

DEPARTMENT OF SPECIAL SERVICES
Township of Union Public Schools
M-E-M-O-R-A-N-D-U-M

TO: Dr. Scott Taylor

C: Gerald Benaquista, Kim Conti, Yolanda Koon, Julia Vicidomini, Diane Cappiello

FROM: Joseph Seugling

RE: Board Agenda

DATE: 2020-08-10

Approve the use of Progressive Options Support Services to conduct bilingual Educational, Social History, and Psychological Evaluations for district students. The cost of each evaluation is as follows: \$600.00 per evaluation. Total cost to the district will not exceed \$1,800.00 for the 2021-2022 school year.

(Account # 11-000-219-320-01-19)

DEPARTMENT OF SPECIAL SERVICES
Township of Union Public Schools
M-E-M-O-R-A-N-D-U-M

TO: Dr. Scott Taylor

C: Gerald Benaquista, Kim Conti, Yolanda Koon, Julia Vicidomini, Diane Cappiello

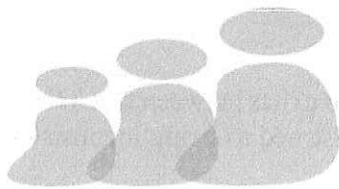
FROM: Joseph Seugling

RE: Board Agenda

DATE: 2020-08-10

Approve the use of Progressive Options Support Services to conduct bilingual Educational, Social History, and Psychological Evaluations for district students. The cost of each evaluation is as follows: \$600.00 per evaluation. Total cost to the district will not exceed \$1,800.00 for the 2021-2022 school year.

(Account # 11-000-219-320-01-19)



**PROGRESSIVE
OPTION
SUPPORT
SERVICES**
Specialists in Behavioral Health

221 River Street, 9th Floor
Hoboken, NJ 07030
www.progressiveopt.com

Phone: (877) 615-3288
Fax: (201) 328-9424
schools@progressiveopt.com

SERVICE CONTRACT AGREEMENT

This Service Agreement ("Contract") is made effective as of _____, by and between Progressive Option Support Services, LLC (the "COMPANY"), of 221 River Street, 9th Floor, Hoboken, NJ 07030 and _____ School DISTRICT ("DISTRICT"), of _____, _____, _____, _____, _____. In this agreement, each is referred to as a party and collectively the "Parties."

RECITALS & RELATION OF PARTIES

The party who is contracting to receive the services shall be referred to as "DISTRICT."

The party who will be providing the services will be referred to as "COMPANY."

The party assigned by the COMPANY to provide services to the "DISTRICT" shall be referred to as "PERSONNEL."

"PERSONNEL" include the individuals hired by the COMPANY as employees, consultants or sub-contractors.

The COMPANY is in the business of providing school-based, Child Study Team psychological, speech, educational, social, and functional behavioral assessments.

The COMPANY is in competition with other persons and entities that provide similar services to schools and school districts in New Jersey.

PERSONNEL assigned by the COMPANY are certified by the NJ Department of Education.

In the provision of services, COMPANY shall always be regarded as performing Services as an independent COMPANY of the DISTRICT.

The COMPANY and the DISTRICT shall agree on the means, methods, assessment instrument(s)

utilized by the COMPANY in providing Services.

The Parties intend that an independent COMPANY relationship exists between the COMPANY and the DISTRICT, and that nothing in this Contract shall be construed as being inconsistent with that status and relationship.

All individuals which COMPANY assigns for Services to DISTRICT shall be considered as employees/agents of COMPANY, and shall never be considered as employees or individual agents of the DISTRICT for any purpose. No such COMPANY employee or agent is entitled to any of the rights, compensation or other benefits which DISTRICT may provide to its own employees.

PREAMBLES

WHEREAS DISTRICT is organized and operated as a Local Educational Agency authorized to engage and hire independent COMPANYS to carry out its powers,

WHEREAS DISTRICT is engaged in providing public educational services, including general education programs, special education programs, and related services, and desires to engage COMPANY to provide certain services hereafter described in connection with DISTRICT programming and service delivery; and

WHEREAS COMPANY represents that it has the expertise, training, capacity and qualifications to perform these services.

NOW THEREFORE, in consideration of the mutual promises and benefits contained herein, the parties agree as follows:

ARTICLE I **DESCRIPTION OF COMPANY SERVICES**

1.1 Description of Services. COMPANY shall provide to DISTRICT the services set forth in Appendix A, including but not limited to the employment and supervision of all COMPANY'S personnel, equipment, supplies and other items, necessary to render such service (collectively the "Services"). Appendix A may, from time to time be amended by agreement of the Parties.

1.2 Services Personnel. COMPANY shall furnish to DISTRICT the names of all primary personnel to be utilized by COMPANY in connection with the performance of the Services. Personnel assigned by COMPANY to perform Services for DISTRICT shall be experienced, fully qualified and certified or licensed as or when legally necessary to perform the Services pursuant to and in conformance with the provisions of the New Jersey Revised School Code. COMPANY represents that it has secured any necessary licenses, approvals and regulatory authorizations to provide the Services.

1.3 Standard of Services. COMPANY shall be responsible that the individuals which COMPANY assigns to perform Services for DISTRICT adhere to professional standards and perform all Services in a manner consistent with generally accepted proficiency and competency for the type and nature of Services rendered.

1.4 Background Checks. COMPANY shall not assign any employee or agent to perform Services without first conducting employment reference checks and any legally required criminal background checks, and reviewing the results of the same with DISTRICT. DISTRICT reserves the right to refuse the assignment of any employee of COMPANY to render Services where the employment or any criminal record history or employment references for that individual (including any pending criminal charges) indicate, in DISTRICT's judgment, unfitness to perform Services.

1.5 Compliance with Policies. The PERSONNEL which COMPANY assigns for Services to DISTRICT/SCHOOL under this Contract shall abide by those policies of DISTRICT/SCHOOL which are applicable to performance of Services under this Contract including, but not limited to, policies pertinent to:

- Child abuse and neglect reporting.
- Sexual harassment.
- Confidentiality of student records and student record information;
- Communicable diseases;
- Alcohol/controlled substance possession and use;
- Copyright; and
- Non-discrimination

At the inception of this Contract, a copy of the above policies will be provided to COMPANY by DISTRICT.

1.6 COMPANY as Employer. COMPANY shall be regarded, designated and considered to be the EMPLOYER with respect to all individuals whom COMPANY may select and assign to provide Services. COMPANY shall be exclusively and solely responsible for compensating, hiring, retaining, evaluating, disciplining, dismissing and otherwise regulating the employment conditions, employment rights, compensation and other similar matters relative to all individuals whom COMPANY utilizes in connection with providing Services.

1.7 Employment Claims to COMPANY. COMPANY shall be responsible for answering, defending and/or resolving all claims arising from the assignment and performance of COMPANY employees/sub-COMPANYs designated by COMPANY to perform the Services.

(a) These claims shall include, but shall not be limited to: proceedings before the New Jersey Public Employment Relations Commission; the National Labor Relations Board; proceedings for unemployment compensation benefits; claims for workers' compensation disability benefits; claims of unlawful discrimination brought before any state or federal agency or court; claims or grievances for breach of contract; and any other claims of

whatsoever kind or character arising from or which are attributable to the performance of Services by COMPANY employees in connection with this Contract.

- (b) All costs (including legal fees) incurred in connection with the defense of the foregoing matters and any judgments resulting there from shall be the sole and exclusive responsibility of COMPANY.

1.8 Non-Exclusive Services. DISTRICT/SCHOOL does not agree to use COMPANY exclusively for the provision of Services or otherwise. It is understood and acknowledged that DISTRICT is free to contract for similar services to be performed by other persons or entities so long as such services do not interfere with the performance of the obligations of the Parties under this Contract.

1.9 COMPANY Taxation Responsibilities. COMPANY shall be responsible for any taxation consequences to it or its employees as a result of COMPANY engagement under this Contract. COMPANY shall be responsible, as legally required, to report as income, its compensation received from DISTRICT. COMPANY shall make, on behalf of itself and its employees, including its employees performing Services, all requisite tax filings and payments to the appropriate federal, state, and local tax authorities. No part of compensation to COMPANY under this Contract shall be subject to withholding by DISTRICT for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation. COMPANY agrees to indemnify and hold DISTRICT harmless from all such claims.

ARTICLE II

TERM OF CONTRACT AND EARLY TERMINATION

2.1 Term. This Contract shall commence as of the effective date set forth above in this contract and remain in full force and effect.

2.2 Early Termination. This Contract may be terminated for any reason during its term by either Party upon thirty (30) days written notice to the other Party. If this Contract is terminated during its term pursuant to this provision, DISTRICT will pay COMPANY for Services provided up to and including the date set for early termination. Any funds remitted by DISTRICT to COMPANY more than the pro-rata charges for Services provided by COMPANY up to and including the date set for early termination will be returned to DISTRICT by COMPANY. Any such amounts owed by either Party to the other shall be paid within thirty (30) days of the date set for early termination of this Contract.

2.3 Survival of Certain Terms. Sections 1.6, 1.8, and 5.1 of this Contract survive the expiration or termination of this Contract for any reason.

ARTICLE III

INVOICE AND PAYMENT

3.1. Compensation and Payment. In consideration of the Services provided to DISTRICT by COMPANY under this Contract, the DISTRICT will pay COMPANY for Services on the basis and at the rate of Compensation ("Compensation") as specified in Appendix B.

3.2 Invoice Procedure. COMPANY shall submit to DISTRICT on the periodic basis, as set forth in Appendix B, an invoice setting forth all applicable charges for the billing interval, itemized generally for Services performed during such period.

- (a) DISTRICT will remit payment on undisputed invoices within thirty (30) days of receipt.
- (b) If the DISTRICT disputes the accuracy of any invoice delivered by COMPANY, DISTRICT shall, within thirty (30) days of receipt, deliver a written notice and explanation of such dispute to COMPANY. COMPANY shall meet with DISTRICT/SCHOOL to review the invoice and account within ten (10) business days.

3.2 COMPANY Services Costs. COMPANY shall have sole and exclusive responsibility, where applicable, for the following costs and charges attributable to the PERSONNEL (i.e., who are COMPANY employees) COMPANY assigns to perform Services:

- (a) All wage and salary compensation.
- (b) All required statutory or contractual pension and retirement contributions.
- (c) All applicable state and federal employment taxes and FICA.
- (d) All unemployment taxes and costs (whether by commercial or self-insurance) attributable to or arising from the performance of services by COMPANY's employees or agents pursuant to this Contract.
- (e) All applicable premium costs for insurance coverages and programs applicable to COMPANY's personnel.
- (f) All expenses whether out-of-pocket or overhead, in providing Services

ARTICLE IV INDEMNIFICATION AND INSURANCE

4.1 Indemnification. Except as hereafter provided in this Article, COMPANY shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of COMPANY's PERSONNEL in connection with the performance of Services. COMPANY shall defend and indemnify SCHOOL DISTRICT from all such claims and/or judgments resulting from such acts or omissions, except for liability for damages which result from the sole negligence or willful misconduct of DISTRICT or its employees or agents.

4.2 Workers' Compensation. COMPANY shall procure and maintain in full force and effect workers' compensation insurance covering its employees while those persons are engaged in performing

Services. If a claim is filed under the provisions of the New Jersey Workers' Compensation Disability Act against SCHOOL DISTRICT by a personnel or agent of COMPANY performing Services, COMPANY shall defend and hold harmless DISTRICT from such claim(s).

4.3 Minimum Insurance. COMPANY shall carry comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage in a form mutually acceptable to both Parties to protect COMPANY and DISTRICT against liability or claims of liability which may arise out of COMPANY provision of Services under this Contract.

4.4 Confidentiality. COMPANY shall observe the policies and directives of SCHOOL DISTRICT to preserve the confidentiality of SCHOOL DISTRICT records and information, including student records and student record information, to the extent that COMPANY (its employees and subcontractors) are permitted to access such records or information.

ARTICLE V COVID-19 SAFETY MEASURES

5.1 Consistent with CDC guidelines, DISTRICT agrees to provide an appropriate venue for service delivery (i.e.: an environment that allows adequate circulation of outdoor air, ventilation, open windows, and reasonable space between the PERSONNEL and individual(s) receiving services.

ARTICLE VI RESTRICTIVE COVENANT

6.1 Non-Compete/Non-Solicitation of Personnel. DISTRICT shall not, during the term hereof, and for an additional period of one (1) year immediately following the termination (for any reason) of this Agreement:

(a) Directly or indirectly contact any personnel which is an employee of COMPANY and/or independent contractor or agent of COMPANY that has been assigned to DISTRICT for educational services.

(b) Directly or indirectly solicit an employee or independent Contractor of COMPANY to terminate his/her employment or contract with the COMPANY and become employed by or become an Employee/Consultant with the DISTRICT which is a client of COMPANY or any other person in the same or substantially the same business as COMPANY.

6.2 Violation of Non-Solicitation. In the event that DISTRICT violates the provisions of this

Agreement, and a lawsuit is filed, the time periods set forth in Section 6.1 shall continue until one (1) year after the date a final judgment enforcing such provision is entered by a Court of competent jurisdiction so long as the time allowed for appeal has lapsed, taking into consideration the provisions of any such court judgment.

(a) DISTRICT acknowledges that the provisions of this Agreement are, in view of the nature of the business of COMPANY, reasonable and necessary to protect the legitimate interests of COMPANY. DISTRICT acknowledges that COMPANY shall be entitled in any Court of competent jurisdiction to seek temporary and permanent injunctive relief without the necessity of proving actual damages, and to seek an equitable accounting of all earnings, profits and other benefits arising from any such violation, which rights shall be cumulative and in addition to any other rights or remedies to which COMPANY may be entitled under this Agreement or otherwise.

(b) As compensation for the COMPANY'S loss of each and any personnel by any of these means, the amount that the DISTRICT shall owe the COMPANY is the PERSONNEL Compensation Amount. The PERSONNEL Compensation Amount shall be equal to the greater of Twenty-Five Thousand Dollars (\$25,000.00) or one half of each and any PERSONNEL'S base compensation for the 12 months prior to the termination of the of the PERSONNEL'S employment with the company.

(c) The DISTRICT shall pay the PERSONNEL Compensation Amount to the COMPANY in 12 equal monthly installments with the first installment to begin on the earlier of (i) one month from the date that such PERSONNEL was no longer employed by or performed services for the COMPANY, or (ii) the day that such PERSONNEL begin employment with or provides services for the COMPANY, or work in the capacity as sub-contractor for the company.

ARTICLE VII
NON-DISCRIMINATION

7.1 No Employment Discrimination. The Parties shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, due to race, color, religion, sex, national origin, age, height, weight, disability, marital status or veteran status.

7.2 No Service Discrimination. The Parties shall not discriminate against any student or other recipient of service under this Contract due to race, color, religion, sex, national origin, or disability in the delivery of Services.

7.3 Discrimination as Material Breach. Breach of obligations recited in this Article shall be regarded as a material breach of this Contract.

ARTICLE VIII
MISCELLANEOUS

8.0 Non-Assignment. Neither Party may assign this Contract, nor its rights and duties hereunder, nor any interest herein without prior written consent from the other.

8.1 Entire Agreement. This Contract, and any Appendices or exhibits attached hereto or incorporated by reference, constitute the entire Contract between the Parties regarding its subject matter and supersedes any prior or contemporaneous understandings or agreements with respect to the Services.

8.2 Amendments. None of the terms and provisions of this Contract or its Appendices A and B, may be modified or amended in any way except by an instrument in writing executed by authorized representatives of COMPANY and DISTRICT.

8.3 Non-Waiver. Failure by either Party at any time to require performance by the other Party or to claim breach of any provision of this Contract shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Contract, nor prejudice either Party regarding any subsequent action to enforce the terms of this Contract.

8.4 Notices. Any notice or other communications required or permitted under this Contract shall be sufficiently given if in writing and delivered personally or sent by confirmed facsimile transmission, telex, telecopy or other wire transmission (with request for assurance in a manner typical with respect to communications of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested) addressed to the Party's principal place of business, marked to the attention of the officer held by its signatory of this Contract, or such other address or officer of which the Parties may have given notice. Unless otherwise specified herein, notices shall be received (a) on the date delivered, if delivered personally, by wire transmission or confirmed facsimile transmission; (b) on the next business day after deposit with an overnight air courier; or (c) three (3) business days after being signed for, if sent by registered or certified mail.

8.5 Severability. If any provisions of this Contract should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Contract shall not in any way be affected, impaired or prejudiced thereby.

8.6 Force Majeure Neither Party hereto shall be liable to the other for any loss of business or any other damages caused by an interruption of this Contract where such interruption is due to war, epidemics/pandemics; rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Contract; riots; strikes, labor stoppages, shutdowns lockouts or labor disputes to the extent such occurrences are not caused by the actions of the Party seeking relief under this Section; or other causes beyond the reasonable and respective control of COMPANY or DISTRICT.

8.7 Headings and Titles. Any Article or Section headings in this Contract are for convenience of the Parties only and in no way alter, modify, amend, limit or restrict contractual obligations of the Parties.

8.8 Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitute one and the same agreement.

8.9 No Third-Party Beneficiary. Nothing in this Contract shall be intended to confer third party beneficiary status or rights, to any person or entity that is not a party to this Contract.

**ARTICLE IX
AUTHORIZATION**

9.1 Signer's Representation. This Contract has been duly authorized, executed and delivered by the Parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that s/he is the signatory duly authorized to execute this Contract on behalf of DISTRICT or COMPANY, as is respectively applicable.

Dated: _____

By: _____

Its: _____

Signature


Dated: _____

PROGRESSIVE OPTION SUPPORT SERVICES, LLC

By: _____ Kerry Pitter, PsyD., BCBA _____

Its: _____ Managing Director _____

83-3454176
COMPANY Federal-E.I. N



Signature

APPENDIX A
SERVICES

Description of Services

Psychologist's Obligations: Administer appropriate standardized and functional assessments to determine the child's level of cognitive development and provide a written report which details the assessment findings.

LDT-Cs Obligations: Administer appropriate standardized and functional assessments, to determine the child's level of academic achievement and provide a written report which details the assessment findings.

School Social Worker's Obligation: Conduct appropriate social assessment which will capture the child's development history and family history, and the child's adaptive functioning (where appropriate) and provide a written report which details the assessment findings.

Speech & Language Obligations: Administer standardized and functional assessment for the purposes of evaluating expressive and receptive language and communication skills and provide a written report which details the assessment findings.

Functional Behavior Assessment (conducted by BCBA or School Psychologist): Conduct assessment to include multiple observations, interviews and a review of records for the purpose of identifying target behaviors that may be interfering the student's education and determining the function of those target behaviors and provide a written report which details the assessment findings.

APPENDIX B
COMPENSATION

For example, \$ **600.00** per Eval. payable within **30** days of invoice.

Progressive Option Support Services School Assessment Rate Sheet

<i>Assessment Type</i>	<i>Discipline</i>	<i>Rate/Unit</i>
Psychological Assessment Service	School Psychologist (SP)	\$600 each
Educational Assessment Service	LDT-C	\$600 each
Social Assessment Service	Social Worker	\$600 each
Speech & Language Assessment	Speech Specialist	\$600 each
Functional Behavioral Assessment	BCBA or SP	\$1400 each

Bilingual assessment priced the same

