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STATE OF NEW HAMPSHIRE  
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**REQUEST FOR PROPOSALS  
NEW HAMPSHIRE DEPARTMENT OF EDUCATION  
HEARING OFFICER AND ALTERNATIVE DISPUTE RESOLUTION OFFICER**

**Deadline for Receipt of Proposals:** January 25, 2021; 4:00 p.m.

**Background:**

The Department of Education is an executive-branch agency of the State of New Hampshire. It is responsible for distributing state and federal monies to local districts to support elementary and secondary public education and providing regulatory direction and technical assistance to the State's elementary and secondary schools.

Appointment of hearing officers is a statutory requirement of administrative agencies. The department is required by State and Federal law to provide Hearing Officers to preside at Due Process Hearings and Alternative Dispute Resolution proceedings. Candidates chosen fulfill Federal and State requirements for hearing officer/mediators in the following areas: Special Education Impartial Due Process Hearings, State Board of Education Hearings, Vocational Rehabilitation Fair Hearings, Alternative Dispute Resolution (e.g. neutral conferences and mediations).

**Minimum Services to be Provided:**

A contract to provide the services for Hearing Officer and Alternative Dispute Resolution Officer requires Governor and Council approval. It is anticipated that the effective date for the contract will be on or after July 1, 2021. The contract will extend through June 30, 2023 with an option to renew for an additional two year term. First meeting with Department contracting officer will be on or after July 1, 2021.

During the period of Governor and Council approval to June 30, 2023, the contractor shall provide the services as a:

- Special Education Impartial Due Process Hearings Officer as outlined in RSA 186-C:16-a and Ed 1123

<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-16-a.htm>

<http://www.gencourt.state.nh.us/rules/ed1100-1200.html>

- Hearing Officer for State Board of Education Hearings as outlined in RSA 541-A and Ed 200

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LV-541-A.htm>

<http://www.gencourt.state.nh.us/rules/ed200.html>

- Fair Hearing Officer for Vocational Rehabilitation Hearings 29 USC 722(c) and Ed 1004.04

[http://www.law.cornell.edu/uscode/html/uscode29/usc\\_sec\\_29\\_00000722----000-.html](http://www.law.cornell.edu/uscode/html/uscode29/usc_sec_29_00000722----000-.html)

<http://www.gencourt.state.nh.us/rules/ed1000.html>

And related issues.

- Alternative Dispute Resolution Officer as outlined in RSA 186-C:23-b and Ed 215.02 (Neutral Conference) and RSA 186-C:24 and Ed 215.03 (Mediation)

<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-23-b.htm>

<http://www.gencourt.state.nh.us/rules/ed200.html>

<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-24.htm>

<http://www.gencourt.state.nh.us/rules/ed200.html>

### **Scope of the Work:**

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.

6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
14. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
15. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting.
16. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
17. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

**Scope of the Work:**

In the role of Alternative Dispute Resolution Officer (e.g. Mediator and Neutral Officer) the contractor shall:

18. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.

19. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
20. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
21. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
22. Ensure timely responses to all inquiries of the parties.
23. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
24. If serving as a Mediator notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
25. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting.
26. File weekly case reports with the Office of Legislation and Hearings on Monday for the prior week.
27. Attend quarterly training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.

**Payment Terms:**

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2023. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one-year time span.

<b>Mediation/Neutral Conference</b>		<b>Date</b>	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
<b>Prior to Pre-Hearing</b>		<b>Date</b>	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery; etc.) <i>Total allowable for case: \$100</i>			
Sufficiency hearing - \$175			
<b>Hearing</b>		<b>Date</b>	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Day – More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
<b>Post-Hearing</b>		<b>Date</b>	
Prepare decision (Non-State Board) - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
<b>Miscellaneous</b>	<b>Date</b>	<b>Details</b> (mileage, time, other information necessary)	<b>Payment</b> (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.575/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			Not Applicable
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			
Evaluation meeting \$30.00			
File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)**			
Consultation (court, OSEP, OCR, DOE) \$30.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task (or training in or out of state for compliance with federal statutes) for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out above for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

*\*If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized.*

*\*\*Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venue (see contract Exhibit C for details).*

*\*\*\*See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 **not** \$90.*

## Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current

estimated amount to be budgeted by the State of New Hampshire to fund this project is \$155,000 for the biennium - \$77,500 for FY 22 and \$77,500 for FY 23. (50,000 state; 7,500 VR; 20,000 SPED per annum)

2. The State shall not be responsible for or pay any costs incurred by the bidder in the preparation of the proposal submitted in response to this RFP.
3. The Department reserves the right to seek clarification of any information contained in a proposal submitted in response to this RFP.
4. The Department reserves the right to reject any and all proposals submitted in response to this RFP. In addition, the distribution of this RFP shall not commit the State to issue a contract.
5. If the Department chooses to award a contract in response to this RFP, the successful bidders shall be notified by letter. The Department shall then develop a contract for Governor and Council approval, relying on the State Standard P37 Contract. The contract shall incorporate, by reference, all provisions of this RFP, the Hearing Officers' Guide to Administrative Process and the successful bidder's proposal, as determined by the Department. In preparing a contract with the successful bidder, the Department reserves the right to clarify any terms and conditions contained in the proposal.
6. The State shall not be responsible for any work performed by a successful bidder prior to the effective date of a contract approved by Governor and Council.
7. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
8. Contractor shall consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
9. When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator, Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.
10. At the conclusion of proceedings, the Coordinator, Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings shall mail an evaluation to each party. The evaluations shall be used by the Coordinator, Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings as one of the components of the annual evaluation of contracted Hearing Officers performance.
11. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

### **Conflicts of Interest:**

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

### **Tentative Work Schedule:**

The successful contractor will be notified in writing after the approval of the contract by the Governor and Council.

First meeting with Department contracting officer will be on or after July 1, 2021.

### **Bid Procedures:**

An original and two copies of the proposal must be received at the Department of Education no later than 4:00 P.M. on January 25, 2021. Late bids shall not be considered, no exceptions.

The proposal shall include (1) a signed and written statement explaining knowledge in specific areas of law and a comprehensive resume; (2) a plan for services that details how the candidate anticipates maintaining electronic and telephonic security, communicating in a timely manner, adhering to Department dispute resolution procedures as outlined in the Hearing Officers' Guide to Administrative Process, ensuring adherence to statutory timelines, and how the candidate anticipates advancing cooperation and teamwork with the Department of Education, and (3) a short essay on how to deal with challenging participants in the adjudicative process.

Incomplete proposals shall not be considered; no exceptions.

Proposals shall be reviewed by a committee of department staff members knowledgeable about the services needed and, if deemed necessary, interviews shall be arranged with candidates to determine applicant qualification. For incumbent candidates, job performance evaluations shall be reviewed to ensure they have met position requirements during their tenure as hearing officers.

The Office of Legislation and Hearings shall notify all bidders of the status of their proposal no later than February 8, 2021. The Office of Legislation and Hearings shall then prepare a contract for contractor signature prior to submission to Governor and Council for approval.

With the exception of individuals submitting a proposal, each bidder (i.e. companies or organizations) shall submit the following information, as appropriate, with the formal proposal:

- For profit corporations must submit a certificate of good standing from the New Hampshire Secretary of State testifying that the corporation is registered to do business in New Hampshire.
- Nonprofit corporations may submit either a certificate of good standing or proof of nonprofit status such as an Internal Revenue Service determination notice.
- Proof of personal automobile insurance during term of contract.

In order to provide all bidders with the opportunity to present a detailed and comprehensive proposal, no page limitation has been established for the formal proposal. The formal proposal shall address the three factors specified in the second paragraph under **Bid Procedures** above.

**Method of Award: Criteria for Evaluating Bids**

All written proposals received by the deadline shall be reviewed and rated by a panel consisting of members of the NHDOE according to the criteria below. Applicants may be contacted for further information and/or clarification. Proposals shall be reviewed to determine the extent to which they provide information to demonstrate the following:

- 30 Points      Expertise/Experience in the field of Administrative Hearings.
- 20 Points      Demonstrated competency in written and verbal communication.
- 30 Points      Experience with Special Education, General Education and Vocational Rehabilitation law.
- 20 Points      Training and experience as a mediator.

Each reviewer’s score of all criteria listed will be totaled for each proposal received. All total scores for each proposal shall be computed. Contracts shall be offered to individuals based on their total score. Awards shall be made to individuals based on the aggregate score of the panel.

Table

**Breakdown of Scoring:**

Expertise/Experience in the field of Administrative Hearings (0-30 points)  
Experience with Special Education, General Education, and Vocational Rehabilitation Law (0-30 points)

*Scoring shall be broken down only as 0, 10, 20 or 30 points not in lesser numbers.*  
30 available points:

- 0      meets none of the requirements
- 10     meets some of the requirements
- 20     meets most of the requirements
- 30     meets all of the requirements

Training and experience as a mediator (0-20 points)  
Demonstrated Competency in written and verbal communication (0-20 points)

*Scoring shall be broken down only as 0, 10, 15 or 20 points not in lesser numbers.*

20 Available points:

- 0      meets none of the requirements
- 10     meets some of the requirements



- 15 meets most of the requirements
- 20 meets all of the requirements

**Further Information:**

Contact Stephen W. F. Berwick via e-mail [Stephen.Berwick@doe.nh.gov](mailto:Stephen.Berwick@doe.nh.gov), via phone (603)271-2299 or FAX (603) 271-1953.

**NOTE:**

Any information submitted as part of a bid in response to this request for proposal (RFP) (or request for bid (RFB) or request for information (RFI) may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP (RFI, or RFB) will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted in response to a request for proposal, bid or information, should be kept confidential as financial or proprietary information, you must specifically identify that information in a letter to the agency.