

**INTERAGENCY AGREEMENT
FOR DUE PROCESS HEARING SERVICES CONCERNING
INFANT AND TODDLER SERVICES**

1. The Parties to this Agreement are:

- 1.1. Kansas Department of Health and Environment [KDHE]
- 1.2. Office of Administrative Hearings [OAH]

2. Purpose of Agreement:

Provide due process hearing services in accordance with the Individuals with Disabilities Education Act (IDEA of 2004). As a condition of receiving federal funds under Part C of the IDEA of 2004, 34 CFR §303.523 requires the lead agency to ensure cooperation among State agencies involved in delivering Part C services to eligible children and their families by entering into interagency agreements with these State agencies. KDHE is the designated Lead Agency for administering the Part C Infant-Toddler Program under the IDEA of 2004, and ensuring access to a due process hearing as a part of the comprehensive resolution process for complaints filed by parents or guardians. OAH provides due process hearing services to various state agencies, including KDHE. KDHE and OAH shall abide by respective federal and state statutes and regulations, and establish policies and procedures in accordance with the IDEA of 2004.

3. Term of the Agreement:

This Agreement is made and entered into effective the 1st day of July, 2016 through the 30th day of June, 2017.

4. Services to be Provided by OAH:

- 4.1. OAH will provide due process hearing services pursuant to 34 CFR §303.435 through §303.438. The hearing services include, but are not limited to, process requests for hearings; assign the case to an impartial Administrative Law Judge/Hearing Officer; contact KDHE and receive its agency record of action taken; schedule hearings; give the parties timely notice of the hearing; conduct hearings; digitally record or make a verbatim transcript of the hearings; allow any parent to be accompanied and advised by counsel and by individuals with special knowledge or training in early intervention services for infants and toddlers; make, prepare, and mail a written decision to each of the parties. Each decision shall contain language

that any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in state or federal court.

- 4.2. Upon receipt of written notice of a request for a due process hearing, OAH will contact KDHE legal staff to obtain the record of the action proposed or taken. OAH will use the KDHE case number, as well as the OAH case number, in all further documents or notices sent to or served on the parties. OAH shall ensure that, not later than 30 days after KDHE's receipt of a parent's complaint, the impartial proceeding is completed and a written decision mailed to each of the parties. An Administrative Law Judge/Hearing Officer may grant specific extensions of time beyond the 30 day timeline at the request of either party pursuant to 34 CFR §303.437. OAH will maintain accurate records of the documents filed, digital recording or verbatim transcript of the hearings held pursuant to this Agreement. Should the recording/copying equipment be inoperable, or should the hearing be one in which OAH believes a court reporter is necessary, OAH shall determine the appropriate means of recording the hearing.
- 4.3. Upon request for transcripts, OAH will produce copies of the digital recording or verbatim transcripts for the parties. KDHE shall be responsible for the costs associated with the transcript preparation as needed for proceedings and as provided by law. KDHE shall be responsible for the fees and related costs associated with the court reporter. No costs shall be assessed to the family, parents or guardians.
- 4.4. OAH shall designate an impartial Administrative Law Judge/Hearing Officer to preside over the due process hearing and each hearing shall be closed to the public unless otherwise requested by the parents or guardians.
- 4.5. OAH is responsible for sending the impartial Administrative Law Judge/Hearing Officer(s) to attend at least one annual training on new developments of Part C of the IDEA.

5. Compensation:

- 5.1. OAH shall prepare and submit an invoice to KDHE for payment of the services conducted during the due process hearing. KDHE shall be responsible for payment to OAH for services provided as a result of the due process hearing.
- 5.2. KDHE shall pay for any OAH traveling expenses associated with the due process hearings that are to be conducted outside of Topeka, Kansas.

6. Miscellaneous Terms and Conditions:


- 6.1. KDHE and OAH have a separate underlying agreement that addresses the fees for conducting due process hearings. Costs and fees for the hearings conducted under this Agreement shall be paid in accordance to the fee structure outlined in the underlying agreement. There shall be no additional costs due and owing from KDHE to OAH other than what is stipulated in this Agreement.
- 6.2. No party may assign or delegate any duties or obligations required by this Agreement without the prior written consent of the other party.
- 6.3. This Agreement may be modified or amended by the parties at any time by an agreement in writing executed in the same formality as this Agreement.

7. Binding Appendices:


The provisions found in Appendix A, Contractual Provision Attachment (Form DA-146a), and Appendix B, (Whistleblower and Non-Debarment Certification) are hereby incorporated in this Agreement and made a part thereof. Such provisions shall take precedence over any contrary provisions of this Agreement.

The parties have executed this Interagency Agreement by their duly authorized representatives on the dates identified by their signatures.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Signature:  Date: 8/23/2016
Susan Mosier MD, MBA, FACS
Secretary
Kansas Department of Health and Environment

OFFICE OF ADMINISTRATIVE HEARINGS

Signature:  Date: 7.8.16
Bob L Corkins, Director
Office of Administrative Hearings

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the ___1st___ day of _____, July _____, 20__16__.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**COMPLIANCE WITH THE
"PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS"**

Congress has enacted a law, found at 41 U.S.C. 4712, that encourage employees to report fraud, waste, and abuse. This law applies to all employees working for contractors, grantees, subcontractors and subgrantees on federal grants and contracts [for the purpose of this document, "Recipient of Funds"]. The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) mandates a pilot program entitled, "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS".

This program requires all grantees, their subgrantees and subcontractors to:

- Inform their employees working on any Federal award they are subject to the whistleblower rights and remedies of the pilot program;
- Inform their employees in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and,
- Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

Employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or,
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or,
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

The requirement to comply with, and inform all employees of, the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is in effect for all grants contracts, subgrants, and subcontracts through January 1, 2017.

The Recipient of Funds acknowledges that as a condition of receiving funds, it has complied with the terms of the "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS", and has informed its employees in writing and in the predominant native language of the workforce, that by working on any Federal award, the employees are subject to the whistleblower rights and remedies of the pilot program.

NON-DEBARMENT CERTIFICATION AND WARRANTY

The Recipient of Funds acknowledges that KDHE is required to verify that any person or entity receiving funds has not been suspended, debarred or otherwise excluded from receiving federal funds. Verification may be accomplished by 1) checking the System for Award Management (SAM) at www.sam.gov; 2) obtaining a certification from the entity; or 3) by adding a clause or condition to the transaction.

The Recipient of Funds, as a condition of receiving funds, certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, or by any department or agency of the State of Kansas.