

Filed
FEB 13 2014
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
)
) Petitioner,)
) Case No. 12E069
v.)
)
DR. STEVE WILMOTH,)
)
) Respondent.)

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE MISSOURI ETHICS COMMISSION, AND
CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondent, Dr. Wilmoth, acknowledges that he has received and reviewed a copy of the Complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission. Respondent knowingly and voluntarily enters into this joint stipulation after consulting with his attorney(s).

The undersigned Respondent further acknowledges that he is aware of the various rights and privileges afforded by law, including but not limited to: the right to appear and be represented by counsel; the right to have all charges against Respondent be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondent; the right to present evidence on Respondent's behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to Respondent by operation of law, the undersigned Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint

Stipulation of Facts, Waiver of Hearing before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, and agrees to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondent jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Ethics Commission (“the Commission”) is an agency of the State of Missouri established pursuant to Section 105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 105, RSMo.

Respondent Wilmoth

2. Respondent Steve Wilmoth is and was at all relevant times the Superintendent of the Seneca R-7 School District.

3. The Seneca R-7 School District is a political subdivision of the State of Missouri for purposes of the conflict of interest laws of Chapter 105.

4. Dr. Wilmoth signed contracts with the Seneca district on February 26, 2011, to serve as the Superintendent of the Seneca district from April 1, 2011, through June 30, 2011, and from July 1, 2011, through June 30, 2013. Under the contracts, Dr. Wilmoth is paid approximately \$110,000 per year, with additional benefits.

Ombudsman Educational Services, Ltd., and Educational Services of America, Inc.

5. Ombudsman Educational Services, Ltd., (“Ombudsman”) is a corporation registered with the Illinois Secretary of State’s office.

6. Ombudsman contracts with school districts, including the Seneca R-7 School District, to provide off-campus programs that, according to its contract with the Seneca district, are “intended to reduce drop-out rates, increase graduation rates, increase attendance levels, improve academic performance for drop-out prevention and offer the District’s non-traditional learners a new opportunity to encounter an individualized learning experience different than that they encountered in the traditional school setting.” Exhibit 1 (Contract dated November 18, 2011).

7. Ombudsman offers its service for students from grades six through twelve. Exhibit 1 ¶ 2.1. Students attend school for four hours per day. Exhibit 1 ¶ 2.2. During this four hour period, each student “works individually on their learning paths which consist of online instructional components, print-based and multimedia resources ... small group interactions ... work study, community service and volunteer opportunities.” Exhibit 1 ¶ 1.3.

8. Ombudsman’s contract with the Seneca district offers this program for approximately 30 students, and requires Ombudsman to maintain a student/instructor ratio of “approximately 10:1 during the majority of the school day.” Exhibit 1 ¶ 2.2.

9. Ombudsman is owned and operated by Educational Services of America, Inc. (“ESA, Inc.”). ESA, Inc. is a for-profit corporation registered with the Delaware Secretary of State.

Wilmoth’s contract with Ombudsman

10. Dr. Wilmoth interviewed with Ombudsman/ESA, Inc. in December, 2010, and he agreed to terms of employment with Ombudsman/ESA, Inc. the same month. He formally signed a contract with ESA, Inc., on March 9, 2011, which was eleven days after signing his contract with the Seneca district.

11. Under his contract with ESA, Inc., Dr. Wilmoth agreed to certain obligation as an “operations and business development liaison,” including:

Generating leads for the business development team to pursue new opportunities for Ombudsman and Spectrum partnerships. Meetings with new potential partners that are scheduled by the contractor may also be attended by an ESA VP of Business Development.

...

Fostering relationships with key personnel in state Departments of Education, members of state or regional superintendent associations, etc. that would be influential in protecting and/or growing Ombudsman.

Exhibit 2 (contract dated March 9, 2011).

12. Under his contract with ESA, Inc., Dr. Wilmoth was paid \$5,000 per month, payable every two weeks. Exhibit 2 ¶ 2.1. The contract was automatically renewable unless either party gave at least 30 days prior written notice. Exhibit 2 ¶ 5.1.

Investigation and Reasonable Grounds Finding

13. Pursuant to Section 105.961, RSMo, the Commission’s staff has investigated a complaint filed with the Commission and reported the investigation’s findings to the Commission.

14. Based on the report of the Commission’s staff, the Commission determined that there are reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

COUNT I

Conflict of interest: Performing a service by which Respondent attempted to influence the political subdivision for which Respondent was an appointed official

15. On January 6, 2011, the Seneca R-7 School District voted to offer Dr. Wilmoth the position of superintendent, and on February 17, 2011, the district voted to change his start date to April 1, 2011.

16. On or about February 26, 2011, Dr. Wilmoth signed contracts agreeing to serve as superintendent of the district beginning April 1, 2011.

17. As superintendent, Dr. Wilmoth was the chief administrative officer of the district.

18. Beginning March 9, 2011, through approximately February 2012, Dr. Wilmoth received \$5,000 per month from ESA, Inc., to serve as an independent contractor as an “operations and business liaison.” In this role, Dr. Wilmoth was to “generat[e] leads for the business development team to pursue new opportunities for Ombudsman and Spectrum partnerships.” Exhibit 2 ¶ 1.1.

19. After September, 2011, being asked by a high school administrator if he had any ideas for an educational program for “at risk” students, Dr. Wilmoth suggested an “alternative school.”

20. On October 6, 2011, Dr. Wilmoth, together with one Seneca district board member and five Seneca district administrators, conducted a site visit to see the Ombudsman program in Ponca City, Oklahoma.

21. In September and November of 2011, Dr. Wilmoth, together with other Seneca district administrators, met with McDonald County school administrators and Neosho school administrators with regard to partnering on an alternative educational program. After learning

that a partnership did not meet the cost needs of the respective districts, Dr. Wilmoth set up a meeting with the Seneca district's board and Lisa Chitty, a representative of Ombudsman, for November 17, 2011. During that meeting, the Seneca district board voted to approve implementation of the Ombudsman program. Exhibit 3 (Minutes for November 17, 2012).

22. The next day, Dr. Wilmoth signed on behalf of the Seneca district the Ombudsman contract, which was set to begin half-way through the school year, in January 2012. Exhibit 1.

23. The contract provides for a penalty of 10% of the initial term's fees (which would amount to fees of approximately \$30,000) if the Seneca district does not exercise a contract renewal option. Exhibit 1 ¶ 3.2. The Seneca district's board meeting minutes do not reflect approval of this contractual penalty provision. Exhibit 3.

24. In January 2012, Dr. Wilmoth, together with Allison O'Neill, attended the ribbon-cutting ceremony for the Ombudsman "alternative school" for the Seneca district.

25. In the news release for the Ombudsman alternative school opening, Dr. Wilmoth discussed the fees under the contract (\$108,000 for one semester, with the district paying approximately \$200 more per student than the amount of funding the state provides, at \$6,850 per student) and said, "It's really a washout.... If we can get half of these kids to graduate that would've been dropouts there's not even a dollar sign to top it."

26. Dr. Wilmoth also stated that the district was looking at expanding the number of students the alternative school will accommodate. For additional seats, the Seneca-Ombudsman contract provides for payments of an additional "\$875 per student per month or \$65 per day for partial months." Exhibit 1 ¶ 3.4. In contrast, the Seneca-Ombudsman contract provided for cost

of approximately \$761 per student per month for 2012-2013. Exhibit 1 ¶ 3.3.2 (cost of \$108,000, or \$6,850 per “slot” for up to 30 students).

27. In the Ombudsman news release, Allison O’Neill, chief operating officer at Ombudsman, said that “the Seneca community has been more than accommodating for the new program.”

28. Once Ombudsman was implemented in the Seneca district, Dr. Wilmoth reported to ESA, Inc., that he “[s]poke to so many of the administrators in Southwest Missouri and interest was always present but the interest is now a reality since they can see a program in action.”

29. In February 2012, Dr. Wilmoth hosted the Sarcoxie schools and Mt. Vernon schools at the Seneca Ombudsman program.

30. Dr. Wilmoth’s contractual relationship with ESA, Inc., was brought to the Seneca district board’s attention in or about February 2012, by a Seneca district employee who had observed Dr. Wilmoth using a laptop supplied and owned by ESA, Inc.

31. Before February 2012, Dr. Wilmoth had informed the Seneca district board chairman that Dr. Wilmoth was an educational consultant, but Dr. Wilmoth did not specify that he was a consultant for ESA, Inc., or for Ombudsman.

32. On February 15, 2012, Dr. Wilmoth informed his insurance provider that he will no longer need professional insurance for his consulting contract with ESA, Inc. That same day, Dr. Wilmoth filed a “personal financial disclosure statement” with the Missouri Ethics Commission that did not disclose his contractual relationship with ESA, Inc. (See Count II, below).

33. Dr. Wilmoth formally terminated his consulting relationship with ESA, Inc., on February 27, 2012.

34. While consulting for ESA, Inc., Dr. Wilmoth earned \$55,000.

COUNT II

Failure to timely and accurately file personal financial disclosure statement

35. On February 15, 2012, Dr. Wilmoth filed a “personal financial disclosure” form with the Missouri Ethics Commission. That personal financial disclosure form contains no reference to payments under the Wilmoth-ESA, Inc., contract, even though Dr. Wilmoth earned more than \$1,000 during 2011 under that contract.

36. Dr. Wilmoth reported these transactions to the Missouri Ethics Commission by letter on March 8, 2012. In response to this letter, the Ethics Commission advised Dr. Wilmoth to amend his personal financial disclosure statement to include these transactions, which he did on March 8.

37. Dr. Wilmoth has amended and filed all Personal Financial Disclosure statements with the Missouri Ethics Commission to disclose all years in which Dr. Wilmoth received more than \$1,000 from Ombudsman and/or ESA, Inc.

JOINT PROPOSED CONCLUSIONS OF LAW

COUNT I

Conflict of interest: Performing a service by which Respondent attempted to influence the political subdivision for which Respondent was an appointed official

38. No appointed official of a political subdivision of the State of Missouri, “serving in an executive or administrative capacity, shall ... perform any services during the time of his or her office or employment for any consideration from any person, firm or corporation, other than the compensation provided for the performance of his or her official duties, by which service he or she attempts to influence a decision of ... any political subdivision in which he or she is an officer or employee or over which he or she has supervisory power.” § 105.454(4), RSMo.

39. There is probable cause to believe that Dr. Wilmoth violated Section 105.454(4), RSMo, by simultaneously serving as the Superintendent and chief administrative officer of the Seneca R-7 School district and knowingly accepting \$55,000 in consulting fees from ESA, Inc., to serve as a business liaison on behalf of Ombudsman, and identifying the Ombudsman program in response to a question from the Seneca School Board about potential alternative schools..

COUNT II

Failure to timely and accurately file personal financial disclosure statement

40. The chief administrative officer of each political subdivision with an annual operating budget in excess of one million dollars must file with the Missouri Ethics Commission a financial interest statement. § 105.483(11); § 105.489(3), RSMo.

41. For an official first appointed to office, the statement must be filed within 30 days of such appointment. § 105.487(2), RSMo.

42. Thereafter, the statement must be filed annually no later than the first day of May, covering the calendar year ending the immediately preceding December 31st. § 105.487(3), RSMo.

43. Among other disclosures, the statement must include “the name and address of each of the employers of such person from whom income of one thousand dollars or more was received during the year covered by the statement.” § 105.485.2(1), RSMo.

44. There is probable cause to believe that Dr. Wilmoth violated Sections 105.483, 105.485, and 105.487, RSMo, by failing to file an accurate personal financial disclosure statements and filing personal financial disclosure statements that failed to disclose a contractual relationships worth more than \$1,000 per year, and that Dr. Wilmoth did so knowingly.

II.

Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the order entered by the Missouri Ethics Commission in this matter. This order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

1. The parties to this Joint Stipulation understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.

2. The Commission shall issue its Consent Order in the form attached hereto as Exhibit A.

a. Respondent shall comply with the conflict of interest laws pursuant to Section 105.450 *et seq.*, RSMo.

b. It is the Order of the Missouri Ethics Commission that a fee is imposed against Respondent Wilmoth in the amount of \$55,000, pursuant to Section

105.961.4(6), RSMo. However, if Respondent pays \$8,250 of that fee within forty-five days after the date of the Order, the remainder of the fee will be stayed, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.

c. If Respondent Wilmoth commits any further violation or violations of the conflict of interest laws under Chapter 105, RSMo, within the two year period from the date of this order, then Respondent will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent has committed such a violation.

3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action, including any proceeding relating to the reporting on personal financial disclosure statements filed in 2014 and earlier of income received through calendar year 2013 by Dr. Wilmoth from Ombudsman and/or ESA, Inc.

4. Respondent, together with his heirs, successors, and assigns, does hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys of or from any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, a claim for attorney's fees whatsoever which Respondent or Respondent's attorney may now have or which they may hereafter have, which are based upon or arise out of the above cases.

RESPONDENT DR. STEVE WILMOTH

PETITIONER MISSOURI ETHICS
COMMISSION

By: Steve Wilmoth 2-16-2014
Dr. Steve Wilmoth Date

By: James Klahr 2/13/14
James Klahr Date
Executive Director

By: Curtis R. Stokes 2/13/14
Curtis R. Stokes Date
Attorney for Petitioner

**Ombudsman Program
Alternative Education Services Agreement**

This Agreement is made and entered into this 18th day of NOV., 2011, by and between Ombudsman Educational Services, Ltd., an Illinois corporation whose address is 1585 North Milwaukee Ave., Libertyville, IL 60048-1359 ("Ombudsman"), and the Seneca R-7 School District, whose address is 914 Frisco Street, Seneca, MO (the "District").

Section 1. Scope of Service Provided.

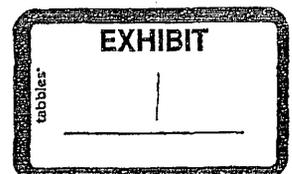
Ombudsman provides the District an off-campus program intended to reduce drop-out rates, increase graduation rates, increase attendance levels, improve academic performance for drop-out prevention and offer the District's non-traditional learners a new opportunity to encounter an individualized learning experience different than that they encountered in the traditional school setting.

The Ombudsman Program is performance-based, allowing all students to work at their own pace and in many cases accelerate their own learning. An Individualized Learning Plan (ILP) is developed for each student, focused on developing their academic skills in Ombudsman's seven areas of study to help the student meet District and state learning standards. Ongoing assessment of students' academic skills in the seven areas of study allows the program to be customized for each student's needs and expected outcomes.

- 1.1 **Placement.** Working with Ombudsman, the District identifies students who may benefit from the program. An initial intake interview is conducted with the student, parent, Ombudsman site director and a District representative, if and when necessary. The Ombudsman director explains the expectations of the program and asks for the student's commitment for participation and success in the program. The parent/guardian is also asked to make a commitment to support the student's effort to succeed in the program.

The District determines credit requirements and projects graduation or promotion, which is reflected in the student's ILP. Students who are unable to fulfill the referring District's graduation requirements may be eligible at the District's discretion to receive an Ombudsman diploma. The Ombudsman diploma is recognized and accredited as a high school diploma by the Middle States Commission (MSCES), Southern Association of Colleges and Schools (SACS), North Central Association of Schools and Colleges (NCA) and AdvancEd Accreditation Commission (AdvancEd).

- 1.2 **Diagnosis/Prescription.** Once the student is accepted and enrolled, the student's academic skill levels in reading, writing and mathematics are identified. These results and communication with the District regarding the student's ILP, are then utilized to establish the student's individualized learning goals, each semester, in the model's seven areas of academic study – Essential Skills: Reading, Writing and Mathematics; Science; Social Studies/Citizenship; College/Career Prep; Health/Recreation; Aesthetics and Life Management. To guide the student toward the attainment of their academic goals in each area of study, the student is prescribed an individualized learning path.
- 1.3 **Instruction.** Each student works individually on their learning paths which consist of online instructional components, print-based and multimedia resources driven by a performance-based curriculum, small group interaction – as needed and, when appropriate, work study, community service and volunteer opportunities. Each student must demonstrate



mastery of a concept before moving on to the next area of study. Working on success, the students begin to improve their self-image and establish realistic academic and life long goals. As a result of the student's rededication to the process of learning and achieving academic success, the program can provide the student the means to willingly modify his/her behavior in a positive way; including the decision to stay in school in pursuit of a high school diploma.

- 1.4 **Evaluation.** Each student's effort to meet his/her academic goals in the seven areas of study is evaluated daily, weekly, monthly and quarterly by the teaching staff using a variety of qualitative and quantitative strategies. Student responsibility, teaching strategies and the ILP are addressed and/or adjusted accordingly to try to help the student successfully complete all requirements of his/her enrollment. Evaluation of the student's assignments in all seven areas of study assist staff in determining the completion of course titles listed on the ILP and issuance of credit back to the District.
- 1.5 **Staff.** The Ombudsman instructional staff consists of certified teachers who may be supported by instructional assistants, with a minimum of a four-year college degree and/or paraprofessionals. The teaching staff possesses a high degree of professionalism, emotional maturity, general intelligence, willingness to change instructional strategies, a sense of humor and a passion for teaching the non-traditional student.

Section 2. Implementation for the District

- 2.1 **Learning Center.** Through consultation with District personnel, Ombudsman will provide one (1) Ombudsman learning center located in the District that creates a positive, professional learning atmosphere. The learning center will meet local zoning requirements and codes to operate the learning center. Upon consultation with District personnel, Ombudsman will renovate the learning center facility so that it is suited for occupancy. Ombudsman will provide the resources and materials reasonably needed to support the site. The learning center will meet the necessary requirements to serve 30 students from grades six (6) through twelve (12) in a four-hour learning approach.
- 2.2 **Staffing.** Ombudsman will provide adequate staff, based upon average daily attendance, to operate the learning center between the hours of 8:00 AM and 4:00 PM, maintaining a student/instructor ratio of approximately 10:1 during the majority of the school day.
- 2.3 **Educational Settings.**
 - 2.3.1 Ombudsman will schedule two learning sessions per day as enrollment dictates. To the extent that it is reasonably possible, Ombudsman will balance the learning sessions to maintain approximately 15 students in each session.
 - 2.3.2 If Ombudsman and the District mutually agree, the District may refer additional students beyond the District's initial purchased slots. Billing for these additional slots would be based upon the cost outlined below in Section -3- of this Agreement.
 - 2.3.3 The learning center will operate based on the District's calendar for all school years during the term of this Agreement.
 - 2.3.4 Ombudsman will provide its performance-based curriculum correlated to Missouri State standards, as the foundation of its academic program. The foundation will be

supplemented with other materials to help students work towards meeting District and state requirements for graduation and/or promotion.

2.3.5 Ombudsman can serve as the academic component of an Individual Education Plan (IEP) for certain students identified by the District as needing special education services only on the following terms:

- (i) The District must have determined and documented that Ombudsman is to serve as the academic component for such referred students. The District, parent and student must acknowledge that such student will be held to the same expectations of the Ombudsman Program related to academic progress, attendance, consideration for others and learning center general rules, as students enrolled in the Ombudsman Program.
- (ii) The District may assign a certified special education instructor employed by the District to periodically visit IEP students placed in the Ombudsman Program for academic services. The District's certified special education instructor could consult with Ombudsman's instructional staff regarding certain adjustments related to academic services for the IEP student that are within Ombudsman's capabilities and general academic strategies.
- (iii) Additional IEP services required by a student's IEP must be administered at and by the District outside of the hours in which IEP students attend the Ombudsman Program.

2.3.6 Should a student demonstrate through actions or behavior while in the learning center that he/she is no longer committed to the program's expectations and despite Ombudsman's staff's reasonable efforts to help the student regain commitment, Ombudsman reserves the right to terminate such student's enrollment. In addition, if a student poses a danger to themselves, other students or staff members, Ombudsman may also terminate such student's enrollment. Documentation of any such incidents and strategies tried will be provided upon request.

2.4 Reports. Ombudsman will provide the District reports, including, but not limited to, the following:

2.4.1 Student attendance on a weekly basis.

2.4.2 Student academic progress reports at the conclusion of the 1st and 3rd quarters and transcripts at the conclusion of the 1st and 2nd semesters.

2.5 Administrative Support Services

2.5.1 The local Ombudsman learning center will be supported by an Ombudsman operations manager, student records, technology, support services, human resources, financial services and professional relations teams.

2.5.2 The Ombudsman operations manager, learning site director and other members of the Ombudsman administrative team, as needed, will regularly meet/conference with the District's designated administrative team to review the satisfaction of students, parents and District staff with the program.

2.6 Program evaluation. The program's effectiveness is to be evaluated based upon criteria determined jointly by Ombudsman and the District. To facilitate such evaluation, the

District agrees to provide data to Ombudsman in a timely manner regarding demographic information, prior academic achievement, transcripts, state achievement test scores and graduation data for students enrolled at an Ombudsman site as well as any data for students that return to the District to measure success after enrollment in the program. Ombudsman will provide a process for collecting such data. Once compiled, Ombudsman will report the results to the District at an agreed upon timeline. Ombudsman agrees that it will use and maintain such data in compliance with all applicable laws and regulations.

- 2.7 **Insurance.** Ombudsman and the District shall indemnify, defend, and hold harmless the other party, and such other party's respective shareholders, directors, officers, officials, employees, volunteers and students from and against all claims, damages, losses and expenses, including attorney fees, arising out of such party's performance of this Agreement, caused in whole or in part by any negligent act or omission of such party, or anyone directly or indirectly employed by such party, or anyone whose acts such party may be liable for, except where caused by the sole negligence or willful misconduct of the other party. Ombudsman shall obtain and maintain during the life of this Agreement (and shall provide certificates or endorsements to District as proof of such coverage) at its own expense and from an admitted insurer authorized to operate in Missouri, the insurance coverage as required by District from time to time but in no event less than: (i) Workers' Compensation coverage at the applicable statutory limits and Employer's Liability coverage in an amount of not less than \$1,000,000 per accident; and, (ii) General Liability Insurance as shall protect Ombudsman, its officials, officers, directors, employees, contractors, volunteers and agents from claims which may arise from services performed under this Agreement, whether such services are performed by Ombudsman, by the District, its officials, officers, directors, employees, contractors or agents or by anyone directly or indirectly employed by any of them, with coverage that shall not be less than \$1,000,000.

Section 3. Contract Terms

- 3.1 **Contract Period.** The initial term of this Agreement shall be January 4, 2012 (last half of the 2011-2012 school year) through the 2012-2013 school year. Unless the District notifies Ombudsman of non-renewal prior to March 30, 2013, this Agreement shall automatically renew for the 2013-2014 school year, and, if this Agreement has so renewed, unless the District notifies Ombudsman of non-renewal prior to March 30, 2014, this Agreement shall automatically renew for the 2014-2015 school year.
- 3.2 **Penalty.** If the District determines that it will not renew the contract after the initial term, a termination fee equal to 10% of the initial term's fees shall be invoiced to District with payment due within thirty days.
- 3.3 **Costs.**
- 3.3.1 **2011-2012: Services under this agreement begin January 4, 2012 in the 2011-2012 school year.** The District's cost will be \$108,630 or a prorated slot cost of \$3,621 per slot for 30 slots.
- 3.3.2 **2012-2013: The District's cost will be \$205,500 or a per slot cost of \$6,850 per slot for 30 slots.**

- 3.3.3 2013-2014: If applicable, the District's cost will be \$211,650 or a per slot cost of \$7055 per slot for 30 slots.
- 3.3.4 2014-2015: If applicable, the District's cost will be \$217,980 or a per slot cost of \$7,266 per slot for 30 slots.
- 3.4 **Additional Students.** If additional students are referred pursuant to Section 2.3.2 above, the additional cost will be \$875 per student per month or \$65 per day for partial months of entry/exit, whichever is less.
- 3.5 **Payment Schedule.** 25% of the first year's total cost to be paid in advance by December 1, 2011, and the balance will be invoiced in two equal amounts in January and March. If this Agreement remains in effect for subsequent school years, the District will be invoiced for the annual payment in four equal amounts in August, October, January and March. Payment is due within thirty days from the date of the invoice.
- 3.6 The District will be provided with data on slot usage and attendance on a weekly and monthly basis in order to support the effort to keep the slots filled at all times. The District can fill a slot(s) whenever an opening occurs during the academic year.
- 3.7 Slots are the District's commitment to the program and therefore the District should keep the slots filled at all times as billing will be based upon the number of slots purchased.
- 3.8 The District will be responsible for any state testing that referred students may be required to take each year, student transportation, food services if needed, coordinating any student placement for the work study/community service and/or vocational classes and any social services/counseling required for students whom the District feels would benefit from enrollment at Ombudsman for academic services. Ombudsman will assist the District's implementation of these matters within reasonable parameters.

Section 4. Miscellaneous

- 4.1 This Agreement shall be governed by and construed in accordance with the laws of Missouri, and time shall be considered of the essence for this Agreement.
- 4.2 All notices, offers, requests, demands, and other communications pursuant to this Agreement shall be given in writing to the addresses in the first paragraph of this Agreement, by personal delivery, by prepaid first class registered or certified mail properly addressed with appropriate postage paid thereon, or by UPS, FedEx or other recognized, reputable overnight courier and shall be deemed to be duly given and received on the date of delivery if delivered personally, on the second day after the deposit in the United States Mail if mailed, or upon delivery if by UPS, FedEx or other recognized, reputable overnight courier.
- 4.3 If legal action is commenced to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and expenses through all appellate levels in addition to any other relief that may be granted.
- 4.4 This Agreement constitutes the entire understanding between Ombudsman and the District, and supersedes all other agreements, whether written or oral, with respect to the subject matter hereof.

- 4.5 This Agreement may be executed in separate counterparts (including by means of facsimile), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.
- 4.6 All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto whether so expressed or not.
- 4.7 The provisions of this Agreement may be amended or waived only with the prior written consent of the District and Ombudsman.
- 4.8 Ombudsman will begin providing services under this Agreement on January 4, 2012, and shall continue doing so through the conclusion of the 2012-2013 school year as per the District's calendar, and, if the applicable options are exercised, shall continue through the 2013-2014 or the 2014-2015 school year, as applicable.
- 4.9 The District will not at any time, whether during or after the term of this Agreement: (1) use for its own benefit or purposes, or for the benefit or purposes of any other person, firm, partnership, association, corporation or business organization, entity or enterprise (each, a "Person"), or (2) disclose in any manner to any Person, any trade secrets, information, data, know-how, or knowledge belonging to, or relating to the affairs of Ombudsman.
- 4.10 If either party is in material breach of its obligations under this Agreement, the non-breaching party may terminate this Agreement if such breach is not cured within 60 days after the non-breaching party provides notice to the breaching party.
- 4.11 In case any provision of the Agreement is adjudged invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such a manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

This Agreement sets forth the business relationship between Ombudsman and the District and is properly executed where indicated below.

District Authorization: <u>Steve Wilmoth</u>	Ombudsman Authorization: <u>Allison M. O'Neill</u>
Name: <u>Steve Wilmoth</u>	Name: <u>Allison M. O'Neill</u>
Title: <u>Supt.</u>	Title: <u>CHIEF OPERATING OFFICER</u>
Date: <u>11-18-2011</u>	Date: <u>11/28/11</u>



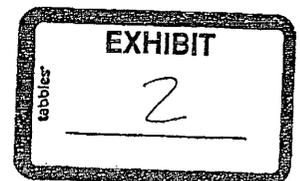
Independent Contractor Agreement

This Agreement is entered into this 9th day of March, 2011, between Educational Services of America, Inc. ("ESA"), a Delaware corporation, and Steve Wilmoth (Contractor). ESA and Contractor agree as follows:

1. Obligations of Contractor

1.1. ESA retains the services of the Contractor as an operations and business development liaison. In this role Contractor shall be responsible for:

- Providing support to the Operations team in the renewal of existing Ombudsman partnerships. This will include phone calls, emails and/or face to face meetings.
- Generating leads for the business development team to pursue new opportunities for Ombudsman and Spectrum partnerships. Meetings with new potential partners that are scheduled by the contractor may also be attended by an ESA VP of Business Development. These leads may be generated in AR, GA, KS, MO, NE, and/or OK. Leads generated outside of these markets must be approved by the Ombudsman COO.
- Providing guidance and support in monitoring new and existing state regulations, analyzing opportunities and threats that have an impact on existing programs and partnerships, and communicating this information to Ombudsman COO. Communication may be in the form of emails, phone calls or face to face meetings. Frequency of this responsibility will be based on timing of new regulations being released for comment and/or passed by state board or other governing body.
- Fostering relationships with key personnel in state Departments of Education, members of state or regional superintendent associations, etc. that would be influential in protecting and/or growing Ombudsman. It is expected meetings will be scheduled by Contractor and also attended by a member(s) of Ombudsman and/or Spectrum leadership. These meetings may be conducted via conference call or face to face.



D8

4/12/11 SW
DWT

2. Obligations of ESA

- 2.1. Fee for Service. ESA agrees to pay Contractor \$5,000.00 per month for services rendered. The Contractor will be paid every two weeks. Contractor is responsible for all taxes and health insurance.
- 2.2. Travel, Supplies and Materials. All travel related expenses, supplies and materials reasonably necessary for Contractor to perform services described in Section 1.1 will be provided by ESA.

3. Relationship of the Parties

- 3.1. Contractor at all times will act as an independent contractor and not as a partner, agent, employee of, or joint venturer with ESA. Contractor will not act or hold himself out to third parties as a partner, employee, or agent of ESA except to the extent provided for under this Agreement. Contractor agrees that his services shall be provided in a competent, efficient and satisfactory manner.
- 3.2. Contractor as a consultant to ESA, will have access to ESA's facilities and information regarding ESA's business. Contractor agrees to hold secret any and all confidential information relating to the business and affairs of ESA, which may be disclosed to the Contractor, or which otherwise comes to his knowledge. Furthermore, Contractor shall not use for his own benefit or disclose such matters to any person, other than authorized officers, directors and employees of ESA unless its use and disclosure has been authorized in writing by ESA, or is otherwise required by law. Contractor's violation of this Section shall be deemed a material breach of this Agreement.

4. Incurring Financial Obligation

- 4.1. Contractor will not incur any financial obligation on behalf of ESA without the prior written approval of ESA.
- 4.2. Except as otherwise provided in this Agreement, Contractor will be responsible for all personal and professional expenses, including but not limited to liability insurance premiums, membership fees and dues, and expenses of attending conventions and meetings. Contractor shall have at all times during the term of this Agreement, professional liability insurance in an amount no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Contractor will deliver at least annually in advance a certificate of insurance evidencing the required coverage and shall immediately provide notice to ESA of any proposed cancellation or modification of such insurance coverage.

5. Term and Termination

- 5.1. Term. The term of this Agreement will be in effect through July 31, 2011. The Agreement shall be automatically renewed each month for consecutive one month terms, without the necessity of notice by either party. Notwithstanding the foregoing, either party may terminate this Agreement with or without cause upon no less than thirty (30) days prior written notice to the other party.
- 5.2. Non-Interference. During the term of this Agreement and following its expiration or termination, Contractor agrees he will not interfere with any contract ESA has with other individuals or entities for which it provides services. Contractor agrees not to solicit or attempt to induce employees of ESA to leave the employ of ESA. Contractor's violation of this Section shall be deemed a material breach of this Agreement.

6. Miscellaneous

- 6.1. Amendments. Any amendment to this Agreement will be effective only if in writing and signed by ESA and Contractor.
- 6.2. Entire Agreement. This Agreement constitutes the entire agreement and understanding by and between ESA and Contractor.
- 6.3. Other Services. Contractor has the right to contract for similar services with other companies or individuals while under contract with ESA.
- 6.4. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee. In the event that either party must file a lawsuit to enforce her/its rights under this Agreement, both parties agree that the venue for the lawsuit shall be Davidson County, Tennessee. The parties agree that the breaching party shall be responsible for attorneys' fees associated with this lawsuit.

CONTRACTOR:

Steve C. W. Smith Date: 3-9-11

EDUCATIONAL SERVICES OF AMERICA, INC.

By: Allison O'Neill Date: 3/9/11
Allison O'Neill, COO

Seneca R-7 School District
Board of Education
914 Frisco Street
Seneca, MO 64865
November 17, 2011

Britt Burr, president, opened the regular meeting at 5:45 p.m. with members Roger Robertson, Kelly Larson, Brad Storrs, Angie Rhoades, and Wayne Blaylock present. David Pickering was absent.

Mr. Storrs made the motion to approve the consent agenda, including the additional bills. Motion was seconded by Mr. Larson, passed 6-0.

Dr. Wilmoth gave a superintendent's report:

- a. The new playground equipment at the Intermediate School has arrived and the maintenance is starting to assemble.

Mr. Simmons gave a presentation on the vehicle bids.

Mr. Storrs made the motion to approve the bid from Frank Fletcher, Joplin, for a 2012 Dodge Caravan for the amount of \$22,997 and a bid from Jimmy Mitchell, Aurora, for a 2011 Ford F-150 for the amount of \$23,899. Motion was seconded by Mr. Larson, passed 6-0.

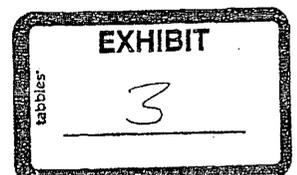
Lisa Chitty from Ombudsman Alternative Program gave a presentation on having an Alternative School in the District.

Mr. Larson made the motion to enter into a Co-Agreement with Ombudsman Alternative Educational Services. Motion was seconded by Mr. Storrs, passed 6-0. (See Attachment #1)

Mr. Storrs made the motion to approve the list of winter sports officials as presented. Motion was seconded by Mr. Larson, passed 6-0. (See Attachment #2)

A short break was taken at 7:09 p.m.

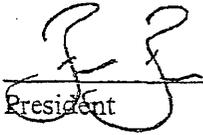
Mr. Larson made the motion to go into executive session at 7:20 p.m. pursuant to RSMo 610.022 and 610.021, sub sections #1, #2, #3, #6, #12, #13, and #14. Motion was seconded by Mr. Storrs, passed 6-0 by roll-call vote.



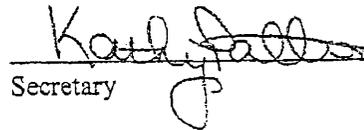
Mr. Larson made the motion to come out of executive session at 7:50 p.m. Motion was seconded by Mr. Storrs, 6-0 by roll-call vote.

Mr. Simmons informed the board of 2 bus route changes, due to overcrowding on the buses. This change will take effect Monday, November 28, 2011. Also, Mr. Simmons reported that most of the buses now have working cameras.

Mr. Burr made the motion to adjourn at 8:08 p.m. Motion was seconded by Mr. Storrs, passed 6-0.



President



Secretary

Filed
FEB 13 2014
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
)
) Petitioner,)
) Case No. 12E069
) v.)
))
DR. STEVE WILMOTH,)
))
) Respondent.)

CONSENT ORDER

The parties having filed a Joint Stipulation of Facts, Waiver of Hearing before the Missouri Ethics Commission, and Consent Order with Proposed Findings of Fact and Conclusions of Law (“Joint Stipulation”) with the Missouri Ethics Commission in this matter, the Missouri Ethics Commission hereby accepts as true the facts stipulated and finds that Respondent Wilmoth violated Sections 105.454(4), 105.485, and 105.487, RSMo, as stated in the Joint Stipulation.

The Commission directs that all terms and orders of the Joint Stipulation be adopted herein and implemented.

1. Respondent shall comply with the conflict of interest laws pursuant to Section 105.450 *et seq.*, RSMo.
2. It is the order of the Missouri Ethics Commission that a fee is imposed against Respondent Wilmoth in the amount of \$55,000 pursuant to Section 105.961.4(6), RSMo. However, if Respondent pays \$8,250 of that fee within forty-five (45) days of the date of this Order, the remainder of the fee will be stayed, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission and sent to the Missouri Ethics Commission.

3. If Respondent commits any further violation or violations of the conflict of interest laws under Chapter 105, RSMo as amended, within the two-year period from the date of this order, then Respondent will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent committed such a violation.

SO ORDERED this 13th day of February, 2014

By:



Dennis Rose, Chair
Missouri Ethics Commission