

OFFICE OF CHIEF ACADEMIC OFFICER
Summary of State Board of Education Agenda Items
May 18, 2023

OFFICE OF SPECIAL EDUCATION

02.A. Action: Contract with Gay, Jones, and Kuhn PLLC to provide supplementary legal counsel and policy and guidelines support to the Office of Special Education relative to the enforcement of and compliance with the Individuals with Disabilities Act (IDEA) [Goal 4 – MBE Strategic Plan]

Awarded Vendor: Gay Jones & Kuhn PLLC
Jackson, Mississippi

Scope of Project: The purpose of this contract is to retain the services of Gay Jones & Kuhn PLLC as supplementary legal counsel to the Mississippi Department of Education, Office of Special Education relative to the enforcement of and compliance with the Individuals with Disabilities Act (IDEA).

Personnel associated with this contract are not former Department employees or related to any Department employees.

Scope of Contract:

- Term of Contract: July 1, 2023 – June 30, 2024
- Amount to be Awarded: \$ 72,000.00
- Method of Award: No competitive requirement (legal services)

Funding Source: Federal funds

This item references Goal 4 of the *Mississippi Board of Education Strategic Plan*.

Recommendation: Approval

Back-up material attached

**CONTRACTUAL AGREEMENT
FOR LEGAL SERVICES**

THIS AGREEMENT made and entered into this the ___ day of _____, 2023, by and between the **Mississippi Department of Education (MDE)** an agency of the State of Mississippi, and **Gay Jones & Kuhn, PLLC** at Fondren Corner 2906 North State Street, Jackson, MS 39216 for the performance of legal services of attorneys and employees of said law firm, hereinafter individually and collectively referred to as **“Attorney” and/or “Gay Jones & Kuhn”**.

WITNESSETH:

In consideration of the mutual covenants contained herein, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

- I. SCOPE OF SERVICES:** The **Attorney and/or Gay Jones & Kuhn** shall provide supplementary legal counsel and policy and guidelines support as deemed necessary for representation of the **MDE’s Office of Special Education** regarding enforcement of and school district compliance with the federal Individuals with Disabilities in Education Act (IDEA). The **Attorney and/or Gay Jones & Kuhn** will copy the MDE’s General Counsel and any applicable Attorney General Designee with all correspondence during the term of this Agreement, including, but not limited to, legal and policy memoranda in support thereof.

The **Attorney and/or Gay Jones & Kuhn** shall also investigate and provide legal advice and recommendations for State Complaints under the IDEA filed on behalf of special education students and to advise the Office of Special Education on legal findings and resolutions to said complaints. **Any potential conflicts that may arise with the legal representation of MDE have been resolved.**

The **Attorney and/or Gay Jones & Kuhn** shall also assist in the representation of **MDE’s Office of Special Education** as it relates to the monitoring of school district compliance with Accreditation Process Standard 17.4, which contains the federal requirements for special education and related services.

The **Attorney and/or Gay Jones & Kuhn** shall also provide legal counsel and support to the Mississippi Schools for the Deaf and Blind regarding compliance with the IDEA and the provision of special education and related services to the schools’ enrolled students.

- II. PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on July 1, 2023 and shall expire on June 30, 2024.
- III. COORDINATION OF SERVICES:** The Attorney and/or Gay Jones & Kuhn shall coordinate the performance of the services to be provided hereunder through counsel for MDE and through the Office of the Attorney General and consult with them on specific courses of action which should be pursued.
- IV. RELATIONSHIP OF PARTIES:** It is expressly understood and agreed that Attorney and/or Gay Jones & Kuhn is an independent contractor and that the purchase of legal services is not based on an employer-employee relationship.
- V. SPECIFIC ATTORNEYS:** The Attorney and/or Gay Jones & Kuhn shall utilize its staff and attorneys to perform the services required by this Agreement, namely Attorneys Mary Margaret Gay and Sarah Beth Jones, and paralegal Olivia Cruise.
- VI. PAYMENT TERMS:** As full and complete compensation for the services to be provided hereunder, the MDE will pay the Attorney and/or Gay Jones & Kuhn at the rates listed below:
- \$250.00 per hourly rate for time expended by a Partner Attorney.
 - \$215.00 per hourly rate for time expended by an Associate Attorney.
 - \$100.00 per hourly rate for time expended by paralegals.

The total amount of this contract shall not exceed \$ 72,000.00, unless agreed and approved in writing by the MDE, the Office of the Attorney General, and the Mississippi State Personnel Board.

Each month, Attorney and/or Gay Jones & Kuhn shall submit to the Office of the Attorney General and to counsel for MDE an invoice for payment of attorneys' fees and all authorized expenses, which shall be paid following approval by the Office of the Attorney General and counsel for MDE.

- VII. AVAILABILITY OF FUNDS:** It is expressly understood and agreed that the obligation of the MDE to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDE, the MDE shall have the right upon ten (10) working days written notice to the contractor to terminate this Agreement without damage, penalty, cost or

expenses to the MDE of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

- VIII. EQUAL OPPORTUNITY:** In connection with the performance of work under this contractual Agreement, Attorney and/or Gay Jones & Kuhn agrees not to discriminate in any manner whatsoever, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and condition of employment against any person otherwise qualified because of race, creed, color, religion, sex, age, national origin, disability, ancestry, or political affiliation.
- IX. NON-ASSIGNMENT AND SUBCONTRACTING:** The MDE will not be independently obligated or liable under this Agreement to any party other than the Attorney and/or Gay Jones & Kuhn named herein. Said Attorney and/or Gay Jones & Kuhn understands and agrees that it shall not assign, transfer, delegate, or subcontract with respect to any of its rights, benefits, obligations, interests, or duties under this Agreement without the prior written consent of the Office of the Attorney General.
- X. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
- XI. MODIFICATION OR AMENDMENT:** Modifications or amendments to this Agreement may be made upon mutual Agreement of the parties, in writing signed by the parties hereto and approved as required by law.
- XII. TERMINATION:** Any party may terminate this Agreement at any time, with or without cause, by giving written notice to the other parties of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of such termination, Attorney and/or Gay Jones & Kuhn shall be entitled to receive just and equitable compensation for any specific services completed in a satisfactory manner prior to the date of termination.
- XIII. NON-WAIVER OF BREACH:** No assent, expressed or implied, by the parties hereto to the breach of the conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of the Agreement.
- XIV. APPLICABLE LAW:** The Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any

litigation with respect thereto shall be brought in the courts of the State of Mississippi. The Agreement shall comply with applicable federal, state and local laws and regulations.

XV. COMPLIANCE WITH MISSISSIPPI EMPLOYMENT PROTECTION ACT (MEPA): Attorney and/or Gay Jones & Kuhn represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program Attorney and/or Gay Jones & Kuhn agrees to maintain records of such compliance and, upon request of the State of Mississippi and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State Attorney and/or Gay Jones & Kuhn further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Attorney/ Law Firm understands and agrees that any breach of these warranties may subject Attorney and/or Gay Jones & Kuhn to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Attorney and/or Gay Jones & Kuhn by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Attorney and/or Gay Jones & Kuhn would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of July 1, 2023.

Mississippi Department of Education
359 North West Street
Jackson, MS 39201

Attorney and/or Gay Jones & Kuhn
Fondren Corner, 2906 North State St.
Jackson, MS 39216

By: _____
_____ (title)

By: _____
_____ (title)

APPROVED:

OFFICE OF THE ATTORNEY GENERAL

By: _____
LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

Date: _____

MISSISSIPPI STATE PERSONNEL BOARD

By: _____
EXECUTIVE DIRECTOR

Date: _____