



August 30, 2021

Ken Marlowe, Director of Social Emotional Services  
3497 North Ammon Road  
Idaho Falls, ID 83401

**RE: Proposal for Requested Training and Consultation**

Dear Mr. Marlowe:

We are submitting this letter as a proposal for the manner in which Balance Point, LLC would assist Bonneville Joint School District No. 93 (the "District") on Section 504 of the Rehabilitation Act and (subject to prior approval) other Education related matters. If agreeable, this letter will form our contract for the provision of such services.

**A. Introduction**

The District is considering retaining our services for training on 10/18/21 from 1-4 P.M. and for consultation/individual training utilizing our expertise regarding students with special needs; specifically related to the Individuals with Disabilities Education Act (IDEA) and Section 504 of The Rehabilitation Act of 1973.

**B. Scope of Work**

Training, consultation, review/development of policies related to special and general education.

**C. Fees and Costs**

The District agrees to pay for services at the rates set forth below, which shall be calculated in 6-minute increments. The District agrees to pay for actual costs incurred, including mileage at \$0.56 per mile, postage, long-distance telephone calls, contract services, fax transmissions, and B/W photocopies at \$0.30 per page, and color copies and scans at \$0.45 per page.

**1. Hourly Rates**

<u>Consultation</u>	<u>Rate</u>	<u>Role/Responsibility</u>
Lyndon Nguyen	\$100 /hr	Overall responsibility
Julian Duffey	\$90/hr	Overall responsibility

**2. Training**

Whole group training for 10/8/21 will be \$1,500.00 plus mileage for Mr. Nguyen. Future group training may be negotiated or multiple trainings scheduled at discounted rates.

**3. Insurance Billing**

In the event fees and costs are billed to the District's insurance carrier, the District agrees to pay any fees and costs that are not covered by the District's carrier. If the District's insurance carrier fails to pay any invoice within thirty (30) days from receipt, the District agrees to pay the full amount of the invoice and seek reimbursement from the District's insurance carrier.

**4. Fee Billing Timeline**

Balance Point, LLC will bill the District for services on a monthly basis. The District agrees to pay the invoice within thirty (30) days of receipt, and ten percent (10%) interest on unpaid balances over sixty (60) days past due.

**D. Effective Date(s)**

The effective date for our engagement shall commence on the date signed below showing agreement and acceptance of this letter of engagement.

**E. Signature**

We would appreciate acknowledgment of your agreement with the terms of this letter by signing below and returning one signed copy for our files. By signing below, you also represent that you have the authority to sign on behalf of the District. This letter may be signed in counterparts.

We would be happy to answer any questions you might have.

Sincerely,

Lyndon P. Nguyen & Julian Duffey

The person signing below attests that they have the authority to authorize this obligation and release of funds from the district.

Agreed and Accepted:

Ken Marlowe \_\_\_\_\_

Date \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS

### 1. RELATIONSHIP OF PARTIES

In performing services under this Agreement, Balance Point, LLC (hereinafter "Contractor") is, and shall at all times be, an independent contractor of the School District. Nothing herein is to be construed as establishing an employer-employee relationship. Contractor is not eligible for School District benefits of any kind and is responsible for its own Social Security, Income Tax withholdings, and workers compensation insurance.

### 2. CONFIDENTIALITY

Contractor acknowledges its obligation to comply with all federal and state laws regarding privacy, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and the Idaho Student Data Accessibility, Transparency, and Accountability Act of 2014 (Idaho Data Accountability Act). Contractor agrees that all information regarding services provided pursuant to this Agreement, including, but not limited to, the student's identity and the nature of services rendered, shall be confidential. Contractor is prohibited from disclosing any information obtained as a result of rendering services pursuant to this Agreement to any individual not authorized and directed by the School District, or without the consent of the parent/guardian or the student, if 18 years of age or older.

#### 2.1 STUDENT DATA PRIVACY AND SECURITY

Although Contractor will not store student data and will only access student data on School District equipment as allowed and necessary, to the extent applicable, Contractor acknowledges its obligation to comply with the Idaho Data Accountability Act, Idaho Code Section 33-133. Contractor covenants and represents as follows:

- (a) Contractor agrees that all PII regarding services provided pursuant to this Agreement, including, but not limited to, the student's identity and the nature of services rendered, shall be confidential and comply with all federal and state laws;
- (b) Contractor represents and warrants that it has in place Administrative Security, Physical Security, and Logical Security controls to protect from a data breach or unauthorized data disclosure;
- (c) Contractor agrees to restrict access to personally identifiable information (PII) to only authorized staff who require such access to perform their assigned duties;

- (d) Contractor is prohibited from using student data and PII for secondary uses including, but not limited to, sales, marketing, or advertising;
- (e) Contractor agrees to indemnify and hold harmless the School District from any liability, including, but not limited to, costs, fines, expenses, and attorney fees, resulting from Contractor's performance of the services provided under this Agreement and/or non-compliance with state and federal law regarding Student Data Privacy and Security; and
- (f) Contractor represents and warrants that it has an appropriate records retention schedule and/or policy for the destruction of data that is consistent with the School District's record retention policy.

#### 2.2 PENALTIES FOR CONTRACTOR'S FAILURE TO COMPLY WITH STUDENT DATA PRIVACY AND SECURITY

Penalties for Contractor's non-compliance with state and federal law or Contractor's covenants and representations regarding Student Data Privacy and Security as set forth in this Agreement will be assessed at the discretion of School District's Board of Trustees and may include, but are not limited to:

- (1) Immediate termination of any contracts with the School District; and
- (2) Any other sanction the School District's Board of Trustees deems proper and appropriate under the circumstances.

### 3. COMPLIANCE WITH APPLICABLE LAWS

Contractor agrees to provide services in accordance with State and federal laws and regulations, including, but not limited to: Idaho Code; Idaho State Board of Education Regulations pertaining to special education; the Individuals with Disabilities Education Act (IDEA); Part 34 of the Code of Federal Regulations (CFR), Sections 330.330-300-349 and 30.400-300.576; Section 504 of the Rehabilitation Act; Part 104 of the Code of Federal Regulations; and the Family Educational Rights and Privacy Act (FERPA).

### 4. PRIOR APPROVAL OF SERVICES

All services rendered by Contractor under the terms of this Agreement shall require prior approval by the School District in accordance with federal and state laws and regulations, local policies and procedures, and professional codes of conduct.

### 5. ASSIGNMENT

This Agreement shall not be subject to assignment, in whole or in part, by Contractor or by operation of law, so as to authorize any person other than Contractor, or Contractor's employees, to assume the duties subject to this Agreement without the School District's prior written consent.

**6. SUCCESSORS AND ASSIGNS**

This Agreement is binding upon, and inures to the benefit of, successors and permitted assigns to the Agreement.

**7. AMENDMENT**

This Agreement may be amended at any time with the prior written, mutual consent of both parties. Any and all amendments to this Agreement shall be in writing.

**8. DEFAULT**

Upon default by either party, the non-defaulting party may, upon written notice, cancel this Agreement immediately and may pursue any and all available legal and equitable remedies. The defaulting party shall be liable for any and all damages that are incurred by the non-defaulting party as a result thereof, including, but not limited to, procuring substitute performance, legal fees, and other losses incurred due to the default.

**9. TIME OF PERFORMANCE**

Time is of the essence in this Agreement; therefore, all times for performance of the obligations, as stated herein, shall be strictly complied with by the parties.

**10. NON-WAIVER BREACH**

The failure of Contractor or the School District to insist upon strict performance of any of the terms of this Agreement, or to exercise any option herein conferred in any or all instances, shall not constitute a waiver or relinquishment of any such term, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of Contractor or the School District.

**11. NON-DISCRIMINATION**

The parties hereby agree that no person shall be excluded from, denied participation in, or otherwise subjected to discrimination on the grounds of race, color, creed, national origin, sex, age, or disability in performance of this Agreement.

**12. GOVERNANCE**

This Agreement shall be governed by the laws of the State of Idaho. Contractor shall, at all times, comply with and observe all federal, state, and local laws, regulations,

and ordinances that are in effect and applicable during the period of this Agreement.

**13. ATTORNEY FEES**

If either party defaults in any manner, or fails to fulfill any or all provisions of this Agreement, and if the non-defaulting party hires an attorney to exercise its rights upon such default or failure, or if the parties are involved in any litigation, including any proceedings in bankruptcy, the prevailing party shall be entitled to recover reasonable attorney fees and costs from the other party. This paragraph shall be enforceable by the parties notwithstanding any rescission, forfeiture, or other termination of this Agreement.

**14. SEVERABILITY**

Any term or provision of this agreement that is invalid or unenforceable in any situation in any jurisdiction (1) will be deemed modified to reflect the intent of the parties, determined by reference to the invalid or unenforceable term or provision, to the greatest extent permissible; and (2) will not affect the validity or enforceability of the remaining terms and provisions of this Agreement, or the validity or enforceability of the offending term or provision in any other situation or jurisdiction.

**15. CONSTRUCTION**

This Agreement is to be construed as the joint and equal work product of each party, and may not be interpreted more or less favorably in respect to either party on account of its preparation or drafting.

**16. MERGER**

This Agreement constitutes the entire agreement between the parties hereto, and shall supersede all previous oral or written proposals, negotiations, commitments, and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing, signed by the duly authorized representatives of the parties.

**17. DEFINITIONS**

17.1 "Administrative Security" consists of policies, procedures, and personnel controls including security policies, training, and audits, technical training, supervision, separation of duties, rotation of duties, recruiting and termination procedures, user access control, background checks, performance evaluations, and disaster recovery, contingency, and emergency plans. These measures ensure that authorized users know and understand how to properly use the system in order to maintain security of data.

- 17.2 “**Aggregate Data**” is collected or reported at a group, cohort or institutional level and does not contain PII.
- 17.3 “**Data Breach**” is the unauthorized acquisition of PII.
- 17.4 “**Logical Security**” consists of software safeguards for an organization’s systems, including user identification and password access, authenticating, access rights and authority levels. These measures ensure that only authorized users are able to perform actions or access information in a network or a workstation.
- 17.5 “**Personally Identifiable Information (PII)**” includes: a student’s name; the name of a student’s family; the student’s address; the students’ social security number; a student education unique identification number or biometric record; or other indirect identifiers such as a student’s date of birth, place of birth or mother’s maiden name; and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student.
- 17.6 “**Physical Security**” describes security measures designed to deny unauthorized access to facilities or equipment.
- 17.7 “**Student Data**” means data collected at the student level and included in a student’s educational records.
- 17.8 “**Unauthorized Data Disclosure**” is the intentional or unintentional release of PII to an unauthorized person or untrusted environment.

**18. (PLACE HOLDER)**