

CONSULTANT AGREEMENT

This professional consulting services agreement (“Agreement”) is made as of this _____ day of October, 2014, by and between the Randolph Township Board of Education (“the Board”) and Applied Behavioral Consulting, LLC (“ABC”), for the provision of behavior analytical consulting services for the 2014-2015 school year.

WITNESSETH:

WHEREAS, ABC provides duly licensed and/or accredited behavioral analysts; and

WHEREAS, the Board has determined that it would be in its best interest to retain ABC to provide, as an independent contractor, such services as are provided by a behavioral analyst (“the services”); and

WHEREAS, it is the intention of the Board and ABC to enter into this Agreement for the provision of these services to the Randolph School District (“District”);

NOW, THEREFORE, in consideration of the mutual covenants conditions and agreements contained herein, the Board and ABC agree as follows:

ARTICLE 1 – SERVICES and TERM

The Board hereby retains ABC to provide the following services:

1.1 ABC shall provide the services of an analytical behavioral therapist for pupils in the District identified as special education pupils, pupils in need of special services or for other pupils as are identified by the District, among other things. In furtherance of same, ABC shall:

1. Conduct and performing behavior assessments;
2. Implement functional analysis of behavior;
3. Provide staff training and workshops in the areas of functional behavioral assessments (FBA), behavior management, positive support plans and behavior improvement plans (BIP);
4. Assist in the development of appropriate and accurate behavior improvement plans;
5. Create positive behavioral support plans;
6. Write and updating behavioral intervention plans;
7. Provide behavioral support and behavioral consultation;
8. Assist with classroom management systems;
9. Assist in creating appropriate IEP goals;
10. Observe classrooms and students;
11. Offer on-going support to all members of the team;
12. Conduct weekly behavioral consultation and hands-on training for staff;
13. Help create crisis plans;
14. Develop and monitor data collection systems; and

15. Perform such other duties as are prescribed or requested by the Superintendent of Schools and/or Director of Special Services for the District.
- 1.2 ABC, or any individual employed by ABC to provide services as set forth herein, shall respect the confidential nature of all information that the company or employee may encounter with regard to pupil records throughout the performance of this Agreement, in accordance with Board policy and all applicable federal and state statutes and regulations.
- 1.3 ABC, or any individual employed by ABC to provide services as set forth herein, shall comply with all policies, rules and regulations of the Board and applicable provisions of State and Federal laws and regulations. Failure to comply with the rules, regulations policies and procedures identified herein, as determined solely by the District's administration, may be cause for immediate termination of this Agreement in its entirety.
- 1.4 ABC represents to the Board that the undersigned, or any individual employed by ABC to provide services as set forth herein, is in full compliance with the criminal history record check required under the provisions of N.J.S.A. 18A:6-7.1, *et seq.*, and that the results thereof are current and favorable.
- 1.5 The term of this Agreement shall be from July 1, 2014 through June 30, 2015. However, ABC's services under this Agreement shall commence upon approval by the Board and the parties' execution of this Agreement and shall continue for the remainder of the 2014-2015 school year, unless this Agreement is terminated by either party pursuant to the provisions set forth herein.

ARTICLE 2 – FEES

- 2.1 In consideration for the services set forth above, the Board shall pay ABC the rate of \$135.00 (One Hundred Thirty-Five Dollars) per hour of consulting services provided, on a weekly and/or as-needed basis, up to a maximum of eight (8) hours per week. In no instance shall the compensation paid to ABC under this agreement exceed the amount of \$1,080.00 per week, except as set forth below. Payment shall be made upon the execution of appropriate purchase orders in accordance with the Board's regular procedure for the payment of outside vendors.
- 2.2 Should additional consulting services in excess of eight (8) hours per week be needed, such services must be pre-approved in writing by the Superintendent and duly approved by the Board of Education.
- 2.3 Services shall be provided exclusively by the Executive Director of ABC with substitution if and when necessary, upon prior notice to the District if possible, by a Masters-level clinician. If the Executive Director and/or substitute is absent from school for any reason, and a therapy session is not provided for a student, the District shall not be charged for any services.

- 2.3 ABC shall provide the Board with an itemized billing statement on the last day of each month, indicating the student treated, the hours of services provided each day of the month prior and the total amount due.
- 2.4 Payment shall be made upon the execution of appropriate purchase orders in accordance with the Board's regular procedure for the payment of outside vendors.
- 2.5 The Board shall make payment to ABC within five (5) days following the monthly Board of Education meeting for services invoiced during the previous month. In no event shall any payment be made without the prior approval of the Board of Education.

ARTICLE 3 – LICENSING AND/OR CERTIFICATION

- 3.1 ABC represents that, to the extent required by law, the undersigned and anyone employed by ABC and providing the services on its behalf is appropriately certified by the State of New Jersey to perform the consultant services set forth above. ABC represents that all certifications and licenses possessed by her are active and in good standing, and in the event that her certification(s) is/are called into question, lapsed or revoked, she shall immediately advise the Board of same, and this Agreement will become null and void

ARTICLE 4 – INDEPENDENT CONTRACTOR

- 4.1 ABC agrees and understands that it, as well as any individual employed by it to provide services as set forth herein, is an independent contractor while performing services under this Agreement, and nothing set forth herein shall be construed to establish an employer-employee, agency, joint venture or partnership arrangement between the parties. ABC shall be responsible for paying any withholding fees and social security and other taxes, as required.
- 4.2 Should a court or agency of competent jurisdiction determine that ABC's services do not qualify the undersigned or any other employee of ABC as an independent contractor, she shall indemnify and hold the Board, its employees and agents, collectively and individually, harmless for any back taxes, pension contributions, benefit payments, etc. for which the Board may be held responsible.
- 4.3 As an independent contractor, neither ABC nor its employees providing services on its behalf, including the undersigned, shall be entitled to any of the rights or benefits attendant to employment by the Board. ABC specifically acknowledges that, except as otherwise may be set forth herein, he/she/it has no rights with regard to tenure, seniority, health benefits, indemnification, pension benefits or other such benefits which may be afforded to Board employees.

ARTICLE 5 – DISPUTE RESOLUTION

- 5.1 The laws of the State of New Jersey shall govern the validity of this Agreement, its interpretation, performance and remedies for contract breach or any other claims related

to this Agreement, without regard to any conflicts of law provisions that would apply the law of another jurisdiction. Any and all claims, disputes or other matters in question between the Board and ABC arising out of or relating to this Agreement or alleged breach thereof, shall be subject to and determined by a Court of competent jurisdiction venued in Morris County, New Jersey.

ARTICLE 6 – INSURANCE

- 6.1 ABC shall maintain, or cause to be maintained, in full force and effect, insurance in such amounts and against such risks as follows:
- a. Workers Compensation and Employers Liability Insurance as required by New Jersey law;
 - b. Auto Liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000) combined single limit per claim;
 - c. Commercial General Liability (including Products Liability and Completed Operations) in amounts not less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000.00) for personal injury coverage, with a general aggregate of Two Million Dollars (\$2,000,000.00); and
 - d. Professional liability (malpractice) insurance coverage in the amount of not less than Three Million Dollars (\$3,000,000.00) for each claim.
- 6.2 Upon request by the Board, ABC shall provide the Board with a certificate or certificates of insurance attesting to the coverages set forth above from an insurance company authorized to do business in New Jersey and having an A.M. Best Rating of at least an “A-“. ABC shall name the Board as additional insured entity with respect to said coverages, other than professional liability coverage.

ARTICLE 7 – TERMINATION

- 7.1 This Agreement may be terminated as follows:
- i. Upon the expiration of the Agreement;
 - ii. By either party, for convenience, upon furnishing the other party with advance verbal notice, accompanied by concurrent written notice, ten (10) calendar days prior to such early termination date. Upon such termination, the Board will not be liable for any amounts under this Agreement except for services completed prior to the termination date;
 - iii. Immediately, for incompetence, neglect or misconduct; or
 - iv. As provided pursuant to Article 1, Section 3, above.

- 7.2 In the event of a termination due to ABC's incompetence, neglect or misconduct. Upon such termination, the Board will not be liable for any amounts under this Agreement except for services completed prior to the termination date. The Board shall also not be liable for any amounts incurred, charged or associated with said neglect or misconduct.

ARTICLE 8 – ASSIGNMENT

- 8.1 The rights of the Board or ABC under this Agreement are personal to each party, and neither party shall assign or transfer or otherwise assign its rights or delegate its duties under this Agreement, whether voluntarily, involuntarily or by operation of law, without the prior written consent of the other party to this Agreement.

ARTICLE 9 – LIMITATION ON LIABILITY

- 9.1 ABC shall indemnify, defend and hold harmless, the Board, collectively and individually, its agents and employees, from any and all damages, losses or claims, including but not limited to, reasonable attorney's fees, that arise as a result of, in whole or in part: (1) the negligent or intentional acts, errors, omissions or failure to perform by ABC, his, her or its employees, agents, sub-consultants or sub-contractors; (2) a breach of student or Board of Education confidentiality, as prohibited herein or by law; and (3) a breach of this Agreement by ABC, his, her or its employees, agents, sub-consultants or sub-contractors.
- 9.2 The provisions of this Article shall survive any termination or expiration of this Agreement.

ARTICLE 10 – ADHERANCE TO LAWS

- 10.1 This agreement shall be construed in accordance with New Jersey law.
- 10.2 ABC and the undersigned agree that she/it shall perform all duties set forth herein to the best of her/its ability in accordance with State, Federal and municipal laws, regulations, and rules, as well as in accordance with all Board Policies, regulations and supervisory directives. ABC agrees to maintain the confidentiality of all student records, and shall not discuss or release such information to any third party without the express written consent of the Superintendent and/or Director of Special Services. ABC's failure to adhere to any State, Federal or municipal law, or any Board policy, regulation or supervisory directive shall result in the immediate termination of this Agreement.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

- 11.1 In the event that any provision of this Agreement conflicts in whole or in part with ABC's proposal for services or any other document or verbal communication, the terms of this Agreement shall control. In the event that ABC's proposal contains additional

services not listed herein, such services shall be considered incorporated into this Agreement by reference.

- 11.2 If, during the term of this Agreement, it is found that a specific clause of this Agreement is illegal, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.
- 11.3 This Agreement represents the entire agreement of the parties and cannot be amended unless such amendment is in writing and signed by both parties.
- 11.4 The services required by this Agreement shall be performed in a manner so as not to interfere with the normal operation of the District.
- 11.5 This Agreement is subject to approval by the Board of Education. Upon such approval, the Business Administrator is expressly authorized to execute this Agreement on behalf of the Board.

This Agreement is entered into the day and year first written above.

**APPLIED BEHAVIORAL
CONSULTING, LLC.**

**RANDOLPH BOARD OF
EDUCATION**

Danielle Tarantino, Exec. Director

Gerald Eckert, Bus. Admin./Bd.Secty.

Dated: _____

Dated: _____

WITNESS:
