

**EXHIBIT** **EXHIBIT**

**RELATIONS WITH COMMUNITY BEHAVIOR  
MANAGEMENT AND MENTAL HEALTH AGENCIES**

*(MOU Template for Providers of BSMD Services)*

GADSDEN INDEPENDENT SCHOOL DISTRICT

AND

\_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING (MOU)**

20\_\_\_\_ - 20\_\_\_\_ School Year

This is an agreement between the Gadsden Independent School District Board of Education (hereinafter District) and \_\_\_\_\_ (hereinafter Provider), a provider of behavior management skills development (BMSD) services. Participation by a student or family in the Provider program is at parent discretion and is not sponsored by the District, nor is participation in the Provider program a replacement for services to be provided by the District pursuant to an Individualized Education Plan (IEP) or Section 504 Student Accommodation Plan (SAP), including but not limited to a Behavior Improvement Plan (BIP).

**PURPOSE**

The purpose of this agreement is to create guidelines and procedures for the Provider to deliver services to students enrolled in the District during school and/or after school hours on District premises. In addition, this MOU is established to promote and sustain a positive and proactive partnership which honors mutual respect and accountability for all parties involved in a student’s treatment program.

**PARTICIPANTS**

Participants in the Provider program may include students enrolled in the District who are identified and referred by a student’s parents, or an agency other than the District, as needing behavior management intervention according to BMSD regulations at 8.322.3 NMAC.

**PROVIDER CREDENTIALS**

Provider will be certified by the Children, Youth and Families Department (CYFD) and will employ or contract with behavior management specialists who work under the supervision of a licensed practitioner employed by a certified behavior management services agency (8.322.3.10 NMAC). All providers of direct services to students on district premises during the school day shall have a minimum of a bachelor degree in a related field. All behavior management specialists will have fulfilled mandatory pre-service training requirements and background investigations as dictated by CYFD regulations. Provider and provider staff are not employees of the District and are in no way to be construed as such.

## PROVIDER SERVICES

All Provider services will be specified in an individualized treatment plan designed to improve the recipient's performance in targeted behaviors, reduce emotional and behavioral excess, increase social skills and enhance behavioral skills through a regimen of positive intervention and reinforcement (8.322.3.13 NMAC).

## RESPONSIBILITIES OF PROVIDER

- Prior to initiating services at any school site, the Provider will contact the school administrator/designee to discuss the proposed nature, duration, schedule, and location of services to be delivered to a student on District premises.
- The Provider will present documentation of written parent/guardian consent to provide services within the District setting prior to initiating services at any school site.
- Within 30 days of the initiation of services, the Provider will develop a behavior management plan which will identify all targeted behaviors that are to be addressed by the Provider and will assess the recipient's progress in behavioral management skills.
- With parent consent, a copy of the behavior management plan will be provided to the campus administrator/designee, as a condition to the student's receipt of services on District premises..
- The behavior management plan must compliment any existing behavior contracts for non-special education students, and must not conflict with any behavior improvement plans (BIPs) of students with disabilities
- All Provider services will be delivered on a scheduled appointment basis only.
- The Provider will adhere to all district and campus rules and regulations including signing in and out at the front office each time a campus is visited as a student is contacted pursuant to a behavioral management plan and notifying the office staff if a scheduled appointment will be missed or must be changed.
- The Provider shall not remove a student from his/her regular schedule for more than one class period. Any such removal must be during an elective course or lunch, unless the prior written approval of the school administrator/designee has been obtained and, for students with disabilities, such removal is consistent with the student's IEP, Section 504 plan and BIP.
- Any student removed from a class will remain under the constant and direct supervision (no greater distance than 15 feet) of the Provider until the student is returned to the appropriate school staff.
- When services are delivered in a classroom, the Provider will adhere to all classroom rules and procedures unless previously agreed to among all parties and pursuant to the recipient's behavior management plan, nor shall the services delivered to the student in the classroom interfere with or disrupt the education of other students.
- No student may be removed from or transported from the school site by the Provider without the prior written consent of the parent and the approval of the school administrator/designee immediately prior to the removal.
- With the approval of the campus administrator/designee, the Provider may be invited to attend student staffings for non-disabled students, and/or IEP team/Section 504 meetings for students with disabilities.
- Services will be provided to identified Provider recipients only and may not be provided to other students at the school site(s).
- The Provider agrees to contact the District immediately upon the discharge of a recipient of services or upon the revocation of consent by the parent for the continued provision of Provider services on District premises.
- The Provider will adhere to all applicable federal, state, and district confidentiality and

privacy mandates.

- The Provider agrees to indemnify and hold harmless the District for any claims raised by the students or parents who receive services on District premises, as well as by a third party for any acts or omissions of the Provider, staff or employees.
- Prior to the initial delivery of services, the Provider will present documentation to the District of current malpractice insurance and professional liability insurance.

#### RESPONSIBILITIES OF THE DISTRICT

- Prior to initiation of services the campus administrator/designee will meet with the Provider in order to develop a common understanding regarding the nature, duration, schedule, and location of services to be delivered to a student on District premises.
- The District will, with the approval of the campus administrator/designee, invite the Provider to attend staffings for non-disabled students, and IEP team/Section 504 meetings for students with disabilities.
- When the Provider's behavior management plan includes assistance in maintaining or achieving appropriate behavior management skills through teaching, training and coaching activities, classroom teachers and/educational staff will cooperate by providing specific lesson plans, assignments, and materials as necessary and appropriate.
- Upon receiving written parent consent to release confidential information, the District will give the Provider a copy of the student's current IEP or Section 504 Plan.
- The District will adhere to all applicable federal, state, and district confidentiality and privacy mandates.
- The District will make available to the Provider all calendars and schedules of current school/program activities as well as copies of site procedures, rules, and regulations.
- The District has the right to refuse or cancel Provider services on District premises for any student where the parent revokes or refuses consent to service delivery on campus..

#### RESPONSIBILITIES OF THE PROVIDER AND THE DISTRICT

- Provider services will be delivered in an environment beneficial/appropriate to the student.
- The Provider and the District will meet at least once annually to discuss each student's progress on all targeted behaviors in the behavior management plan.
- Both parties will cooperate in providing training to Provider and District staff as agreed upon and as necessary.
- This MOU will be reviewed and/or renewed annually with the participation of both parties.

#### GENERAL TERMS AND CONDITIONS

- This MOU is governed by the laws of the State of New Mexico and any disputes regarding the terms of the MOU are subject to New Mexico law.
- Either party may terminate this MOU upon 30-days written notice to the other party, with or without cause.
- **Term.** The term of this MOU shall commence upon execution by the parties and shall remain in effect for the 2011-2012 school year. Unless terminated as provided herein, this MOU shall expire June 30, 2012.
- **Renewal Term.** At the end of the initial term, and any subsequent term, this MOU may be renewed, at the sole discretion of the School District, for consecutive terms as the School District determine appropriate.
- **Independent Contractor Status.** The Provider acknowledges and agrees that it is an

independent contractor, and not as an employee, contractor or agent of the School District. The Provider and the School District are not in a partnership or joint venture, nor are they or shall they be deemed to be partners or joint venturers of any kind for any purposes. Neither Provider nor any of its employees shall accrue leave, insurance benefits, retirement contributions, use of school equipment or vehicles or other benefits of employment with the School District.

- **Sex Offender Registration.** The Provider shall review the list of registered sex offenders at the Department of Public Safety's (DPS's) website, [www.nmsexoffender.dps.state.nm.us](http://www.nmsexoffender.dps.state.nm.us) to verify that none of its employees or prospective employees being considered for hiring appear on the list, and Provider shall notify the District of any employee, prospective employee, subcontractor or subcontractor employee who appears on such list and such person shall not be permitted by Provider to enter any District premises or building or site in connection with the services contracted under this MOU.
- **Criminal Background Check.**
  - (a) The Provider shall conduct a criminal background check on all of its employees, agents, subcontractors, subcontractor employees, or representatives who will deliver services to students on District premises and, as a result will have unsupervised access to students (which shall mean performing services for compensation at any District site). Such background check shall comply with the requirements of NMSA 2978 Section 22-10A-5B.
  - (b) Should the background check disclose a conviction of any of the individuals listed above for a felony or misdemeanor involving moral turpitude, such individual shall be prohibited by Provider from entering any District premises, building or site in connection with the services to be delivered under this MOU.
- **Immigration Status.** Provider hereby verifies that it has confirmed the legal ability of all of its employees to work in the United States. Provider shall keep on file in the Provider's office for inspection by the District on request, a properly completed Form I-9 or other acceptable documentation for each employee who is not a United States citizen, and shall assure that adequate documentation is requested by Provider, whenever an employee's right to work in the United States is subject to reasonable question.
- **Insurance; Liability.** The Provider shall purchase and provide the School District with a copy of a liability insurance policy, including but not limited to general and employment practices liability insurance, in relation to the services provided under this MOU during the term of this MOU with limits at least equivalent to those specified in the New Mexico Tort Claims Act, which policy shall name the District as an additional insured.
- **Dispute Resolution.**
  - (a) If a dispute arises as to the terms or interpretation of this MOU, the parties shall promptly attempt in good faith to resolve the dispute by mediation. The parties shall mutually agree upon the selection of the mediator within ten (10) work days of a request for mediation. The mediation shall occur in Doña Ana County, New Mexico and the parties shall share the costs of the mediation equally. If the parties cannot reach agreement on selection of a mediator, or if the mediation session cannot be held within sixty (60) days after the request, unless the parties consent to a longer period, the parties shall proceed to

arbitration as set forth below.

(b) All disputes not resolved by negotiation and mediation shall be resolved by arbitration in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, unless the parties mutually agree to a different procedure. All disputes shall be decided by a single arbitrator and shall be heard in Doña Ana County, New Mexico. A decision shall be rendered by the arbitrator no later than three months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978 Sections 44-7A-1 to 44-7A-32. The arbitrator shall have the authority to include in the arbitration award a provision that the prevailing party shall recover all of its costs, expenses and attorneys fees incurred as a result of the dispute.

- **Entire Agreement; Modification.** This MOU constitutes the final and entire agreement between the parties, and there is no agreement or promise on the part of either party to do or omit to do any act or thing not herein mentioned. This MOU is intended as a complete and exclusive statement of the terms and conditions of the parties' agreement and may not be amended, changed, modified or altered without the written consent of both parties.
- **Assignment.** No assignment of the obligations of this MOU in whole or in part, and no assignment or encumbrance of any interest in the compensation agreed to be paid under this MOU, shall be made without prior consent of the School District.
- **Severability.** In the event that any provision in this MOU shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this MOU.
  - **Notice.** Any instruction, notice or demand (individually or together, "Notice") required or permitted by this MOU to be given must be in writing and (i) delivered by certified mail to the Postal Service of the United States of America, postage pre-paid or (ii) hand-delivered by courier or by a nationally recognized and reputable overnight delivery service. Each Notice shall, for all purposes, be deemed given and received: (i) if given by certified mail, return receipt requested, postage pre-paid, when the return receipt is signed; or (ii) if given by a nationally recognized and reputable overnight delivery service, when the Notice is actually received by the party. If the Notice is tendered under the provisions of this paragraph and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date tendered.
- **No Discrimination.** The Provider shall not discriminate or retaliate against any employee of Provider or the School District, or against any student, parent or school patron on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, identity, physical or mental disability or serious medical condition.

We have read the MOU and are in full agreement with the above articles and statements. By signing below, each party certifies that it is authorized to obligate its organization to the terms

and conditions of this MOU.

\_\_\_\_\_  
Superintendent  
Gadsden Independent School District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provider CEO/Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provider Program Manager

\_\_\_\_\_  
Date

