

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: September 23, 2013

AGENDA ITEM No. 13-09-(2)-09

ACTION: (Y/N) Y

SUBJECT: Developmental Day Center Contract

INFO. CONTACT: Dr. Denise Morton PHONE: (919) 732-8126

ATTACHMENTS: 1. Orange County Schools Developmental Day Contract

PURPOSE: To have the Board of Education review and approve the 2013-2014 Orange County Schools Developmental Day Center contract.

BACKGROUND: The Orange County Schools Exceptional Children's (EC) Department submits an annual application to the State Board of Education requesting developmental day funding. This funding is to assist in providing special education and related services to eligible children with disabilities to be served in accredited developmental day centers. The Children's Learning Center is the local developmental day center which serves preschool students with disabilities ages 3 to 5 which is located in a separate building on the campus of Hillsborough Elementary School. The per child allocation rate for the 2013-2014 school year is \$1,004.10 per month for 10 months of service. EC staff is requesting funding for 6 slots.

FINANCIAL IMPACT: \$60,246.00 is the amount of state funding requested by the district to pay for 6 slots at the developmental day center.

RECOMMENDATION: The Superintendent recommends that the Board of Education approve the 2013-2014 Orange County Schools Developmental Day Center contract.

**ORANGE COUNTY SCHOOLS
DEVELOPMENTAL DAY CENTER CONTRACT**

This EDUCATIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this the *26th day of August 2013* by and between the Orange County Board of Education hereinafter referred to as the "Board," the governing body of the Orange County Schools, hereinafter referred to as the "District," and The Children's Learning Center, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, the Board is a local board of education working to provide public schools within its local school administrative unit as directed by law; and

WHEREAS, Contractor is a North Carolina corporation in good standing in the business of providing Development Day Center services for children in Orange County, North Carolina; and

WHEREAS, the Board desires to obtain, and Contractor desires to provide, educational services for eligible Orange County Schools students at Contractor's Development Day Center.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

AGREEMENT

- 1. Obligations of Contractor.** Contractor shall, in performing services under this Agreement, exercise the highest degree of care and perform such services in an expert fashion. For all Orange County Schools' students at Contractor's Developmental Day Center, Contractor represents, warrants, covenants and agrees to be responsible for the following and to provide the following services:
 - a. Contractor shall provide special educational and related services for up to *10* Orange County Schools students ages 3 through 5 at no cost to the students' parents or guardians, pursuant to the Request for Developmental Day Funds (DDCF-1) and Developmental Day Roster/Withdrawal Form (DDCF-2) attached hereto as Attachment 1.
 - b. Meet all compliance requirements of Public Law 108-446, Individuals with Disabilities Education Act (IDEA 2004), Public School Laws of North Carolina, Chapter 115C, Article 9, and Policies Governing Services for Children with Disabilities. This includes discussions of eligibility, service delivery, Least Restrictive Environment and placement outside the context of an IEP meeting. Draft IEP goals may be sent home to the parent prior to any IEP meeting
 - c. Develop an Individualized Education Program (IEP) for each child. The IEP Team shall be a multidisciplinary team which shall include the parent(s), guardian(s), or surrogate parent(s) for each child. The content of the IEP shall include all the requirements in Policies Governing Services for Children with Disabilities.

- d. Review and evaluate the IEP at appropriate intervals, at least annually, and amend it as needed. Draft copy of the IEP shall be provided to the District PK coordinator one week prior to the IEP meeting.
- e. Provide the District with a copy of each student's IEP, data related to each student's progress towards mastering IEP goals and any amendments to a student's IEPs for the children included in this Agreement.
- f. Provide related services as specified in each child's IEP. A schedule will be submitted to the District regarding the provision of related services for each child and will be updated if changes occur for children included in this agreement.
- g. Submit an attendance record and/or report regarding any decreases of enrollment at the end of each month to the District for children included in this agreement.
- h. Maintain an RECP or less than 50% of the students having an IEP or IFSP or a combination of both the IEP and IFSP per each classroom, not total for the center. Children receiving services under the eligibility area of speech only must be calculated in the overall number of children with an IEP or IFSP.
- i. Notify the District of the children needing re-evaluations 120 days prior to the due date.
- j. Supply the names and credentials of all persons providing services for the children included in this Agreement.
- k. Provide the District, upon enrollment of each child, the following information: child's name, date of birth, disability, and parent(s), guardian(s), or custodial agency (such as the Department of Social Services) name and address to be added to the census registry.
- l. Provide a description of all services provided in off-site inclusive settings (if applicable).
- m. Maintain sufficient space, furniture, instructional equipment, technology equipment and connectivity, and supplementary aids and resources to meet instructional needs.
- n. Maintain status as an approved developmental day center by the Department of Health and Human Services.
- o. Designate an administrative liaison for collaboration between the Contractor's Developmental Day Center and the District.
- p. Meet with the District exceptional children's compliance specialist or liaison regularly to discuss the delivery of educational services to exceptional children.
- q. Provide adequate working space for all District employees in order to review educational and compliance records.
- r. Require employees to attend any training sessions required by the District for the provision of special education services to students.
- s. Use CECAS as the tool to write IEPs, progress notes and related forms.

2. Obligations of Board. For all District students attending Contractor's Developmental Day Center pursuant to this Agreement, the Board covenants and agrees to the following:

- a. Pay the Contractor as stated in Paragraphs 4 and 9 of this Agreement.
- b. Provide the Contractor with a current edition of the Policies Governing Services for Children with Disabilities, 2010.
- c. Appoint the District's Exceptional Children's Director or his/her designee to serve as a member of the IEP Team for each child and to coordinate services with the

Contractor for the duration of the Agreement.

- d. Provide verification to the Exceptional Children's Division that each child with a disability served by the Contractor is receiving services with the Contractor for the duration of the Agreement provided attendance records are provided by the Contractor.
 - e. Conduct a compliance review of the files of children served by the Contractor per the district audit schedule. The District will review documentation of teacher licensure to ensure that teachers of preschool children possess either Birth through Kindergarten (B-K) or Preschool Add-On teaching license.
3. **Mutual Obligations.** The Board and the Contractor hereby agree to the following terms and conditions:
- a. Adhere to the terms of this MOA, with guidelines established between the Department of Health and Human Services and the Department of Public Instruction.
4. **Payment of Fees.** The Board agrees to pay Contractor according to the Developmental Day Center Program per child allocation rate as set by the North Carolina Department of Public Instruction for the **2013-2014** school year, currently \$999.10 per child per month, for up to a maximum of 6 District students ages 3 through 21, plus an additional \$5.00 per child per month for material fees (or \$50.00 per child per year), for a total of \$1004.10 per child per month ($\$999.10 + \$5.00 = \$1004.10$), payable in ten (10) monthly payments. The total amount of funds expended by the Board under this Agreement shall not exceed **\$60,246.00 for the 2013-2014 school year. This will be revised once the Developmental Day fees are finalized.**
5. **Program Compliance Audit.** The Department of Public Instruction monitors all local education agencies, charter schools and state operated programs to determine compliance with appropriate state and federal laws and the State Board of Education as outlined in the Procedures Governing Programs and Services for Children with Disabilities. The Contractor shall reimburse the Board all monies lost as a result of records being out of compliance as outlined in the Procedures Governing Programs and Services for Children with Disabilities, the Individuals with Disabilities Education Act, and Chapter 115C, Article 9 of the General Statutes.
6. **Term.** The services described in the Agreement will be provided from September 1, 2013 through June 30, 2014 ("Term").
7. **Termination for Convenience.** The Board may terminate this Agreement at any time at its complete discretion upon twenty (20) calendar days' notice in writing from the Board to Contractor prior to the date of termination. In addition, all finished or unfinished documents and other materials produced by Contractor pursuant to this Agreement shall, at the request of the Board be turned over to it and become its property. If the Agreement is terminated by the Board in accordance with this section, the Board will pay Contractor at the hourly rate for all services performed as of the date of termination.
8. **Termination for Default.** At any time, the Board may terminate this Agreement immediately and without prior notice if Contractor is unable to meet goals and timetables or if the Board is dissatisfied with the quality of services provided.

- 9. Terms and Methods of Payment.** Contractor shall submit to the Board monthly invoices itemized by name of student, record of student attendance, and the amount owed. Such invoices shall be submitted within thirty (30) days of the rendering of services. The Board shall process payments to Contractor within thirty (30) days of submission of such invoices. Invoices should be sent to the Board at 200 King Street, Hillsborough, N.C. 27278 for review and approval. In no case shall Contractor be entitled to payment for services not actually rendered. The Board shall have no obligation to pay invoices submitted by Contractor after June 30, 2014.
- 10. Agreement Funding.** Pursuant to N.C. General Statute 143C-6-8, it is understood and agreed between Contractor and the Board that the Board's payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made, and, if payment obligations are made with State funds, upon the availability of appropriated funds that are not State funds.
- 11. Insurance.** Contractor agrees to maintain \$1,000,000 in general liability and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees of Contractor participating in the provision of services under this Agreement. Certificates of such insurance shall be furnished by Contractor to the Board and shall contain the provision that the Board be given 20 days' written notice of any intent to cancel or terminate by either Contractor or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default and grounds for immediate termination of this Agreement.
- 12. Taxes.** Contractor shall pay all federal, state and FICA taxes for all employees participating in the provision of services under this Agreement.
- 13. Monitoring and Auditing.** Contractor shall cooperate with the Board, or with any other person or agency as directed by the Board, in monitoring, auditing, or investigating activities related to this Agreement. Contractor shall permit the Board to evaluate all activities conducted under this Agreement as dictated by the Board. Contractor shall provide auditors retained by the Board with access to any records and files related to the provision of services under this Agreement. The Board agrees that its auditors will maintain the confidentiality of any trade secrets of Contractor accessed during an audit conducted under this Agreement.
- 14. Records and Confidentiality of Student Information.** Contractor agrees that all student records created or obtained in the course of providing services to the Board under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and Board policies. All student records shall be kept in a secure location preventing access by unauthorized individuals. Contractor will maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not in the direct employ of Contractor. Contractor shall not forward to any person other than the parent or District any student record, including, but not limited to, the student's identity, without the written consent of the parent and District. Upon termination of this Agreement, Contractor shall turn over to District all student records of District's eligible students to whom Contractor has

provided services under this Agreement.

15. Access to Students or School Premises. The District shall maintain full, final, and plenary authority to grant, deny, or restrict Contractor, its agents or employees' access to any student, school premises and school-sponsored events, including the authority to determine what services, if any, will be delivered, and by whom, to District students. Nothing in this Agreement shall be construed to create any right of access to school facilities or school-sponsored events on the part of Contractor, its agents, or employees, and the District expressly reserves the right to deny or restrict Contractor, its agents, or employees access, on a temporary or permanent basis, to any school facility or school-sponsored event, or to any individual student, with or without cause, at any time, and without prior notice to Contractor. The decision to deny access to Contractor to any student, school facility, or school-sponsored event shall be final and not subject to appeal. The District shall not incur any liability to Contractor for denying or restricting access to school premises or school-sponsored events, with or without cause, and Contractor expressly waives the right to challenge any such a denial or restriction of access in any judicial or administrative action.

16. Lunsford Act/Criminal Background Checks. All parties acknowledge that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school or other facility dedicated to the care of minors. Contractor shall conduct criminal background checks on each of its employees or agents who, pursuant to this Agreement, interacts with the District's students or provides services on Board property or at Board events. Such checks shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Contractor shall provide documentation to the District of criminal records and background checks before assigning its employees or agents to provide services under this Agreement. Contractor shall likewise provide documentation to the District of its annual checks of the aforesaid sex-offender registries. The mandatory sex-offender registry checks may be completed by accessing the North Carolina Sex Offender Registry website at <http://sexoffender.ncdoj.gov/>. Under no circumstances shall any employee or agent be assigned to work with any student or on Board property or at Board events if (1) said worker appears on any of the aforesaid sex-offender registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of students or school personnel.

Upon request, Contractor will furnish the Board with sufficient information to allow the District to perform its own criminal background checks on the Contractor's employees and agents.

Contractor further agrees that it has an ongoing obligation to provide the school system with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Board reserves the right to prohibit any contractual personnel of Contractor from delivering goods or providing services under this

Agreement.

Failure to comply with this provision shall be grounds for immediate termination of the Agreement.

- 17. Indemnification.** Contractor shall indemnify, defend and hold harmless the District, the Board, its school board members, officers, agents, and employees from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, resulting from or connected with any acts under this Agreement or from the omission or commission of any act, lawful or unlawful, by Contractor, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by Contractor in connection with the defense of said matters.
- 18. Relationship of Parties.** Contractor shall be an Independent Contractor of the Board and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Contractor be construed as an employee, agent or principal of the Board.
- 19. Compliance with Applicable Laws.** During the term of this Agreement, Contractor shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules and regulations, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement. Contractor represents that it is aware of and in compliance with the Immigration Reform and Control Act, and that it will collect properly verified I-9 forms from each employee providing services under this Agreement. Contractor shall not employ any individuals to provide services to the Board who are not authorized by federal law to work in the United States.
- 20. Applicable Board Policies.** Contractor acknowledges that the Orange County Board of Education has adopted policies governing conduct on District property and agrees to abide by any and all relevant Board policies while on District property or working with District students.
- 21. Assignment.** Contractor shall not assign, subcontract, or otherwise transfer any interest in this Agreement without the prior written approval of the Board.
- 22. Agreement Modifications.** This Agreement may be amended only by written amendments duly executed by and between Board and Contractor.
- 23. North Carolina Law.** North Carolina law will govern the interpretation and construction of the Agreement.
- 24. Entire Agreement.** This Agreement constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this Agreement. This document, the purchase order, if any, used in connection herewith and any other document incorporated in this Agreement by reference supersede all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Agreement.

25. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties to this agreement have hereunder set their respective hands on the day and year first above written.

For the Orange County Board of Education:

Donna Coffey, Chair
Orange County Board of Education

Date

Dr. Del Burns, Interim Superintendent
Orange County Schools

Date

Connie Crummins, Exceptional Children's Director
Orange County School


Date

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Donna Brinkely, Finance Director
Orange County Schools

Date

For the Children's Learning Center, a *program of Chapel Hill Training Outreach Project, Inc.*



Mike Mathers

8/14/13
Date

Executive Director, Chapel Hill Training Outreach Project, Inc.