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NEW DIRECTION OUTREACH

6857 South State Street
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RESIDENTIAL TREATMENT CENTER
THERAPEUTIC DAY SCHOOL

Not-for-profit Organization Since 1994

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for Children and Family Services

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LETTER OF APPEAL/ WAIVER REQUEST

Funding Year 2004: 7/01/2004 – 06/30/2005

Stephen LaFlora
New Direction Academy
6857 South State Street
Chicago Illinois, 60637
Fax (773) 224-8201

January 08, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
202-418-0187

CC: 02-6

RE: Rescinding of Funding Commitment

Billed Entity Number: 231787
Application Number: 396775
Funding Request Numbers: 1129345, 1129288, 1084610, 1129343
FCC Registration Number: 0011999315

On November 10, 2009, New Direction Academy received an "Administrator's Decision on Appeal" from the Universal Service Administrative Company (USAC), which stated our funding had been rescinded in full.

The FRNs associated with Application Number 396775 are FRN 1129345 for $4,283.73; FRN 1129288 for $76,142.95; and FRN 1084510 for $15,576.42; Totaling $96,003.10.

We are respectfully, appealing the decision of the Universal Service Administrator Company (Schools And Libraries Division) and, or are requesting a waiver of sec. 47 C.R.F. section 54.504(b) (2) (iii) and, 47 C.R.F. sec 54.504(c) (1) (vi), in the recovery of funds as set forth in the November 10, 2009 Administrator's Decision .

"Building An Environment That Feels Like A Family And A Home"

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List A B C D E

Background:
New Direction Academy (NDA) is a not-for-profit organization. NDA was established as a therapeutic day school in 1998. NDA is licensed by the Illinois State Board of Education (ISBE) as a Non Public Special Education Program [1], and is contracted by the Chicago Board of Education, to provide academic instruction and therapeutic services to children between the ages of 5-15 and grades K thru 9. [2] All students attending New Direction Academy have been diagnosed with various emotional, behavioral and learning disabilities. Many of these students referred by the Chicago Public Schools (CPS) come from economically-disadvantaged homes. We provide Special Educational Services to these trouble youths.

Appeal:
The Federal Communications Commission (FCC) and the Universal Service Administrator Company (Schools And Libraries Division) requires all applicants to base requests for services to be purchased with Schools and Libraries support discounts on an approved technology plans, except applicants whom are applying for basic telephone service. [1] NDA is contending that it did satisfy this requirement and that a Technology Plan was on file with the Schools And Libraries division at the time services were rendered. In that the State of Illinois Department of Education has classified NDA as a Non Public Special Education Program (**Educational Service Agency**) under 105 ILCS 5/14-1.02, Ch.122, par. 14-7.02, and that NDA is considered an ESA for the Chicago Board of Education. We cite the following to support our contention:

> "All educational programs for children with disabilities as defined in Section 14-1.02 administered by any State agency shall be under the general supervision of the State Board of Education. Such supervision shall be limited to insuring that such educational programs meet standards jointly developed and agreed to by both the State Board of Education and the operating State agency, including standards for educational personnel." [2]

> "**Nonpublic Special Education Programs** provide educational, therapeutic and/or residential services to students with disabilities. In the continuum of services for eligible students, federal and state laws allow programmatic options for students who may require exceptional educational and/or clinical intervention to meet their needs. Nonpublic programs approved under Section 14-7.02 of the School Code help serve and promote the continuation and improvement of Individualized Education Program (IEP) services for these students with disabilities." [3]

We further contend that as a Non Public Special Education Program contracted through

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[1] 105 ILCS 5/14-1.02, Ch.122, par. 14-7.02
[2] Certification provided to USAC
[1] *See Schools and Libraries Fifth Report and Order,* 19 FCC Rcd at 15826-30, paras. 51-63. *See Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, paras. 51-63 (2004) (*Schools and Libraries Fifth Report and Order*).

[2] *id*, par. 14-1.02
[5] *id*, par. 14-7.02

CPS, we meet the requirements of an Educational Service Agency (ESA) as defined by the Schools And Libraries Division.

> Federal law defines an ESA as a "regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies." To determine whether an ESA is eligible to receive Schools and Libraries support as an applicant, FCC rules governing the program require USAC to determine whether the ESA provides elementary or secondary education as determined under state law. USAC determines whether the entity provides elementary or secondary education to its student population and whether the ESA facility is eligible for support because elementary or secondary education, as defined in state law, is provided at that facility. [6]

	Schools And Libraries Division [4]	**Illinois State Board Of Education**
1	Authorized by State statute	105 ILCS 5/14-1.02, Ch.122, par. 14-7.02 [5]
2	"...provides elementary or secondary education as determined under state law."	Licensed by the Illinois State Board of Education as a therapeutic day school [2]
3	"...curriculum development services to their districts."	Develop curriculum appropriate to the needs of the enrolled student [7]
4	Instructional-level services: Schools and Programs	Provide properly credentialed staff to meet IEP needs [7]
5	Provide educational services to their component school districts.	Participate in assuring that State Assessments are conducted for all grade-eligible students [7]
6	Listed in Eligibility Table of ESA states on Schools And Libraries website.	1. Authorized by State: YES; 2. ESA Eligible for USF Support; YES [6]

We are, further contending that NDA is a ESA for the Chicago Board of Education and based this upon the following:

1. The State of Illinois is listed in the "Eligibility Table for Educational Service Agencies" as an ESA eligible state.
2. NDA is Licensed by the State of Illinois and contracted through the Chicago Board of Education as a Non Public Special Education Program.
3. Our Curriculum (Technology), Programs, IEPs [5], and educational programs are all developed to be in compliance with CPS guidelines and policies, in order to continue be considered a Nonpublic Special Education Program. [6]
4. NDA does not accept private referrals, our student body are exclusively students referred from the Chicago Board of Education.
5. We are funded by the Illinois State Board of Education and the Chicago Board of Education.
6. We have provided a signed contract with the Chicago Board of Education which substantiates that we are a Nonpublic Special Education Program provider (ESA) for the funding year in question.

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[4] *See, e.g,* USAC Website, ESA Guidelines, http://www.usac.org/sl/applicants/step01/csa-guidelines/
[5] 23 Ill. Adm. Code 226.230

[6] 23 Ill. Adm. Code 401.10(a) (8)

7. Once students have successfully completed our program, the Chicago Board of Education issues their Diplomas and Academic Credits.
8. We meet all the criterion specified by Schools and Libraries Division as noted above.
9. CPS Curriculum is mandated for all Non Public Special Education Programs (ESAs) and part of this mandate is Technology / Technology Plan. [7]

Conclusion

We believe the auditor and the USAC Administrator made an error in concluding that because NDA was privately run, we should not be considered as an ESA. Although, "Nonpublic Special Education Programs are privately run, they are publicly ... funded through a referral process from school districts..." and "Transcript credits are agreed upon at the IEP meeting and are awarded by the placing public school district" (The Chicago Board of Education).[8] Additionally, it should be noted that as a Non Public Special Education Program we cannot exercise the same autonomy that a privately run school can. As an example, we cannot hire Teachers or Staff without approval of the ISBE. Specifically, all teachers must be properly credentialed as specified by ISBE[9] and be certified to work with Special Needs Children.[10] Students cannot be removed from our program without ISBE and CPS approval. Nor can any changes be made to our curriculum or educational programs without ISBE approval.[11] "Any change in the number, type or duties of the professional or paraprofessional positions ..." [12] must also be reported. NDA must also submit to annual reviews from CPS every two years to retain their Non Public Special Education Program status.[13]

We therefore, respectfully submit that NDA is in fact a ESA for the State of Illinois and the Chicago Board of Education and therefore, covered under the Technology Plan for the Chicago Public Schools System for the 2004 funding year and, request that our appeal be granted.

Waiver Request

On November 10, 2009, New Direction Academy received a "Administrator's Decision on Appeal" from the Universal Service Administrative Company (USAC), which stated:

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[7] *Board Report #04-0728ED7-40 Private Specialized Schools Contract, Scope of Services, Subsection: Educational Environment para. E, F*
[8] *See, e.g.* Illinois State Board of Education, Special Education Services website, http://www.isbe.state.il.us/spec-ed/html/nonpublic_se.htm
[4] 105 ILCS 5/14-8.01, Ch.122, par. 14-8.01
[9] *See Staffing Requirements*, 23 Ill. Adm. Code 401.240
[10] 23 Ill. Adm. Code 401.10(a) (8)

[11] *id*, par. (a)(1)
[12] *id*, par. (a)(3)
[13] *id*, par. (i)(3)

- After review of your letter of appeal and all pertinent correspondence, it has been determined that New Direction Academy had provided a technology plan that was approved by CELT Corporation on November 15, 2005. However, services started November 1, 2004 according to 486 Number 291369. Additionally, this technology plan was created July 2, 2004. Form 470 Number 189710000457055 was posted August 12, 2003. Therefore, New Direction Academy's funding was correctly rescinded and USAC correctly sought recovery of disbursed funds. Although New Direction Academy states that they are covered by City of Chicago Public Schools (CCPS) District 299's technology plan, New Direction Academy did not provide written verification from the CCPS District 299 that New Direction Academy was included in the District's technology plan approved on January 22, 2002 and effective until January 22, 2005. Finally, New Direction Academy did not provide documentation showing that CCPS District 299 had an approved technology plan covering the 2nd half of FY2004 (1/23/2005-6/30/2005).

  You certified on your FCC Form 486 that the technology plan for the services received as indicated on the form was approved. During the review of your application, however, USAC determined that the technology plan you provided was not approved before receiving services as required by program rules.

  You certified on your FCC Form 470 that you had a technology plan for the services requested. USAC has determined, however, that your technology plan was not created prior to the posting of your FCC Form 470 for the services requested. In your appeal, you did not show that USAC's original decision was incorrect. Consequently, your appeal is denied.

We are contending, there was initial confusion on our part as to whether or not NDA was covered by the Technology plan for the Chicago Board of Education. Our premise was further supported by the fact that, the students at our school were/are technically CPS students in our school program until such time as their behavior is ameliorated. We were also informed by our vendor that we may not be covered under the CPS Technology Plan we and should develop an additional Technology plan "just in case". So, in an effort to insure that our organization was covered in ether event, on July 2, 2004 we proceeded to develop an individual Technology plan.

Additionally, NDA has provided written verification CCPS, in the form of a signed contract on "Chicago Board of Education Letter Head" for the 2004 funding year. In this contract it states that Providers (New Direction Academy) "... shall utilize the most current CPS MANDATED curriculum as the basis for instruction ... " and part of the mandated curriculum is the 2004 Technology Plan for CPS (Chicago Public Schools). *Board Report #04-0728ED7-40 Private Specialized Schools Contract, Scope of Services, Subsection: Educational Environment para. E, F*

Conclusion

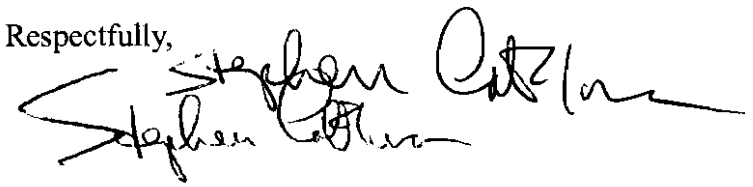
We have made every effort to insure that NDA is in compliance with USAC guidelines / policies and do not feel rescinding this funding commitment would promote the statutory

requirement of section 254(h) of the communications Act of 1934 (as amended). [14] Nor do we believe that rescinding the funding commitment would serve in the public's best interest and refer to the Bishop Perry Order. "... many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors".[15]

We therefore, are requesting a waiver of Section 47 C.R.F. section 54.504(b) (2) (iii) and 47 C.R.F. sec 54.504(c) (1) (vi), in the recovery of funds as set forth in the November 10, 2009 Administrator's Decision. And, request that our waiver be granted.

Finally it should be noted that effective September 2009; New Direction Academy closed its doors due to low student enrollment (6 students). Low student enrollment is symptomatic of the overall special education student population within the CPS Specialized Services Department. Since annual revenues are based solely on student enrollment, we could no longer keep our doors open without additional students.

Respectfully,



Stephen La Flora
Executive Director
New Direction Academy

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[14] 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

[15] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*). u

Illinois State Board of Education
AREA VII Learning Technologies Hub

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January 22, 2002

Mr. Arne Duncan, Chief Executive Officer
Chicago Public Schools District 299
125 South Clark Street
Chicago, Illinois 60603

Dear Mr. Duncan:

Congratulations! Your school's technology plan has met the necessary requirements as specified by the Illinois State Board of Education's rubric to qualify you to apply for the Snowe-Rockerfeller E-Rate discount. In addition, you are eligible to apply for any state or federal competitive grants as they are offered.

We recognize that the efforts made by your technology team were taxing, but we are certain that the outcome will be tremendous for your students and their school.

The AREA VII Learning Technology Center is committed in its resolve to support your technology team members in their effort to provide quality education for your students. If you have any questions regarding your technology plan, please feel free to contact our office at 773-553-6260.

Sincerely,

Shirley Berry

Shirley Berry
Director

Chicago Public Schools
Medill Professional Training Center
1326 West 14th Place - Room 104, Chicago, Illinois 60608
Telephone: (773) 553-6260 • Fax: (773) 553-6261

District Name: Chicago Public School #299 **LTC:** Area 7
Supt. Name: Arne Duncan **ROE/ISC/PDA:**

Peer Review Team Member: Cindy Hamblin
Peer Review Team Member: Kurt Mowrer
Peer Review Team Member: Phil Morris
Peer Review Facilitator: Lucianne Sweder

Learning Technology Center Director/Coordinator: Shirley Berry

Plan Begins School Year: 2001-2002
Approval Date: 1/22/02
Approved Through (Date): 1/22/05
Length of Plan (3-Year or # of Other Plan Length): three years

PRIVATE SPECIALIZED SCHOOLS CONTRACT

BETWEEN

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO

AND

NEW DIRECTION OUTREACH

EFFECTIVE DATE: AUGUST 1, 2004

TABLE OF CONTENTS

I. INCORPORATION OF RECITALS

II. TERM AND OPTIONS TO RENEW

III. PROVIDER RESPONSIBILITIES

- A. SCOPE OF SERVICES
- B. CALENDAR
- C. STAFFING
- D. ADMISSION PROCEDURE
- E. RECORD KEEPING [*includes Electronic Data Entry Program, School Improvement Plan, & Emergency Evacuation Plan*]
- F. PROGRESS REPORTS and PROGRESS NOTES
- G. REPORTING SERIOUS INCIDENTS; INVESTIGATIONS AND AUDITS
- H. RECORDS RETENTIONS AND RETURN OF RECORDS
- I. LICENSING AND STAFF DEVELOPMENT
- J. HEALTH SERVICES MANAGEMENT PROGRAM (HSMP)
- K. CHANGES TO RELATED SERVICES
- L. INSTRUCTION DURING PERIODS OF EXTENDED EXCUSED ABSENCE
- M. HIPAA OBLIGATIONS
- N. SURVIVAL AND MATERIAL BREACH

IV. BOARD RESPONSIBILITIES

V. STAFF CERTIFICATION AND STANDARDS OF PERFORMANCE

VI. COMPLIANCE WITH LAWS, BOARD POLICIES AND RULES

VII. INSURANCE REQUIREMENTS

VIII. INDEMNIFICATION/NON-LIABILITY OF THE BOARD

XI. HEALTH AND SAFETY

X. COMPENSATION AND PAYMENT

XI. CONFIDENTIALITY

XII. NON-DISCRIMINATION

XIII. TERMINATION

XIV. ON-SITE INSPECTIONS AND CORRECTIVE ACTION

XV. REPRESENTATIONS AND WARRANTIES OF PROVIDER

XVI. INDEPENDENT CONRACTOR

XVII. MISCELLANEOUS

- A. Assignment
- B. Choice of Law
- C. Entire Contract
- D. Modification
- E. Waiver
- F. Notices
- G. Conflict of Interest
- H. Indebtedness Policy
- I. Contingent Liability

XVIII. SOFTWARE LICENSE

XIX. BOARD APPROVAL

TABLE OF EXHIBITS AND ATTACHMENTS

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B – ELECTRONIC DATA ENTRY PROGRAM

EXHIBIT C –PAYMENT PLAN

EXHIBIT D - SERIOUS INCIDENT REPORTING FORM

ATTACHMENT 1: CRIMINAL BACKGROUND CHECK AFFIDAVIT

ATTACHMENT 2-A: CONSENT AND RELEASE OF LIABILITY FORM FOR SPECIAL ACTIVITIES

ATTACHMENT 2-B: GENERAL CONSENT AND RELEASE OF LIABILITY FORM

ATTACHMENT 3: TRANSPORTATION GUIDELINES LETTER

ATTACHMENT 4: EMERGENCY EVACUATION PLAN TEMPLATE

PRIVATE SPECIALIZED SCHOOLS CONTRACT
NEW DIRECTION OUTREACH

This Private Specialized Schools Contract ("**Contract**") dated August 1, 2004 ("**Effective Date**"), is by and between the **Board of Education of the City of Chicago**, a body politic and corporate (the "**Board**") and **New Direction Outreach** ("**Provider**").

RECITALS

A. Certain Chicago Public School ("**CPS**") students have special education needs that cannot be met in a public school environment and they may benefit from placement in a private school or public out-of-state school, or private special educational facility ("**Private Specialized School**") environment.

B. Provider operates one or more Private Specialized Schools (collectively, "**Facilities**").

C. The Illinois State Board of Education ("**ISBE**") and the Illinois Purchased Care Review Board ("**IPCRB**") have approved Provider's Private Specialized School Program(s) (hereinafter referred to as the "**Program**" or "**Programs**" depending upon whether Provider operates more than one Facility where CPS students ("**Students**") are placed).

D. Provider wishes to operate and provide, and the Board wishes to have Provider operate and provide to Students who have been selected by the Board or The Illinois Department of Children and Family Services ("**DCFS**") or the courts, the Program in accordance with the terms and conditions set forth in this Contract. The objectives of the Program shall be to meet the goals and objectives contained in each Student's Individualized Educational Program ("**IEP**"), as defined by the current Illinois School Code, and to meet each Student's special education needs.

NOW THEREFORE, in consideration of the foregoing, and the mutual promises, covenants and undertakings set forth herein, the Board and Provider agree as follows:

I. INCORPORATION OF RECITALS

The matters recited above in "Recitals" are hereby incorporated into and made a part of this Contract.

II. TERM AND OPTION TO RENEW.

A. **Term.** This Contract is for an initial term ("**Term**") commencing on the Effective Date first set forth above and continuing through July 31, 2006 unless terminated sooner as provided herein below.

B. **Options to Renew.** By mutual written consent, the parties shall have one (1) option to renew this Contract for a renewal periods of 24-months ("**Renewal Period**").

1. Excluding those provisions regarding compensation rates, the terms and conditions of this Contract, as they may be amended from time to time, shall apply to any Renewal Period.

2. If Provider does not wish to continue the Contract for a Renewal Period, Provider **must** give written notice thereof to the Board's Chief Specialized Services Officer at least thirty (30) calendar days before the Term is scheduled to expire.

3. The Board's exercise of any and all options to renew is subject to approval of the Members of the Chicago Board of Education.

III. PROVIDER RESPONSIBILITIES

A. **SCOPE OF SERVICES.** Provider agrees that its Program shall include the provision of professional services and any "Related Services" required by a student's IEP (collectively, "**Services**"). As used herein, the term "**Related Services**" shall mean such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including

rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Provider shall provide Services pursuant to the terms of this Contract, including the "**Scope of Services**" attached hereto and incorporated herein as **Exhibit A**. If a child's IEP provides for an Extended School Year ("**ESY**"), Provider shall operate the ESY Program and shall provide the Services for such ESY or, at the Board's option, shall cooperate with another Board-selected school in transitioning the Student for such ESY period.

It is understood and agreed that a regular school day cannot be shorter than 5 ½ hours, including a lunch period lasting 20 - 30 minutes and the duration of the ESY period shall be established by each Student's IEP.

Provider agrees that the Board may, from time to time, request changes in the Scope of Services. Change requests shall be documented hy a written amendment signed by an authorized representative of each party; and Provider shall promptly implement any such change.

B. **CALENDAR.** Provider agrees to operate its Program(s) in accordance with the CPS Regular School Calendar ("**Calendar**"), current copies of which can be downloaded from the CPS website: http://www.cps.k12.il.us/calendar.html. It is understood and agreed that Provider shall not modify the Calendar without prior written approval from both the Board and ISBE.

Provider shall operate the ESY Program and shall provide the Services for such ESY or, at the Board's option, shall cooperate with another Board-selected school in transitioning the Student for such ESY period.

It is understood and agreed that a regular school day cannot be shorter than 5 ½ hours, including a lunch period lasting 20 - 30 minutes and the duration of the ESY period shall be established by each Student's IEP.

C. **STAFFING.** Pursuant to the terms of this Contract, and subject to the provisions of **Section V** herein below, Provider shall provide a sufficient number of teachers certified by the Illinois State Board of Education ("**ISBE**"), other professional personnel (including but not limited to psychologists, social workers, administrators, speech therapists, occupational therapists, counselors, physical therapists and other professionals) (collectively, the "**Professional Staff**"), and a sufficient number of qualified aides to meet the needs of the Students as specified in their IEPS. Professional Staff may be Provider's employees or Provider's subcontractors. These aides and the Professional Staff shall be collectively called Provider's "**Staff**" and they shall be Provider's employees or its subcontractors. It is understood and agreed that Provider shall maintain an adequate number of qualified and experienced staff to effectively manage, support and educate the Students, and to assure the successful operation of the Program.

D. **ADMISSION PROCEDURE.** Throughout the Term, and any extension thereof, Provider agrees to admit Students to its Program(s) as vacancies occur. The Board will have absolute discretion in assigning Students to the Program(s), subject to the Board's obligations under **Section IV (B)** (Board Responsibilities) herein below. Enrollment may vary as Students leave a Program and new Students are assigned to fill the vacancies. Notwithstanding the foregoing, it is understood and agreed that executing this Contract does not obligate the Board to place any Students with Provider.

E. **RECORD KEEPING.**

1. Throughout the Term and any renewal period, Provider shall maintain the "Green Attendance Book" and shall follow all Board policies and procedures for Private Specialized Schools including those policies and procedures that relate to record keeping for enrollment, attendance and Student performance data, as such policies and procedures may be adopted by the Board and amended from time to time. Such policies and procedures include, but are not limited to the Board's requirement that Provider transfer attendance information to the Kids Attendance Management Program ("**KAMP**") each school day and either (a) submit such information to the Board electronically on a daily basis if

Provider has received KAMP software from the Board, or (b) submit such information to the Board on KAMP forms each month if Provider has not received KAMP software from the Board.

2. **In addition, Provider shall enter into the CPS KAMP system, "Private Facility" Staff information for all Professional Staff and aides who shall provide direct services to the Students. It is understood and agreed that Provider shall update this information as changes occur.**

3. On or before the tenth (10th) business day of each month, Provider shall give the designated CPS Specialized Schools and Services Unit contact (the "**SSaS Contact**") a written report containing the following information: (i) the number of Students enrolled in the Program during the preceding month, (ii) the number of days of instruction recorded for such month, and (iii) the number of days each Student was present and absent during such month and the cause of absence for each Student. In addition, no later than one (1) business day following a Student's absence for five (5) consecutive instruction days, Provider shall submit to its SSaS Contact and the Bureau of Nonpublic Tuition, the name of that Student and the cause of the extended absence. If the five-day absence does not qualify as an "excused absence" pursuant to Board and the Bureau of Nonpublic Tuition guidelines, Provider shall include documentation of attempts to return the Student to school during such five-day period. Provider shall submit the reports required under this **Subsection III (E) (3)** in the manner prescribed by the Board from time to time. It is understood and agreed that the Board may modify the frequency of reporting, the report content, and the manner in which reporting is conducted with written notice and without amending this Contract.

4. **Electronic Data Entry Program.** Provider shall comply with the provisions of **Exhiblt B** attached hereto and incorporated herein by reference as such Exhibit may be modified by the Board with written notice. To satisfy the Recordkeeping requirements of this Contract, Provider agrees to provide and maintain, at its own cost and expense, a computer, a modem, a printer, and an analog line, all of which are required by the Office of Specialized Services to support the receipt and transmission of this data.

5. After any Student is absent from the Program for five (5) consecutive school days, and such absence does not qualify as an "excused" absence under Board guidelines, the Board and Provider shall determine immediately whether or not to convene an IEP meeting to review the Student's placement and possible termination from the Program. It is understood and agreed that the Board shall have final decision-making authority with respect to this matter and Provider shall not be reimbursed for terminated Students. No Student who is terminated from the Program pursuant to this Section may be reinstated without the prior written consent of its SSaS Contact.

6. Provider agrees to maintain and furnish (and have their subcontractors, if any, maintain and furnish) all reports reasonably requested by the Board. Such reports shall include, but shall not be limited to: Student evaluations conducted by Provider (e.g., speech and language, physical therapy, occupational therapy, psychological, social work and counseling evaluations), IEP reports, Related Services Progress Notes, graduation and post graduation information, all performance and standardized test data, monthly summary attendance and enrollment reports, school reports, and all other Student reports.

7. **School Improvement Plan**. On or before August 15th of each academic year that this Contract is in effect, Provider shall submit to the Board's Director of Specialized Schools a "**School Improvement Plan**" that evaluates the school's performance during that academic year and presents goals for the next academic year. The Board shall prescribe the form of such School Improvement Plan. **It is understood and agreed that Provider's non-compliance with this Section shall constitute a Material Breach of this Contract, subject to the provisions of Section XIII (Termination) herein, and the Board also shall have the right to withhold payments due under this Contract until Provider remedies such non-compliance to the Board's reasonable satisfaction.**

8. **Emergency Evacuation Plan.** Upon executing this Contract, and at least thirty (30) days prior to the beginning of each new academic year, Provider **must** submit to the Director of Specialized Schools a copy of its plans for evacuating its building(s) and grounds that are used for the Program(s) (the ("**Schools**" or "**Facilities**") and relocating Students to another location or Program in the event that operations at the Facilities must be temporarily suspended or terminated for any reason. **Attachment 5** is the template that Provider must use for its Emergency Evacuation Plan. The Board shall have the

right to modify this template from time to time. It is understood and agreed that the Board may refuse to execute or renew this Contract until Provider's annual "Emergency Evacuation Plan" has been approved by the Board.

F. **PROGRESS REPORTS AND PROGRESS NOTES.**

1. **Academic and IEP Progress Reports.** Each quarter, and more frequently if requested, Provider shall provide to its SSaS Contact written Progress Reports on the academic performance and IEP achievements for each Student. At least twice each year, Provider shall hold parent-teacher conferences to discuss each Student's progress.

2. **Related Services Progress Notes.** Professional Staff providing Related Services to Students hereunder shall maintain current Progress Notes for all such Related Services and shall assure that these Progress Notes are placed in each Student's file at the Facility prior to the last day of the month during which such Related Services were provided. Progress Notes must be signed and dated by the person who actually provided the Related Services and must be in a format acceptable to the Board. Upon request, the Director of Specialized Schools shall provide sample Progress Notes to be used as a model. Provider shall make these Progress Notes available for inspection by its SSaS Contact and other authorized Board staff at any time.

3. Provider shall bring these Progress Reports and Progress notes to each Student's IEP conference

G. **REPORTING SERIOUS INCIDENTS; INVESTIGATIONS AND AUDITS.**

1. Provider shall use the Serious Incident Reporting Form attached hereto as **Exhibit D**, as such form may be revised from time to time by SSaS, to report all serious incidents regarding any Student. As directed on the form, Provider must fax a copy of the completed form (2-pages) to its SSaS Contact within twenty-four (24) hours of the Serious Incident.

2. Provider shall cooperate fully with any Board audit or investigation of Provider's Program (including its buildings and grounds), shall provide full access to its facilities, Staff (including administrators) and Students, and all records regarding the Program and the Students (excluding mental health records); and shall provide all documentation requested by the Board. Such documentation shall include, but shall not be limited to a reporting package that the Board shall define within the Term. Notwithstanding the foregoing, whenever investigations or audits are not related to health or safety issues, the Board shall provide at least five (5) calendar days advance notice to the Provider prior to such investigation or audit. It is understood and agreed that Provider's non-compliance with this provision shall constitute a **Material Breach** of this Contract, subject to the provisions of **Section XIII** herein.

3. Provider shall cooperate with the Board in investigating any and all allegations of suspected child abuse or neglect that are reportable pursuant to the **Abused and Neglected Child Reporting Act**. This cooperation shall include providing unrestricted access to Provider's Staff. Within twenty-four (24) hours of becoming aware of any suspected case of child abuse or neglect, Provider must notify the Board and DCFS of the suspected case of child abuse or neglect. (With respect to out-of-state Programs, Provider shall not notify DCFS, but shall notify the Board and the office designated by that State to receive such reports.) If any of Provider's Staff are accused of child abuse or neglect and either the alleged victim has sustained injury or if the Board requests, Provider shall immediately reassign the alleged perpetrator or restructure his/her position so that (s)he has **no** unsupervised contact with the child. In any case where an allegation of child abuse or neglect is sustained by the Board, the Provider shall immediately comply with any requests by the Board to remove such person(s) from having contact with any Board-funded Students. It is understood and agreed that Provider's non-compliance with this provision shall constitute a **Material Breach** of this Contract and, at the Board's discretion, may result in termination of this Contract pursuant to the provisions of **Section XIII** and/or the Board's withholding payment of funds.

4. **Inspector General.** In addition to the foregoing, Provider hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to

diem rates paid to Provider. This assistance may include, but not be limited to the electronic input of data and training its Professional Staff on using such data-entry system, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Provider shall comply and shall assure that its Professional Staff complies with the Board's policies and procedures regarding the provisioning of Services and the related record-keeping, as such policies and procedures may be instituted by the Board or its agents and revised from time to time.

3. Provider shall identify at least one (1) person who shall be designated the Board's contact (the "**Contact**") under this **Subsection III (J)**. The Contact shall (i) be trained in the record-keeping and reporting process; (ii) shall train all of Provider's Professional Staff who are involved in providing Related Services to Students; and (iii) shall be responsible for reviewing and correcting all Related Service logs, reports and Medicaid submissions. **No later than five (5) business days following the end of the reporting period,** the Contact shall provide completed Medicaid submission forms (paper and/or electronic) to the Board's Office of Specialized Services. [See address in **Section III (H)** above.]

K. **CHANGES TO RELATED SERVICES.** Provider shall not increase, decrease, initiate, discontinue or change any Related Services required by the IEP (e.g., speech therapy, physical therapy, occupational therapy, counseling, social work, etc.) in method or amount unless authorized by an IEP meeting convened in accordance with the Board's stated policies applicable to all students with disabilities. **If Provider elects to provide Related Services to a Student that are not required under that Student's IEP, it is understood and agreed that such additional Related Services shall be provided by Provider without additional cost to the Board.**

L. **INSTRUCTION DURING PERIODS OF EXTENDED EXCUSED ABSENCE.** When a Student Absence is disability-related or otherwise qualifies as an "excused absence" under Board guidelines, either Provider or the Board shall provide homebound instruction for the Student. It is understood and agreed that the Board shall have absolute discretion in determining who shall provide such instruction and if the providing party is not Provider, the Board shall not pay Provider for the Student's spot during this period of homebound instruction. Notwithstanding the foregoing, the Board reserves the right, on a case-by-case basis to continue paying Provider for the Student's spot for a period of time to be determined by the Board. It is understood and agreed that Provider shall hold the Student's spot open for the period of time that the Board is continuing to make such payments. (For the purposes of this Section, "homebound" shall mean any non-Facility location.)

M. **HIPAA OBLIGATIONS.** At all times Provider agrees to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "**CFR**"). In the event of conflicting terms or conditions, this **Section III (M)** shall supersede the other provisions of this Contract.

1. **Definitions.** Capitalized terms not otherwise defined in the Contract shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.

2. **Use and Disclosure of Protected Health Information.** Provider shall use and/or disclose Protected Health Information ("**PHI**") only to the extent necessary to satisfy Provider's obligations under the Contract.

3. **Prohibition on Unauthorized Use or Disclosure of PHI.** Provider shall not use or disclose any PHI received from or on behalf of the Board, except as permitted or required by the Contract, as required by law or as otherwise authorized in writing by the Board. Provider shall comply with: (a) Title 45, Part 164 of the CFR; (b) State laws, rules and regulations applicable to PHI not preempted pursuant to Title 45, Part 160, Subpart B of the CFR; and (c) the Board's health information privacy and security policies and procedures.

4. **Provider's Operations.** Provider may use PHI it creates or receives for or from the Board only to the extent necessary to carry out Provider's legal responsibilities. Provider may disclose such PHI as necessary for Provider's legal responsibilities only if:

i) The disclosure is required by law; or

ii) Provider obtains reasonable assurance, evidenced by written contract, from any person or organization to which Provider shall disclose such PHI that such person or organization shall:

- Hold such PHI in confidence and use or further disclose it only for the purpose for which Provider disclosed it to the person or organization or as required by law; and

- Notify Provider (who shall in turn promptly notify the Board) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

5. **PHI Safeguards**. Provider shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI received from or on behalf of the Board, or developed by Provider (including its staff, Key Employees and subcontractors) for the Board.

6. **Electronic Health Information Security and Integrity.** Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d-2(d) of the United States Code and Title 45, Part 142 of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted Health Information received from or on behalf of the Board pertaining to an individual. Provider shall document and keep these security measures current.

7. **Protection of Exchanged Information in Electronic Transactions.** If Provider conducts any Standard Transaction for or on behalf of the Board, Provider shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR. Provider shall not enter into or permit its subcontractors or agents to enter into any Trading Partner Contract in connection with the conduct of Standard Transactions for or on behalf of the Board that: (a) changes the definition, Health Information condition or use of a Health Information element or segment in a Standard; (b) adds any Health Information elements or segments to the maximum defined Health Information set; (c) uses any code or Health Information elements that are either marked "not used" in the Standard's Implementation Specification or are not in the Standard's Implementation Specification(s); or (d) changes the meaning or intent of the Standard's Implementation Specification(s).

8. **Access to PHI.** In addition to the Audit and Document retention provisions found in Section 7 herein above, Provider shall provide access, at the request of the Board, to PHI in a Designated Record Set, to the Board or, as directed by the Board, to an individual to meet the requirements under Title 45, Part 164, Subpart E, Section 164.524 of the CFR and applicable state law. Provider shall provide access in the time and manner set forth in the Board's health information privacy and security policies and procedures.

9. **Amending PHI.** Provider shall make any amendment(s) to PHI in a Designated Record Set that the Board directs or agrees to pursuant to Title 45, Part 164, Subpart E, Section 164.526 of the CFR at the request of the Board or an Individual, and in the time and manner set forth in the Board's health information privacy and security policies and procedures.

10. **Accounting of Disclosures of PHI.**

    i) **Provider shall document such disclosures of PHI and information related to such disclosures as would be required for the Board to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.**

    ii) Provider agrees to provide the Board or an individual, in the time and manner set forth in the Board's health information privacy and security policies and procedures, information collected in accordance with Section 12(a) above, to permit the Board to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.

Docket No. 05-92-1009.) The Board reserves the right, pursuant to all applicable statutes and regulations and the Student's IEP, to review the appropriateness of any Student's placement.

V. STAFF CERTIFICATION AND STANDARDS OF PERFORMANCE

A. Provider agrees that its Staff shall be qualified to perform their respective duties. In addition, Provider shall assure that all members of its Professional Staff hold and maintain throughout the Term valid certificates from the State where the Program is located that authorize such persons to provide the subject services to the Students who they service. Throughout the Term, and any extension thereof, Provider shall maintain and utilize sufficient Staff to assure the effective and efficient operation of the Program. Provider shall cause its Staff to devote such time, attention, skill, knowledge and professional ability as necessary to effectively and efficiently fulfill Provider's obligations or otherwise perform under this Contract. **Provider shall use reasonable efforts to provide adequate bilingual Staff to meet the needs of the Students and their parents/guardians.**

B. Subject to the provisions of Section 10-21.9 of the Illinois School Code as amended from time to time, Provider shall, at its own cost and expense, conduct Criminal Background Checks for all Staff who have direct daily contact with CPS Students; and Fingerprint-based Criminal History Records Checks for all incoming applicants for such positions from August 12, 2004 forward. Within thirty (30) calendar days of executing this Contract, Provider shall submit to the Director of Specialized Schools a signed Criminal Backgrounds Check Affidavit ("**Affidavit**") for each Facility where Students are currently place, attesting that each of the above-described Staff has been investigated with satisfactory results. Provider shall promptly submit a supplemental Affidavit each time it adds a new Staff member who shall come into direct daily contact with one or more Students and shall submit a supplemental Affidavit each time a Student is placed in a Facility for which Provider has not already provided a current Affidavit. The Affidavit Form is attached to this Contract as Attachment 1 and should be completed for each School where CPS Students are placed.

C. The Board has retained Provider because of Provider's expertise and that of its Professional Staff. **Within fourteen (14) calendar days** of executing this Contract, Provider shall give its SSaS Contact, a listing of all members of Provider's Professional Staff, including their names, titles and certifications, and shall give its SSaS Contact copies of these persons' current certificates and licenses. **It is understood and agreed that Provider shall send the Board's Director of Specialized Schools written notification of any changes to its Professional Staff within five (5) business days of making any such changes and this notification shall include the names of any persons who left and the names and credentials of any persons hired; and within such time period, Provider also shall enter these changes onto the CPS KAMP System.**

D. Provider agrees to remove any Staff from performing Services upon written direction from the Board and shall bear any cost associated with removal of such Staff (including any liability therefore) if such removal is for cause.

E. **Material Breach.** It is understood and agreed that Provider's non-compliance with this Section shall constitute a **Material Breach** of this Contract, subject to the provisions of **Section XIII** herein below; and the Board also shall have the right to withhold payments due hereunder until Provider remedies such non-compliance to the Board's reasonable satisfaction.

VI. COMPLIANCE WITH LAWS, BOARD POLICIES AND RULES

A. Except as set forth in **Section VI (B)** below, Provider agrees to comply with all Board rules, policies and procedures (including but not limited to its **Uniform Discipline Code**, as such Code may be revised by the Board from time to time, and the prohibition against corporal punishment) and all applicable federal, state and local laws and regulations, as such laws, rules, policies and procedures may be amended from time to time.

B. Provider shall submit a copy of its behavior intervention policies and procedures to the Board's Office of Specialized Services and shall adhere to and comply with such policies and procedures unless the Board has requested modifications thereto. In such event, Provider shall modify its behavior intervention policies and procedures as the Board may request, to the extent that such requests do not violate Federal, State or local

laws. Notwithstanding the foregoing, it is understood and agreed that Provider shall not commence any expulsions or terminations of placement without convening an IEP meeting with the Case Manger and the Student's Parent(s)/Guardian(s) and without providing thirty (30) calendar days notice in accordance with ISBE 19-83.

C. Provider warrants that it is, and shall continue to be, in compliance with the regulations of the Illinois State Board of Education throughout the Term and any extension thereof. Moreover, Provider warrants that it shall follow all federal, state and Chicago Public School procedures to identify, evaluate and serve Students with disabilities and ensure compliance with the **Individuals with Disabilities Education Act** ("**IDEA**") and that it is (and shall continue to be) in compliance with **The Illinois School Code** (105 ILCS *et sec.*), as such School Code may be amended by the Illinois Legislature from time to time.

D. **Material Breach.** It is understood and agreed that Provider's non-compliance with this Section shall constitute a **Material Breach** of this Contract, subject to the provisions of **Section XIII** herein below; and the Board also shall have the right to withhold payments due hereunder until Provider remedies such non-compliance to the Board's reasonable satisfaction.

VII. INSURANCE REQUIREMENTS

A. Provider shall not begin providing Services under this Contract until it has satisfied all insurance requirements provided hereunder. Provider shall keep all such insurance in force and effect throughout the Term and any extension hereof.

B. Provider, at its own expense, shall procure and maintain insurance covering all operations and Services under this Contract, performed by Provider or its subcontractors. All insurers shall be licensed by the State of Illinois and rated A:VII or better by A.M. Best or comparable rating service or be an authorized Risk Retention Group acceptable to the Board. Upon executing the Contract, Provider shall submit to the Board satisfactory evidence of insurance coverage by sending such evidence to the Risk Management Coordinator.

Minimum insurance requirements include:

(1) **Workers' Compensation and Employers' Liability Insurance** affording compensation benefits for all employees as required by law and employers' liability insurance with limits of $500,000 for accident or disease.

(2) **Commercial General Liability Insurance** with a combined single limit of $1,000,000 per occurrence for personal injury and property damage liability inclusive of independent contractors, contractual liability for this insured Contract and products/completed operations coverage.

(3) **Commercial Automobile Liability Insurance** with a combined single limit of $1,000,000 per accident for bodily injury and property damage liability arising from owned, non-owned and hired automobiles.

(4) **Professional Liability Insurance** covering acts, errors or omissions with limits of not less than One Million and 00/100 Dollars per claim ($1,000,000.00) and Ten Million and 00/100 Dollars in the aggregate. Coverage extensions shall include contractual liability. When policies are renewed or replaced, the policy retroactive data must coincide with, or precede, start of work on the Contract. A claims made policy which is not renewed or replaced must provide for an extended reporting period of not less than two (2) years.

Provider shall have its general and automobile liability insurance endorsed to Provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are listed as ADDITIONAL INSUREDS on a primary basis, without recourse or right of contribution.

C. Provider shall require its insurer(s) to submit insurance certificate(s) evidencing coverage maintaining by the Provider indicating that the Board, and its members, employees and agents and such other parties as may be designated by the Board are **additional insureds** on the general, automobile, and umbrella liability

insurance and providing **forty-five (45) days prior written notice** of material change, cancellation, or non-renewal be given to:

Office of Procurement and Contracts
Board of Education of the City of Chicago
125 S. Clark St., 10th Floor
Chicago, Illinois 60603
Attn: Jacqueline Daley, Contract Administrator

D. Any failure by the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Provider's obligation to obtain the required insurance. The Board reserves the right to obtain copies of insurance policies, certificates of insurance and insurance records by written request at any time from Provider, and reserves the right to modify, delete, alter or change insurance requirements at any time.

E. **Survival and Material Breach.** It is understood and agreed that the provisions of this Section shall survive the termination or expiration of this Contract. Moreover, it is further understood and agreed that Provider's non-compliance with any of its obligations and responsibilities under this Section shall constitute a Material Breach of this Contract, subject to the provisions of **Section XIII** (Termination) herein below; and the Board also shall have the right to withhold payments due under this Contract until Provider remedies any and all such non-compliance to the Board's reasonable satisfaction.

VIII. INDEMNIFICATION/NON-LIABILITY OF THE BOARD

A. Except as provided in **Subsection VIII (E)** below, Provider agrees to appear, defend, indemnify and bold harmless the Board, its members, trustees, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, expenses, of every kind, nature and character, including costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character, in connection with or arising out of the acts or omissions of Provider, its officials, agents, and/or Staff under this Contract. This includes, but is not limited to the unauthorized use of any trade secrets, U.S. patent or copyright infringement.

B. The Board shall have the right, at its option and at its own expense, to participate in the defense of any suit, without relieving Provider of any of its obligations hereunder. The Board retains final approval on any and all settlements and/or legal strategies.

C. Provider expressly understands and agrees that the indemnity obligations set forth herein are separate from, and not limited by Provider's obligation to obtain insurance pursuant to this Contract.

D. Provider agrees that no Board member, trustee, employee, agent, officer or official shall be personally charged by Provider with any liability or expense, or be held personally liable to Provider under this Contract.

E. It is understood and agreed that **Subsection VIII (A)** shall not apply where the acts or omissions of Provider that are the subject of the action were undertaken by Provider at the express direction of the Board and that no ancillary acts or omissions of Provider are at issue.

F. **Survival and Material Breach.** It is understood and agreed that the provisions of this Section shall survive the termination or expiration of this Contract. Moreover, it is further understood and agreed that Provider's non-compliance with any of its obligations and responsibilities under this Section shall constitute a Material Breach of this Contract, subject to the provisions of **Section XIII** (Termination) herein below; and the Board also shall have the right to withhold payments due under this Contract until Provider remedies any and all such non-compliance to the Board's reasonable satisfaction.

IX. HEALTH AND SAFETY

A. Provider represents and warrants that the Facility is in compliance with all applicable governmental health and safety laws, ordinances, codes, rules and regulations, and shall remain in compliance with all such laws, ordinances, codes, rules and regulations as they may be modified from time to time by the promulgating party, throughout the Term and any renewal thereof. Provider further represents and warrants that no conditions exist at the Facility that would give rise to a violation of any such policy, law, ordinance, code, rule or regulation.

B. As PART of the RFP process, Provider submitted the following documentation to the Board:

- Fire inspection documentation for each Facility
- Building inspection documentation for each Facility
- Location within specific Cluster of each Facility
- Evidence of compliance with all state and local building and zoning ordinances as they relate to each Facility
- Number of exits; number of bathroom facilities at each Facility
- Age of building and assessment of building condition for each Facility
- Building, zoning, and safety code violations filed against Provider's Facilities

Provider shall promptly deliver to the Board evidence of subsequent inspections, assessments and violations as they are received by Provider. Such evidence shall be sent to the Director of Specialized Schools as specified in Section III herein above or to such other address as the Board may designate.

C. If Provider learns of any condition that may result in a violation of any governmental health or safety law, ordinance, code, rule or regulation, as a result of such inspection, or otherwise, Provider shall promptly take such remedial action as is necessary to bring that Facility back into compliance.

D. **Material Breach.** It is understood and agreed that Provider's non-compliance with this Section shall constitute a **Material Breach** of this Contract, subject to the provisions of **Section XIII** (Termination) herein below; and the Board also shall have the right to withhold payments due hereunder until Provider remedies such non-compliance to the Board's reasonable satisfaction.

X. COMPENSATION AND PAYMENT

A. Compensation under this Contract shall be subject to the provisions of this **Section X** and is described in the **Payment Plan**, a copy of which is attached hereto and incorporated herein as **Exhibit C**.

B. Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in the subsequent fiscal year's budget. In the event the Board does not appropriate sufficient funds for performance under this Contract in the subsequent fiscal year, the Board shall notify Provider and this Contract shall terminate on the last day of the fiscal period for which the funds were appropriated. In no event shall the Board be liable to Provider for any amount in excess of the current appropriated amount.

C. Compensation shall be based on actual Services performed and the Board shall not be obligated to pay for any Services not in compliance with this Contract. In the event of early termination, the Board shall only be obligated to pay the fees incurred up to the effective date of termination. In no event shall the Board be liable for any costs incurred or Services performed after the effective date of termination as provided herein. Provider shall submit invoices referencing this Contract as specified in the Payment Plan and shall submit such supporting documentation as the Board may request from time to time. The Board shall process payments in its normal course of business.

D. Federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584; and State of Illinois Sales Tax does not apply by virtue of Exemption Identification No. E9997-7109-04 to Chicago School District #299, Board of Education of Chicago, IL. The amounts to be paid to Provider hereunder are inclusive of all other taxes that may be levied or based upon this Contract, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the products and Services to be provided under this Contract, but excluding taxes levied or imposed upon the income or

business privileges of Provider. Provider shall be responsible for any taxes levied or imposed upon the income or business privileges of Provider.

E. If Provider disputes any payment, Provider must file a written appeal with Chief Specialized Services Officer within sixty (60) days from the date it received such payment. This appeal must state the basis of the dispute and include any available written documentation that supports Provider's claim. Thereafter, such payment shall be deemed final and may not be contested by Provider.

XI. CONFIDENTIALITY

A. In the performance of Services, Provider may have access to certain information not generally known to others ("**Confidential Information**").

B. Provider agrees not to use or disclose to any third party, except in the performance of Services, any Confidential Information or any records, reports or documents prepared or generated as a result of this Contract without the prior written consent of the Board. This provision shall survive the expiration or termination of the Contract.

C. Provider shall not issue publicity news releases or grant press interviews except as may be required by law during or after the performance of the Services, disseminate any information regarding Services without the prior written consent of the Board. In the event Provider is presented with a request for documents by any administrative Provider or with a subpoena duces tecum regarding any records, data, other documents, or deliverables which may be in Provider's possession by reason of this Contract and/or the Services being performed, Provider shall immediately give notice to the Board and its attorney with the understanding that the Board shall have the opportunity to contest such process by any means available to it before such records, data, other documents, or deliverables are submitted to a court or other documents are submitted to a court or other third party; provided, however, that Provider shall not be obligated to withhold such delivery beyond the time ordered by the court or administrative Provider, unless the subpoena or request is quashed or the time to produce is otherwise extended.

D. Provider agrees to cause its Staff including subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Provider under this Contract.

E. All records, reports, documents and other materials prepared by Provider in performing Services as well as all records, reports, documents and other materials containing Confidential Information, prepared or generated as a result of this Contract shall at all times be and remain the property of the Board.

1. All of the above items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of the Contract.

2. In the event any of the above items are lost or damaged while in Provider's possession, such items shall be restored or replaced at Provider's expense.

F. **Survival and Material Breach.** It is understood and agreed that the provisions of this Section shall survive the termination or expiration of this Contract. Moreover, it is further understood and agreed that Provider's non-compliance with any of its obligations and responsibilities under this Section shall constitute a Material Breach of this Contract, subject to the provisions of **Section XIII** (Termination) herein below; and the Board also shall have the right to withhold payments due under this Contract until Provider remedies any and all such non-compliance to the Board's reasonable satisfaction.

XII. NON-DISCRIMINATION

A. It shall be an unlawful employment practice for Provider or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, military discharge status, or national origin.

B. Provider shall comply with the Civil Rights Act of 1964 as amended, 42 U.S.C.A. Sec. 2000, *et seq.*; *The Age Discrimination in Employment Act*, 29 U.S.C.A. Sec. 621, *et. seq.*; Section 504 of the *Rehabilitation Act*, 20 U.S.C.A. Sec. 701, *et seq.*; as amended; The *Equal Opportunities for Individuals with Disabilities Act*, 42 U.S.C.A. Sec. 12101, *et. seq.*; and the *Illinois Human Rights Act*, 775 ILCS 5/1-10, as amended, and the *Chicago Human Rights Ordinance*, MCC ch.2-160.

C. To demonstrate compliance with this **Section XII**, Provider and its subcontractors, if any, shall furnish such reports and information as the Board may require from time to time.

XIII. TERMINATION

A. If at any time during the Term and any extension thereof, the Board, in its sole discretion, determines that it no longer requires or wishes Provider to provide the Services, the Board may terminate the Contract by giving Provider thirty (30) calendar days written notice thereof.

B. Notwithstanding the foregoing, and subject to the other provisions of this Contract, if Provider defaults under this Contract and such default is not cured within ten (10) calendar days of the Board's giving written notice thereof, the Board shall have the right to take any and all of the following actions:

1. Immediately terminate the Contract, provided however, that if said default is due to the insolvency or bankruptcy of Provider, or if Provider has committed a **"MATERIAL BREACH"** (as designated throughout the Contract), the Board may immediately terminate the Contract upon written notice to Provider and without regard to the ten (10) day cure period;

2. Transfer Students enrolled in the Program to another school and Provider shall be responsible for any additional expense associated with such transfer;

3. Deem Provider non-responsible for future contract awards;

4. Withhold the payment of funds due for Services rendered; and

5. Pursue any and all other remedies available to the Board at law or equity.

C. Events of default include, but are not limited to the following:

1. Any material misrepresentation by Provider in the inducement of this Contract, in the operation of the Program, or in the performance of the Services;

2. Breach of any undertaking, representation or warranty made by Provider in this Contract or any renewal thereof;

3. Failure of Provider to perform in accordance with or comply with the terms and conditions of this Contract;

4. Assignment by Provider for the benefit of creditors or consent by Provider to the appointment of a trustee or receiver, or the filing by or against Provider of any petition or proceeding under any bankruptcy, insolvency or similar law; and

5. Provider's failure to maintain its approvals from the ISBE and the IPCRB throughout the duration of the Term and any extension thereof.

XIV. ON-SITE INSPECTIONS AND CORRECTIVE ACTION

A. The Board has the right, with or without notice, to conduct site inspections of the Facilities to assure that Provider is fulfilling its obligations under the Contract. Any such site inspections shall occur during normal business hours and they may include, but not be limited to reviewing the physical site, reviewing all records

and files pertaining to the Students, observing and interacting with the Students, and interviewing Students and Staff (including the administrators).

B. If during, or as a result of such inspections, the Board finds any deficiency that compromises the physical, emotional or education well-being of its students, it shall notify Provider of such deficiency and Provider must, within 48 hours following notification, provide the Board with a written corrective action plan to address Provider's failure to conform its obligations under the Contract ("**Corrective Action Plan**"). The Corrective Action Plan shall be subject to Board approval. If Provider and the Board cannot agree upon a Corrective Action Plan or if the Provider does not take remedial measures in accordance with the Corrective Action Plan, the Board shall have the right to claim that Provider has committed a **Material Breach** and the Board may exercise its rights under **Section XIII** above.

C. Provider's right to perform (and continue performing) Services, and its right to receive (and continue receiving) compensation therefore, shall be subject to the Board's approving each Program and Facility after all such inspections and site visits.

D. **Material Breach.** It is understood and agreed that Provider's non-compliance with any of its obligations and responsibilities under this Section shall constitute a Material Breach of this Contract, subject to the provisions of **Section XIII** (Termination) herein above; and the Board also shall have the right to withhold payments due under this Contract until Provider remedies any and all such non-compliance to the Board's reasonable satisfaction.

XV. REPRESENTATIONS AND WARRANTIES OF PROVIDER. Provider represents and warrants that the following shall be true and correct as of the effective date of this Contract and shall continue to be true and correct throughout the Term and any extension thereof: It is understood and agreed that Provider's non-compliance with this **Section XV** shall constitute a **Material Breach** of this Contract, subject to the provisions of **Section XIII** herein above

A. Provider is and shall remain compliant with the Laws, Board Policies, and Rules as set forth in **Section III (L)** (HIPAA Obligations) and in Section **VI** (Compliance with Laws, Board Policies and Rules) above and shall maintain its approvals from the ISBE and the IPCRB for the purpose of providing its Program(s).

B. No payment, gratuity or offer of employment was made to Provider in relation to this Contract or as an inducement for awarding this Contract. Provider is and shall remain compliant with all applicable anti-kickback laws and regulations.

C. No officer, agent or employee of the Board is or shall be employed by Provider or has or shall have a financial interest (directly or indirect) in this Contract or the compensation to be paid hereunder, except as may be permitted in writing by the Board's Ethics Policy No. 95-0927-RU3 adopted September 27, 1995, as such Policy may be amended from time to time and which is hereby incorporated by reference and made a part hereof.

D. Provider has taken all action(s) necessary for the approval and execution of this Contract and execution by the person signing on behalf of Provider is authorized by the Provider and has been made with complete and full authority to commit Provider to all terms and conditions of this Contract which shall constitute valid, binding obligations of Provider.

E. Provider has not defaulted under, or been alleged by the Board to have defaulted under, any agreement with the Board during the five (5) year period immediately preceding the Effective Date.

F. The Provider's Disclosure Form previously completed and submitted by Provider is hereby incorporated by reference and made a part hereof. Provider shall promptly notify the Board of any material change in information set forth therein, including but not limited to change in ownership or control of Provider. It is understood and agreed that any such change shall be subject to Board approval.

G. **Provider represents and warrants that it is not making and shall not make any claim through Medicaid for any IEP services (including, but not limited to the Related Services) that it is providing or that it may provide to Students under this Contract.**

XVI. INDEPENDENT CONTRACTOR. It is understood and agreed that the relationship of Provider to the Board is and shall continue to be, that of an independent contractor and neither Provider nor any of its Staff shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any state or federal withholding or other taxes or for FICA or state unemployment insurance for Provider, its Staff, or its subcontractors, and the payment of any such taxes incurred or due by Provider shall be the sole responsibility of Provider. Provider agrees that neither Provider nor its Staff or subcontractors shall represent themselves as employees or agents of the Board. Provider shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to a social security number and/or a federal employer identification number.

XVII. MISCELLANEOUS

A. **ASSIGNMENT.** Except as may be set forth herein, Provider shall not delegate any of its duties. This Contract shall be binding on the parties and their respective successors and assigns, provided however, that Provider may not assign this Contract without the prior written consent of the Board. Such consent shall not be unreasonably withheld.

B. **CHOICE OF LAW.** The Contract shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of law or choice of law principles.

C. **ENTIRE CONTRACT.** This Contract, including all exhibits and referenced documents, constitutes the entire agreement between the parties with respect to the matters contained herein. Any prior agreements or representations, either written or oral, relating to the subject matter of this Contract that are not expressly set forth in this Contract, are of no force or effect.

D. **MODIFICATION.** Except with respect to **Exhibits B and D**, and the Attachments, all of which the Board may unilaterally modify with written notice, no modification or amendment to this Contract shall be effective unless such modification or amendment is in writing and signed by both parties hereto.

E. **WAIVER.** No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and each party reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

F. **NOTICES.** All notices, demands or consents required or permitted hereunder shall be in writing and shall be delivered by overnight delivery, facsimile (with confirmation copy by mail), or mailed to the respective parties hereto at the addresses first set forth above or at such other address as shall have been given to the other party hereto in writing for the purposes of this clause. Such notices and other communications shall be deemed effective upon the earliest to occur of (i) actual delivery, (ii) five days after mailing, addressed and postage prepaid, return receipt requested, delivery as aforesaid (seven (7) days for intercontinental deliveries), (iii) one (1) business day after transmission by overnight delivery (two (2) business days for intercontinental deliveries), or (iv) the day of receipt where receipt has been confirmed.

If to the Board:

Originals:

Chicago Public Schools
Office of Specialized Services
125 South Clark Street – 8th Floor
Chicago, IL 60603

Attn: Chief Specialized Services Officer
Fax: 773/553-1801

Copies of Legal Notices:

Ruth M. Moscovitch, General Counsel
The Board of Education of the City of Chicago
P.O. Box 2976
Chicago, IL 60690

Fax: 773/553-1701

If to Provider: New Direction Outreach
6857 South State Street
Chicago, IL 60637
Attn: Stephen LaFlora Fax: 773/224-8201

It is understood and agreed that Provider is responsible (and not the Board) for forwarding copies of any such notices to its Facility contact if that Facility is directly affected by such Notice.

G. **CONFLICT OF INTEREST.** This Contract is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3 which restricts the employment of, or the letting of contracts to, former Board Members during the one-year period following expiration or other termination of their terms of office.

H. **INDEBTEDNESS POLICY.** Provider agrees to comply with the Board's Indebtedness Policy adopted July 26, 1995 (95-0726-EX3) as such policy may be amended from time to time, which is hereby incorporated by reference as if fully set forth herein.

I. **CONTINGENT LIABILITY.** Since the School Code of Illinois prohibits the incurring of any liability unless an appropriation has previously been made, any expenditures beyond the current fiscal year shall be deemed to be contingent liabilities only, subject to appropriation in the subsequent fiscal years' budgets.

XVIII. SOFTWARE LICENSE. The provisions of this Section shall only apply if the Board gives Provider software to use for tracking student attendance and for tracking the provisioning of Services mandated by the Students' IEPS (the "**Software**").

A. The Board grants to Provider a nonexclusive and nontransferable license to use the Software in object code form, and the supporting documentation, only in connection with the reporting requirements of this Contract.

B. Provider may make one (1) archival copy of the Software, provided that Provider affixes to such copy all copyright, confidentiality and proprietary notices that appear on the original. Provider may not sublicense, lease, rent or lend to any person its rights to use the Software.

C. The Board and its suppliers shall retain all title to, and, except as expressly licensed herein, all rights to the Software, all copies thereof, all related documentation and materials, and all of the Board's (or their suppliers', if applicable) service marks, trademarks, trade names or any other designations.

Any invoices purporting to cover such items do not convey title to, or patent rights, copyrights or any other proprietary interest in, such items to Provider.

D. Provider agrees, except as otherwise expressly authorized herein, not to: (a) copy, in whole or in part, any Software or documentation; (b) reverse compile or engineer the Software; or (c) remove any identification or notices of any proprietary or copyright restrictions from the Software or any equipment that the Board may loan to Provider.

E. Provider agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of the Board. Provider agrees not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of the Board. Provider agrees to implement reasonable security measures to protect such trade secrets and copyrighted material.

F. This License is effective until terminated. Provider may terminate this License at any time by destroying all copies of Software including any documentation and promptly returning the loaned equipment, if any, to the Board. This License shall terminate immediately upon written notice from the Board if Provider fails to comply with any provision of this License. Upon termination, Provider must promptly return any loaned equipment to the Board and destroy all copies of Software not residing on such loaned equipment.

XIX. BOARD APPROVAL. The execution of this Contract shall be subject to approval by the members of the Chicago Board of Education.

IN WITNESS WHEREOF, the Board and Provider have caused this Private Specialized Schools Contract to be executed by their duly authorized representatives as of the date first set forth above.

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO

By: Michael W. Scott
Michael W. Scott, President

Attest: Estela G. Beltran
Estela G. Beltran, Secretary

Date: 11/4/04

Board Report # 04-0728-ED7-40

Approved as to legal form: KH

Ruth Moscovitch
Ruth M. Moscovitch, General Counsel
The Chicago Board of Education

NEW DIRECTION OUTREACH
FEIN No. 36-3991981

Signature: Stephen LaFlora

Print Name: Stephen LaFlora

Print Title: Executive Director

Date: 10 - 27 - 04

SCOPE OF SERVICES

NEW DIRECTION OUTREACH

Board Report # 04-0728-ED7-40

Term: August 1, 2004 until July 31, 2006

This Scope of Services is subject to the terms and conditions of that Private Specialized Schools Contract dated August 1, 2004 (the "**Contract**") by and between The Board of Education of the City of Chicago (the "**Board**"), acting on behalf of the Chicago Public Schools ("**CPS**"), and New Direction Outreach ("**Provider**"). Defined terms used in this Scope of Services shall have the same meanings as ascribed to such terms in the Contract.

In addition to providing all services and deliverables (collectively, "**Services**") specified elsewhere in the Contract (including the Exhibits and Attachments), Provider agrees as follows:

I. EDUCATIONAL ENVIRONMENT

A. Provider shall operate educationally and age appropriate instructional programs which utilize adequate and appropriate equipment and supplies, including, but not limited to behavior management tools and computerized instructional equipment.

B. Provider shall administer all Board-mandated and State-mandated achievement tests, or alternative assessment tools as determined through the IEP process and consistent with the Board's guidelines. The Board shall provide test booklets and scoring. In addition, the Board shall provide test administration training to Provider's designated Staff at time(s) determined by the Board. Such training shall be provided without charge, except that Provider shall be responsible for providing the necessary Staff release time and for paying Staff salaries and their travel and incidental expenses, if any.

C. Provider shall insure that each Facility shall have areas that are conducive to learning and that are separate from the Students' lunchroom and activity rooms. Provider shall insure that instructional activities (including, but not limited to academics and speech and language sessions) occur in such areas.

D. Provider shall insure that the ratio of certified Staff to Students and age groupings at each Facility shall conform to the standards of the ISBE or, with respect to out-of-state Programs, to the standard of the State where the Programs are located. (Refer to Settlement Contract between the Office of Civil Rights and the Illinois State Board of Education, Docket No. 05-92-1009.)

E. Provider shall utilize the most current CPS mandated curriculum as the basis for instruction in its educational programs.

F. Provider shall utilize technology and multi-media techniques to engage students in project learning.

G. Provider shall have sufficient Staff available at each Facility to effectively manage, support and educate Students in a manner that is consistent with their individual needs.

H. Provider shall include in each Program suitable programming to prepare Students for their successful and timely return to their neighborhood public school. Each Program also shall include a special component dedicated to decreasing truancy and increasing the attendance of student having a history of truancy problems.

I. Provider shall include in each high school Program, a vocational component; and shall help the Students obtain jobs or apply to post-secondary programs. In addition, Provider shall administer an interest inventory to each Student and shall provide transition support services as needed.

II. INDIVIDUALIZED EDUCATION PROGRAMS (IEP):

A. Provider shall implement the existing IEPs for all Students. Provider acknowledges and agrees that it cannot unilaterally modify a Student's IEP without notify its SSaS Contact and going through a formal IEP process.

B. When no IEP exists, or when it is time to update an IEP, Provider shall notify the Case Manager and request an IEP Conference. Provider shall use the Board's IEP forms to develop, in collaboration with the Board, an IEP for each Student that shall comply with the requirements of the IDEA and shall provide free appropriate education in the least restrictive environment. Each Student's IEP shall be shaped according to that Student's needs, utilizing various teaching strategies.

C. All IEPs **must** include measurable academic and behavioral goals and benchmarks. Provider shall review each IEP quarterly and evaluate whether a Student's performance is 'on target'. If during such review, Provider determines that there is a significant disparity between a Student's performance and an anticipated IEP benchmark, Provider shall promptly notify its SSaS Contact to determine whether an IEP Meeting should be convened.

D. In addition to including measurable academic and behavioral benchmarks, each IEP **must** include the goal of successfully reintegrating the Student into the regular school environment and the methods to be used to achieve this goal. And, in the case of those Students 14 years of age or older, each IEP also **must** include the goal of successfully transitioning the Student into the workforce and obtaining an Illinois Office of Rehabilitation Services ("**ORS**") Certification, if applicable.

III. RELATED SERVICES:

A. Provider shall furnish Related Services to Students as required by each Student's IEP.

B. It is understood and agreed that the cost of any and all Related Services that Provider is required under a child's IEP to provide to such child, is included in the rates specified in the Payment Plan and the Board shall not pay Provider any additional sums for providing such Related Services.

C. Provider's failure to provide all such Related Services shall constitute a Material Breach under the Contract and in addition to its rights under **Sections III** (Provider Responsibilities) and **XIII** (Termination) of the Contract, the Board shall have the right to provide the missing Related Services at Provider's expense, and claim the cost of such Related Services as a setoff against any sums that the Board may owe or may subsequently owe Provider under the Contract or any other contract.

IV. STUDENT PROGRESS:

A. Students shall demonstrate academic achievement at the level(s) anticipated by such Students' IEPs, as documented through local, state, and/or alternate assessment tools.

B. Students shall demonstrate decreased manifestations of inappropriate behavior(s) and shall show gains in the frequency of appropriate behaviors at the levels anticipated in their IEPS and/or Functional Analysis and Behavior Plans.

V. EXTRA-CURRICULAR OFF-SITE ACTIVITIES:

A. No Student may participate in any extra-curricular off-site activity ("**Activity**") until his/her parent or guardian has signed and returned a Consent and Release of Liability Form that has been approved by the CPS Specialized Schools and Services Unit ("**SSaS**"). Attached are two forms to be used for this purpose. **Attachment 2-A** is the form that must be used for special Activities such as field trips and this form must describe the Activity in detail. **Attachment 2-B** is the form that must be used for recurring Activities that may occur throughout the school year such as intramural sports events. The process for conducting special Activities is as follows and must be strictly adhered to. Your failure to follow this process shall constitute a **Material Breach** under the Contract.

B. At least ten (10) business days prior to scheduling an Activity, Provider must submit a proposal for that Activity to its SSaS Contact. These proposals must fully describe the Activity, must detail the reason for the Activity, and must state the anticipated benefits to the Students.

C. Provider may schedule an Activity **only after obtaining** its SSaS Contact's written approval.

D. Provider may allow only those CPS students whose parents/guardians have signed the Consent and Release of Liability Form relating to an Activity to participate in such Activity.

E. Provider must fax the signed Forms to its SSaS Contact (773-534-7820) **at least one (1) business day prior to the scheduled Activity**.

VI. OTHER SERVICES

As requested by the Board from time to time, Provider shall do the following:

A. Work with the public schools to facilitate the timely reintegration of Students into their neighborhood schools.

B. Provide support services to students to facilitate their timely reintegration into their neighborhood schools.

C. Furnish transition services to Students fourteen years of age and older to facilitate their successful transition into the work force and into the community at large; and assist these Students in obtaining ORS certification, if necessary.

D. Establish and maintain links to community organizations to facilitate the successful transition of students fourteen years of age and older into the community at large, into the workplace, and into post-secondary programs.

E. **Transportation for Students Placed in Residential Facilities.** If Provider operates a Private Residential Facility outside of the Chicago metropolitan area that services Chicago Public School students, the Board will provide transportation **only** in accordance with the provisions of 23 Illinois Administrative Code 226, Section 226.950 and Provider must confirm with its SASS Case Manager that the Student's parent/guardian has been sent a copy of the Transportation Guidelines Letter, as such letter may be revised from time to time by SASS. A copy of this letter is attached to the Contract as **Attachment 3**.

VII. EVALUATION OF PROVIDER'S SERVICES

Provider shall be evaluated each year to determine the extent to which its performance of the above-described Services helps the Board achieve its goals. To this end, Provider may be required to provide additional information as requested by the Board from time to time.

The annual evaluation of Provider's performance shall include an assessment of how well Provider achieves the following:

Criteria	Descriptions	Expected Outcomes
Elementary Students Demonstrate Adequate Academic Progress	Administer Board selected tests (TBD) within 2 weeks of each Student's start date to obtain pre-test data. At the end of 2 semesters, administer the same tests to the Students to obtain post-test data.	Each Student shall demonstrate a minimum of 4-6 months growth in each academic area over a 9-month period.
High School Students Demonstrate Adequate Academic Progress	1. Administer Board selected tests (TBD) within 2 weeks of each Student's start date to obtain pre-test data. At the end of 2 semesters, administer the same tests to the Students to obtain post-test data. 2. Students' grades and the number of earned credits.	1. Each Student shall demonstrate a minimum of 4-6 months growth in each academic area over a 9-month period. 2. Each Student shall receive a minimum of 3 credits each semester.

Administrative Review	Evaluation shall focus on Provider's compliance with administrative criteria established by the Board from time to time. Important areas include, but are not be limited to: making timely submission of all Contract deliverables and updates; cooperation with Board and CPS staff; compliance with HSMP and KAMP reporting requirements; Student participation in testing; and percentage of Students successfully reintegrated into a public school setting.	• 100% compliance and accuracy is expected for all reporting requirements • All deliverables and updates must be accurate and must be submitted on time. as specified in the Contract. • The Board shall establish minimum mandatory performance criteria for all other areas.
Instructional Review	The Board shall determine what instructional elements shall be included in the Instructional Review.	Programs shall be evaluated based upon criteria established by the Board from time to time.
Vocational Component Review	The Board shall determine what vocational elements from Provider's Proposal shall be included in the Vocational Component Review.	Programs shall be evaluated based upon criteria established by the Board from time to time.
Qualified/Adequate Staff	Staff is properly certified and the staff/pupil ratio is within the desired range. Maximum Student-Teacher Ration is 10:1. Aide is mandated for 10 or more students and is recommended when class size exceeds 7.	All teachers shall hold LSBI or Type 10 certifications and all providers of Related Services are certified to provide the services that they provide.
Professional Development	Professional development activities and/or in-services must include: ☑ 2 Reading Sessions – to be pre-approved by Board ☑ 1 Behavior session (intervention, gang, violence prevention, medication, etc.) – to be pre-approved by Board ☑ 1 Content Area session– to be pre-approved by Board ☑ 1 Choice of school	4 professional development sessions completed in 1 school year

ELECTRONIC DATA ENTRY PROGRAM

NEW DIRECTION OUTREACH

Board Report No. 04-0825-PR38-40

I. BOARD RESPONSIBILITIES.

The Board shall provide the software that Provider needs to submit Student and Service data electronically to the KAMP System, and any updates to such software.

II. PROVIDER RESPONSIBILITIES.

A. Prior to September 1, 2004, Provider must have a computer with a modem, a printer and an analog line at each School site so that Provider can satisfy the data entry, transmission and reporting requirements of the Cluster Contract.

B. Provider shall designate one (1) or more members of its Staff to be trained by the Board on data entry and report-generation procedures. Provider shall be responsible for providing the necessary Staff release time for this training and for paying its Staff salaries and their travel and incidental expenses, if any. It is understood and agreed that the Board shall have no other liability whatsoever for any compensation or other benefits (e.g., travel/incidental expenses) payable to such individuals.

C. Provider shall designate one staff member to (1) enter attendance data into the computer and electronically transmit such data to the Board and generate reports; (2) train the Services providers on the proper means of entering data into the computer, electronically transmitting such data to the Board, and generating the required reports; (3) review all entered data, and reports for accuracy; and (4) submit all data and reports required by the Board.

D. DATA ENTRY.

(1) Provider shall, on a daily basis, enter all Student attendance information into the Board's Student Information System via the computer.

(2) Provider shall enter all Student-related Health Services Management Program (**HSMP**) Fee-For-Service data into the Board's Student Information System on the date such services are provided

E. Provider shall, at its own cost and expense, return the Software and all associated materials to the Board within ten (10) business days of the expiration or termination of the Contract, or upon the Board's request. Provider shall be responsible for packing all such materials correctly and shall bear risk of loss until the materials are delivered to the Board.

It is understood and agreed that the Board's failure to satisfy the requirement of this Exhibit B and the reporting requirements of the Contract shall constitute a Material Breach of the Contract. And in addition to its other remedies, the Board may withhold payments until this breach has been cured.

III. PAYMENT.

Payments to Provider shall be contingent upon the Board's review and acceptance of all Deliverables submitted by Provider pursuant to the terms of the Contract, including but not limited to attendance data, any supporting documentation, the HSMP service reports specified above, and any other Deliverables specified in the Contract. No payments shall be made until the Board has certified that Provider's Deliverables are accurate and complete. All payments shall be made in the Board's ordinary course of business.

PAYMENT PLAN # 2 – ATTENDANCE BASED

NEW DIRECTION OUTREACH

Board Report # 04-0728-ED7-40

APPROVED RATE: The "**Approved Rate**" is the *per diem* rate that the Illinois Purchased Care Review Board ("**IPCRB**") approves for each Private Specialized School ("**Facility**") operated by New Direction Outreach. If the IPCRB changes the Approved Rate for a Facility during the Term, the Board will apply such change as of the date the IPCRB states that this rate change takes effect, and the Board will adjust payments accordingly as specified in the Contract.

It is understood and agreed that the cost of any and all Related Services that Provider is required under a child's IEP to provide to such child, is included as a component of the Approved Rate and the Board will not pay Consultant any additional sums for providing such Related Services.

The Board agrees to compensate Provider on a monthly basis in an amount equal to the **Approved Rate** times the number of reported days of enrollment for each month with the total not to exceed the number of days allowed for Provider's Program by the Illinois State Board of Education ("**ISBE**"), with the following adjustments for non-delivery of an acceptable level of service:

A. For Students other than those identified in **Paragraph B** below, when the percentage of school days actually attended by enrolled Students in the aggregate at each Facility falls below 93% in any given month, the Board will reduce that month's payment to such Facility by 1/10 of 1% for each 1/10 of 1% that the aggregate attendance rate is below 93%.

B. Commencing on the twenty-first (21st) school day of consecutive absence of a health disabled Student, as defined in **Paragraph B (1)**, below, when the absence is related to the Student's medical condition, the Board will pay the per diem authorized only for days on which the Student is actually in attendance at the Facility, with the following qualifications:

(1) A health-disabled Student is any Student whose disability includes a health impairment that is documented in the Student's evaluation material and that Student is absent for a medical reason related to said impairment. This includes children who have been hospitalized or are otherwise out of school for psychiatric or emotional illness reasons;

(2) The twenty-day periods are non-cumulative, that is, the time period of twenty school days may start again once the Student returns to school;

(3) This limitation will not apply in cases where a Student is receiving home/hospital services from the Provider during the time of absence, provided, however, that (i) the Board's Case Manager has been provided notice of the Student's need for home/hospital services; (ii) Provider has followed the procedures established by the Office of Specialized Services for the provisioning of homebound/hospital services; which includes an IEP meeting to establish the need for services and identification of the services needed; <u>and</u> (iii) a determination by the Board's Case Manager of whether the services should be provided by the Board or the Provider.

(4) The Board reserves the right, pursuant to all applicable laws and regulations, to review the appropriateness of Student placements.