physical or mailing address, email address, and telephone number(s) of the Applicant submitting the application.
3. Application Content. Accurate and complete information is a criterion for selection. The application must respond to each item of qualification clearly, specifically and completely in the order listed under “Qualifications and Selection.”
4. In addition to the names and addresses of parties and their representatives from contested cases, as required above, an Applicant may submit up to two reference letters indicating his/her level of professionalism and demonstrating his/her ability to implement the RFA activities. Such letters will not be included within the 15-page limit.
5. Each Applicant must provide the disclosure of any past and/or current affiliations that may present the appearance of a conflict of interest. This statement may be made available to the parties to any dispute to which a contractor is assigned as a hearing or review officer and, upon request, to members of the public under the Inspection of Public Records Act.
6. Each Applicant must provide a proposed hourly rate for service provided in conducting the activities described in the Scope of Work found in Appendix A.
7. Within each section of the application, Applicants should address the items in the order in which they appear in this RFA.

#### IV. QUALIFICATIONS

Applicants should respond in narrative form to each mandatory specification. The narratives, along with required supporting materials, will be evaluated and awarded points accordingly.

The following are the qualifications for special education hearing officers.

1. Applicants must be licensed to practice law in New Mexico. Applicants must either be in good standing and on active status or, if inactive, must not have assumed such status in response to a disciplinary complaint or proceeding.
2. Applicants must have at least three years of current or prior experience in the active practice of law, preferably with a strong emphasis in administrative law or representation of governmental agencies.
3. Applicants must **not** have represented or been associated with a firm or organization that has represented parents, students, public school districts or other K-12 educational agencies in any dispute over educational services, student activities or student discipline for the two years preceding the submission of applications.
4. Applicants must demonstrate the ability to analyze complex legal issues and express clear legal reasoning in written decisions resolving issues and cases at the original and appellate jurisdictional levels. Each Applicant must submit one writing sample of not more than 20 pages which may be an excerpt from an authored decision or a legal brief or memorandum or a complete authored decision or a legal brief or memorandum on one or more dispositive issues in a contested case before a tribunal exercising original jurisdiction. **(The submission of these writing samples will not be included in the 10 page limit for this application).**
5. Applicants should demonstrate:
  - a. Knowledge or experience in special education law (highly desirable), disability law (highly desirable) or federal civil rights law. Describe the nature and extent of your experience.
  - b. Experience adjudicating contested cases as a judge, hearing officer, special master or arbitrator exercising original jurisdiction, or as an attorney or advocate appearing before such tribunals.

Each Applicant must submit a signed “Acceptance of conditions of RFA and authorization for the Public Education Department to obtain confidential references” in Appendix C. The Agency may contact any identified parties and/or their representatives and solicit their confidential views regarding the candidate’s qualifications to serve as a hearing officer.

APPENDIX A

Contract Terms and Conditions

STATE OF NEW MEXICO

**PUBLIC EDUCATION DEPARTMENT**

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Public Education Department**, hereinafter referred to as the "Agency," and \_\_\_\_\_, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by both parties.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

A. The Contractor shall perform the following work:

The Contractor shall serve as an impartial hearing officer in due process hearing or other administrative hearings, as assigned by the Agency, by performing the applicable duties specified in the New Mexico special education rules at 6.31.2.13(I) NMAC, or any successor rules, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), P.L. 108-446, and the implementing federal regulations issued in 2006. Responsibilities may include travel to the school district or other educational agency in New Mexico where a due process hearing or other administrative hearing has been requested.

B. Services will be performed within the State of New Mexico. The locations of the hearings may be a consideration in the selection of the hearing officer in any given proceeding.

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

- (1) The Contractor shall comply with all applicable standards of neutrality, confidentiality, and conduct as required by federal and state statutes, rules and regulations.
- (2) The Contractor shall maintain a current resume, vita or other written statement of qualifications and experience on file with the Agency and will provide the Agency with appropriate updates. The Contractor shall disclose any past and/or current affiliations that may give rise to the appearance of a conflict of interest. The written qualifications and disclosure statement may be made available to the parties in a due process hearing or other administrative hearing to which the Contractor has been assigned and, if requested, to the public under the Inspection of Public Records Act.

- (3) The Contractor shall maintain individual case files along with detailed records of activity in each case, such as travel, telephone calls, research and drafting of orders, decisions and correspondence.
- (4) The Contractor, serving as an impartial due process hearing officer, shall comply with federal and Agency timelines and transmit a written final decision by certified mail to the parties and the Agency within 45 calendar days of the commencement of the timeline for a hearing unless the hearing officer has granted one or more extensions at the request of a party or parties. The required timelines may vary as the result of changes in the IDEA, the implementing federal regulations or the New Mexico special education rules. The Contractor shall return individual case files to the Agency within 21 calendar days of rendering a final decision.
- (5) The Contractor agrees that he/she shall invoice and provide the school district or other educational agency involved in the dispute with the necessary records and receipts to process reimbursement and compensation requests for the due process hearings upon completion of services as a hearing officer. The Contractor will provide copies of such billings to the Agency for data collection purposes only.
- (6) The Contractor agrees that upon completion of due process hearing officer services, he/she shall separately invoice the Agency and provide the necessary records and receipts to process compensation and reimbursement requests for adjudication of due process claims or other hearing request filed by or against the Agency.
- (7) The Contractor agrees that he/she shall devote the time necessary to the performance of the above duties and shall have access to the necessary support and equipment to perform said duties, including: (a) telephone; (b) ability to answer telephone calls during normal business hours either through secretarial support, answering machine, or voice mail; (c) computer and email; and (d) access to the Agency's online case management system, adequate legal research materials, including applicable state and federal statutes, rules, regulations and case law.
- (8) The Contractor shall attend all training sessions for due process hearing officers sponsored by the Agency. In the event of extenuating circumstances, and at the Agency's discretion, the Contractor may be excused upon the condition that he/she views videotapes of the missed training sessions. The Contractor will be compensated at their normal hourly rate for attending mandatory trainings and will be reimbursed at the current state DFA travel or per diem rate while attending Agency sponsored trainings requiring travel outside the Contractor's county of residence. When applicable, the Agency will apply for New Mexico minimum continuing legal education (MCLE) course approval for sponsored training sessions and will pay for MCLE credit recording. Nothing herein precludes the Contractor from attending trainings not sponsored by the Agency at his or her own expense.

The receipt of the deliverables contemplated under this Agreement shall assist the Agency in achieving its goals as set forth in its Strategic Plan.

2. **Compensation.**

A. **Compensation for Services Adjudicating Claims Against the Agency.**

1. The Agency shall pay the Contractor for services as a hearing officer involved in adjudicating claims brought by or against the Agency for services satisfactorily performed at the rate of \_\_\_\_\_ (\$\_\_\_\_\_). Such compensation is not to exceed twenty thousand dollars (\$20,000.00), excluding gross receipts tax and expenses. The rate of the gross receipts tax levied on the amounts payable under this Agreement will depend on the business location of the Contractor.

**The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$\_\_\_\_\_). This amount is a maximum and is not a guarantee that the work assigned to Contractor to be performed under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. The Contractor will not be paid for services exceeding the total compensation amount without amending this Agreement in writing prior to the delivery of any services exceeding the total compensation amount.**

2. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any year-to-year negotiations between the parties, pursuant to Paragraph 1, Scope of Work. All invoices must be submitted within 15 days of the closing a specific hearing case or the completion of a mandatory training. All invoices **MUST BE** received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

3. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the Contractor's services or invoiced amounts are unacceptable within thirty (30) days after receipt of written notice, by means of the Contractor's payment request, the Agency shall provide the Contractor with a letter of exception explaining the defect or objection to the services or specific items in the related invoice, and outlining the remedial steps that may be taken. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Agency shall not incur late charges, interest, or penalties for failure to make payment within the specified time.

4. Due process hearing officers will be reimbursed for the following expenses after submitting the necessary receipts and documentation: copying and postage; and per diem and mileage. Copying costs will be reimbursed at the lesser of the actual cost or 10 cents per page. Per diem and mileage expenses incurred while serving as a due process officer will be reimbursed at current DFA approved state rates.

B. Compensation for Services as Impartial Due Process Hearing Officer.

1. Upon satisfactory completion of the required services as an impartial due process hearing officer and the Agency's receipt of the written decision, the Contractor will provide a detailed billing statement to the administrative head of the school district or other educational agency involved in the dispute and receive compensation from that agency for time spent and allowable expenses incurred performing the functions of a hearing officer. The Contractor will provide copies of such billings to the Agency for data collection purposes only. The Contractor releases the Agency from all liabilities, claims and obligations whatsoever for the fees and costs related to services provided as a hearing office with regard to claims against the school district or charter school.

2. Pursuant to 6.31.2.13(I)(23) NMAC, or any successor rules, for services provided by the Contractor as an impartial hearing officer, the educational agency involved in the dispute will provide compensation as follows:

(a) Compensation at the rate of \_\_\_\_\_ (\$\_\_\_\_\_) per hour for reasonable and necessary time spent performing the functions of an impartial due process hearing officer, subject to the following limitations:

- (i) Time spent performing reasonable and necessary legal research will be compensated at the hourly rate. The Agency will pay for the Contractor to have unlimited access to LRP Publications' Special Ed Connection website for legal research. The expenses of any other computer-assisted legal research will be borne by the Contractor.
- (ii) Time spent for travel to conduct a hearing at an educational agency outside the hearing officer's city of residence will be compensated at the hourly rate.

(b) Hearing officers will be reimbursed for the following expenses after submitting the necessary receipts and documentation: necessary long distance telephone calls; copying, and postage; and per diem and mileage. Copying costs will be reimbursed at the lesser of the actual cost or 10 cents per page. Per diem and mileage expenses incurred while performing hearing officer duties will be reimbursed at current DFA approved rates.

(c) The educational agency involved in the due process hearing dispute shall also pay the Contractor the amount of New Mexico gross receipts taxes levied on the compensation and expenses payable for hearing officer services.

3. Contractor must submit to the educational agency involved in the due process hearing dispute a detailed statement accounting for all services performed and expenses incurred. Although Contractor should attempt to resolve any disputes related to fees and expenses with the educational agency, if the educational agency finds that the Contractor's submitted invoice is unacceptable, the educational agency may submit a letter of exception to the Contractor and



Agency within thirty (30) days after receipt of written notice, explaining the defect or objection to the services or specific items in the related invoice, and outlining the remedial steps that may be taken. The Agency may assist in resolving the dispute between Contractor and the educational agency, but the Agency is not responsible for any related liabilities, claims and obligations whatsoever for the fees and costs related to services provided as a hearing officer.

**3. Term.**

This Agreement shall terminate on **June 30, 2025**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; **provided, however,** that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if during the term of this Agreement, the Contractor, or any of its officers, employees or agents, is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: (1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without written approval of the Agency; (2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and (3) take such action as the Agency shall direct for the protection, preservation, retention, or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the Agency as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and/or Congress for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature or Congress, this Agreement shall terminate immediately upon written notice being given by the

Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico, as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including, without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

## **12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

B. The Contractor further represents and warrants that it has complied with, and during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

(1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

(2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (a) the Contractor is not a public officer or employee of the State; (b) the Contractor is not a member of the family of a public officer or employee of the State; (c) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (d) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

(3) in accordance with Section 10-16-8(A) NMSA 1978, (a) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the state within the preceding year and whose official act directly resulted in this Agreement and (b) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act while in State employment directly resulted in the Agency's making this Agreement;

(4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (a) the Contractor is not a legislator; (b) the Contractor is not a member of a legislator's family; (c) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (d) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, (e) this Agreement is not a sole source or small purchase contract, and (f) this Agreement was awarded in accordance with the provisions of the Procurement Code;

(5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

(6) in accordance with Section 10-16-13 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed and, during the term of this Agreement, shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was

entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to, discrimination under any program or activity performed under this Agreement. If the Contractor is found not to be in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, the Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any provision of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the DFA and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

**20. New Mexico Employees Health Coverage.**

A. If Contractor has or grows to six (6) or more employees who work or who are expected to work an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this Agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State of New Mexico exceeds \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (1) accepted health insurance, (2) declined health insurance due to other health insurance coverage already in place, or (3) declined health insurance for other reasons. These records are subject to review and audit by a representative of the State.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following website link to additional information: <https://www.bewellnm.com/>.

**21. Employee Pay Equity Reporting.**

Contractor agrees, if it has ten (10) or more New Mexico employees or eight (8) or more employees in the same job classification at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If Contractor has two hundred fifty (250) or more employees, Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one

(1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date, or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that Contractor meets or exceeds the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report for each such subcontractor within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals on behalf of each such subcontractor shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation and, if Contractor has already submitted the required report accompanying Contractor's response to such solicitation, the report does not need to be re-submitted with this Agreement.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

**Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:**

To the Agency: Miguel Lozano, Esq.  
New Mexico Public Education Department  
300 Don Gaspar Ave.  
Santa Fe, NM, 87501  
[Miguel.Lozano@ped.nm.gov](mailto:Miguel.Lozano@ped.nm.gov)

To the Contractor: \_\_\_\_\_, Esq.  
\_\_\_\_\_  
\_\_\_\_\_

**25. Authority.**

If Contractor is other than a natural person, the individuals signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution or approval from the Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Legal Counsel - Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation and Revenue Department

## APPENDIX B

THE DUE PROCESS RULES OF THE NEW MEXICO SPECIAL EDUCATION RULES CAN BE FOUND IN SUBSECTION I OF SECTION 13 OF 6.31.2 NEW MEXICO ADMINISTRATIVE CODE (NMAC) AT:

[https://nmonesource.com/nmos/nmac/en/item/18063/index.do#s6\\_31\\_2\\_13](https://nmonesource.com/nmos/nmac/en/item/18063/index.do#s6_31_2_13)



**APPENDIX C**

**ACCEPTANCE OF CONDITIONS OF REQUEST  
FOR APPLICATIONS AND AUTHORIZATION  
FOR PUBLIC EDUCATION DEPARTMENT TO OBTAIN  
CONFIDENTIAL REFERENCES REGARDING APPLICANT**

I hereby certify that I have read and understand the New Mexico Public Education Department's Request for Applications (RFA) for special education hearing officers, that I accept the terms and conditions therein and that I am submitting this acceptance and authorization in partial fulfillment of the RFA requirements.

I understand that the initial selection of candidates for potential contract awards will be based on the written applications, and that if I become a candidate the Department may contact some or all of the persons I have identified as parties or representatives from contested cases in which I have participated and other persons I may list as references. I understand that the Department will request the persons it contacts to provide their candid opinions regarding my qualifications to serve as a special education hearing officer.

I understand that the Department will send a copy of this acceptance and authorization to each individual or entity from whom it is seeking such information. I hereby authorize the party receiving a copy of this signed form (including a photocopy or facsimile copy) to provide and release complete information as may be requested and I waive any claim of confidentiality I might have with regard to such information. Any person or entity providing information in accordance with this acceptance and authorization is released from any and all claims of liability for his or her good-faith expressions of opinion regarding my qualifications. To encourage candor and foreclose any appearance of future retaliation against persons providing such information, I waive any claim of access to or knowledge of the information so provided.

I understand that the Department will evaluate all information so received in light of the legal or non-legal background and the potential partisan bias of each respondent. I further understand that the information obtained pursuant to this authorization is for the exclusive use of the Public Education Department and its agents and consultants in making contracting decisions and will not be disclosed to any other person or entity without my written authorization unless such disclosure is necessary to comply with legal mandates or respond to charges brought by me before a tribunal of competent jurisdiction.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Date