

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON,
DIVISION ONE

PROFESSIONAL NETWORK, INC.,

Appellant,

v.

WASHINGTON DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,

Respondent.

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APPELLANT'S BRIEF

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A. Assignment of Error

The trial court erred by granting the Department of Social and Health Services' motion for summary judgment on Professional Network, Inc.'s claims of tortious interference with a business expectancy, breach of contract, and tort against public policy. .

B. Issues

1. Does a provider who has a non-competitive client services contract with a governmental agency have a claim for tortious interference with a business expectancy when the agency interferes with the provider's third-party clients by spreading false information about the provider, soliciting detrimental information about the provider from its employees, convincing the provider's employees to quit and become independent providers, and failing to renew the contract even though the provider qualified in every respect?
2. Did a governmental agency breach its contract with a client services provider when the agency failed to follow termination procedures, spread false information about the provider, solicited detrimental information about the provider, convinced the provider's employees to quit and become independent providers, and failed to

renew the contract, contrary to regulations, statutes, and the ordinary course of the agency's business?

3. Does a client services provider have a claim for a tort against public policy when a governmental agency fails to renew its non-competitive client services contract as retaliation for the provider seeking administrative review of the agency's claim that the provider had been overpaid?

C. Statement of Facts

Professional Network, Inc. (PNI) is a Washington corporation. Clerk's Papers (CP) at 364; *Declaration of Priscilla Coy-Monahan (Coy-Monahan Dec.)*, ¶ 1. From 1996 to 2005, PNI provided supervised parent-child visitation services to clients of the Washington Department of Social and Health Services (DSHS), Division of Children and Family Services (DCFS). CP at 365; *Coy-Monahan Dec.* at ¶ 1. The parent-child visitation services involved the supervision and monitoring of court-ordered visitation between children and their parents. CP at 364; *Coy-Monahan Dec.* at ¶ 1. DCFS compensates the parent-child visitation service providers for the supervision and transportation at fixed hourly rates that are uniform within the region of service. CP at 365; *Coy-Monahan Dec.* at ¶ 1. DCFS maintains six regional offices in Washington, and PNI

was a parent-child visitation provider in several regions. *Id.* Region 4 is designated as the Seattle Regional DCFS office. CP at 11, 30-36, 38, *First Amended Complaint* at ¶ 1.3; *Answer to First Amended Complaint* at ¶¶ 2-5. Region 4 employs numerous social workers and case managers who referred and directed DCFS clients to the various providers in Region 4. CP at 11, 38; *First Amended Complaint* at ¶ 1.4; *Answer to First Amended Complaint* at ¶¶ 2-5.

DCFS Region 4 used noncompetitive client service contracts to hire parent-child visitation client service providers, such as PNI. CP at 365, 372; *Coy-Monahan Dec.* at ¶ 2, Ex. 1. Under these contracts, a service provider had to meet certain requirements and submit paperwork to DCFS Region 4. CP at 366; *Coy-Monahan Dec.* at ¶ 4. The Region 4 business office would memorialize the provider relationship between the Region and the provider through a “Client Service Contract” signed by the provider and the DCFS contracts manager. *Id.*

For a parent-child visitation service provider to receive referrals from DSHS social workers and be paid for its services, the provider must be listed with DSHS as a contractor in the applicable region. CP at 366; *Coy-Monahan Dec.* at ¶ 5. Having a contract signed by the region and the parent-child provider, however, does

not guarantee referrals to the provider. *Id.* The basis for referrals to a provider depends on the performance, availability, service, and reputation of the parent-child visitation provider. *Id.* The primary source of revenue for each parent-child services provider is the product of the hours of service provided multiplied by the applicable hourly rate for “supervision/monitoring time.” CP at 366-67; *Coy-Monahan Dec.* at ¶ 5.

The Office of Financial Management Guidelines provide that noncompetitive client service contracts are “continually renewed year after year based on a non-competitive award.” CP at 374-75; *Coy-Monahan Dec.*, Ex. 1, *General Policies for Client Service Contracting, Washington State Office of Financial Management Guidelines*, § 16.10.25.c. Region 4 managers understood that such contracts were to be renewed yearly, and that grounds for not renewing a contract were either that information on file was not up to date or that the provider was no longer in business. CP at 500; *Declaration of David T. Hasbrook (Hasbrook Dec.)*, Ex. 3, *Deposition of Jackie Buchanan*, at 51-52.

PNI and DCFS Region 4 signed parent-child visitation Client Service Contracts and renewed the contracts for the time periods between October 1, 1999 and June 30, 2005. CP at 365; 413-45;

Coy-Monahan Dec. at ¶ 3, Exs. 2-3. Each of the contracts between PNI and DCFS contain a form box with the printed legend “Total Maximum Contract Amount.” *Id.* The total maximum contract amount in each of the contracts is either blank or is filled in with “\$0.00” or with the words “\$Fee for Service.” *Id.* The term “Fee for Service” means that the providers bill their actual time in providing the service, and the agency pays the provider the set regional rate multiplied by the hours billed. CP at 488; *Hasbrook Dec.*, Ex. 1, *Deposition (Dep.) of Priscilla Wolfe* at 35. The term also means that there is no limit to the amount of fees a provider can collect under the services contract. *Id.* The contracts also state that DCFS or DSHS shall have the responsibility to authorize services and that the referrals to PNI will come from social workers. *Id.*; see, e.g. CP at 145; *Declaration of Priscilla Wolfe*, Att. 2 at 5.

By 2005, PNI was the largest provider of parent-child visitation services in Region 4. CP at 492, *Hasbrook Dec.*, Ex. 2, *Dep. of Carol Felton* at 66. According to the DCFS Regional Administrator, PNI provided \$1.2 million worth of services to Region 4 clients between July 1, 2003 and June 30, 2004. CP at 501; *Hasbrook Dec.*, Ex. 3, *Dep. of Jackie Buchanan* at 68. PNI performed 7,607 supervised parent-child visitations in 2003, 10,143

visitations in 2004, and 5,154 visitations during the first six months of 2005. CP at 526-27; *Declaration of Sean Monahan* at ¶ 2. On average, Region 4 paid PNI approximately \$70,000 a month in fees for parent-child visitation services from the beginning of 2002 to the end of 2004. *Id.*

In 2004, Jackie Buchanan, DCFS's Regional Administrator, decided to reduce referrals to, terminate, and/or eliminate PNI as a parent-child visitation services provider in Region 4. CP at 496, 501-03; *Hasbrook Dec., Ex. 3, Dep. of Jackie Buchanan*, at 9, 68-75. Ms. Buchanan had management meetings with the Region 4 Business Managers, Byron Williams and Paula Williams, after which Byron Williams was supposed to execute Buchanan's policy towards PNI. CP at 502; *Hasbrook Dec., Ex. 3, Dep. of Jackie Buchanan*, at 70. Byron Williams then directed Cris Jones, a Region 4 social worker who was assigned to monitor provider contracts for Region 4, to carry out the orders. *Id.* Ms. Buchanan also consulted with Carol Felton, the Region 4 Regional Administrator from 2001 to 2004, special assistant to the Assistant Secretary for Children's Administration, and the Director of Field Services for Children's Administration from 2004 to 2006, about her desire to eliminate PNI as a client services provider. CP at 491,

493; *Hasbrook Dec.*, Ex. 2, *Dep. of Carol Felton*, at 6-9, 80-81.

Pursuant to the meetings, members of the Region 4 business office took several steps to terminate or eliminate PNI.

1. Region 4 submitted an incorrect overpayment claim and would not accept PNI's response, forcing PNI to seek administrative review

In the fall of 2004, Region 4 advised PNI that it believed PNI had been overpaid for client services in the amount of \$25,969.72. CP at 77; *Declaration of Kathryn Leonard*, Ex. 4, *Vendor Overpayment Notice*, at 1. PNI responded that the claim was not accurate and promptly answered all of Region 4's questions and provided all requested documentation. CP at 86; *Declaration of Kathryn Leonard*, Ex. 5, *Stipulation and Agreed Order of Dismissal*. There is no evidence that Region 4 reviewed PNI's documents demonstrating the overpayment claim was not accurate. CP at 492, 507; *Hasbrook Dec.*, Ex. 2, *Deposition of Carol Felton*, at 66-67.; Ex. 4, *Deposition of Paula Williams*, at 92-93.

Region 4 submitted a formal overpayment notice to the Office of Financial Recovery for the full amount on January 4, 2005. CP at 84; *Declaration of Kathryn Leonard*, Ex. 4, *Vendor Overpayment Notice*. PNI exercised its administrative right to challenge the overpayment claim, and the matter was ultimately

settled on December 30, 2005, with a payment by PNI to DSHS of \$1500 over 18 months. CP at 86; *Declaration of Kathryn Leonard*, Ex. 5, Stipulation and Agreed Order of Dismissal. The overpayment claim and process impaired PNI's reputation among its clients and social workers in Region 4. CP at 369; *Coy-Monahan Dec.* at ¶ 14

2. Region 4 sent an email to all Region 4 social workers, all DCFS management, and others falsely stating that PNI's contract had been terminated

On December 27, 2004, Cris Jones sent an email to all Region 4 staff, all Region 4 management, all Region 4 social workers, and all management throughout the DCFS state administration for every region and headquarters which stated

Professional Network, Inc. (PNI) no longer has a visitation contract. Social workers, if your client family receives visitation services from PNI, you need to refer them to a different CA contracted provider.

CP at 517-18; *Hasbrook Dec.*, Ex. 7 (emphasis in original). That email was approved by Byron Williams, and it was the subject of a conference call between Mr. Jones, Mr. Williams, and the state contracts supervisor, Priscilla Wolfe. CP at 524-25; *Hasbrook Dec.*, Ex. 9. Celeste Carey, Region 4's financial staff member, forwarded and replied to the Jones email that same day to advise the financial

workers of Region 4 that no payments to PNI would be honored after January 1, 2005. CP at 517; *Hasbrook Dec.*, Ex. 7.

Paula Williams was out of the office when Mr. Jones sent the above email. CP at 523-24; *Hasbrook Dec.*, Ex. 9. When she asked Mr. Jones why and on what authority he had proceeded, Mr. Jones indicated that Byron Williams had directed the conference call with Ms. Wolfe and the communications about PNI. *Id.*

PNI learned of the email when a PNI security services employee informed PNI's President, Priscilla Coy-Monahan, that it had been sent. CP at 368; *Coy-Monahan Dec.*, at ¶ 12. Coy-Monahan was surprised because, at that time, PNI had a client services contract signed by Ms. Wolfe on behalf of DSHS for the service period between December 1, 2004 and June 30, 2005. CP at 141; *Declaration of Priscilla Wolfe*, Att. 2.

3. In March 2005, Region 4 sent a letter intending to terminate the contract to an incorrect address

On March 4, 2005, Region 4 sent a letter to an address that PNI had not occupied for over four years. CP at 527; *Declaration of Sean Monahan*, at ¶ 5. The letter notified PNI that DSHS was terminating its contract for convenience with PNI. *Id.* Region 4 and DSHS headquarters had worked together on the letter and process

to eliminate PNI as a service provider. CP at 369; *Coy-Monahan Dec.*, at ¶ 15. Region 4 ultimately rescinded the letter, but because of the delay caused by Region 4's response, its reputation among the clients and social workers was impaired. *Id.*

4. Region 4 solicited detrimental information from PNI employees and convinced PNI employees to quit and become PNI's competitors

Between 2004 and the middle of 2005, Region 4 employees, including Cris Jones, attempted to solicit detrimental information about PNI from PNI employees, and attempted to divert PNI's parent-child visitation service employees from PNI to become "independent" providers to Region 4 clients. CP at 368; *Coy-Monahan Dec.*, at ¶ 13. Several PNI employees left PNI and became client services providers in Region 4. *Id.*

5. Region 4 did not renew PNI's contract even though the contract was not competitive and PNI qualified in every respect

PNI continued to provide parent-child visitation services to its clients in June 2005. CP at 369; *Coy-Monahan Dec.*, at ¶ 16. Towards the end of June 2005, Region 4 advised PNI that it must have a renewed client service contract in place for the next period beginning July 1, 2005. *Id.* PNI requested the contract numerous times, and Region 4 eventually issued a client services contract to

PNI to sign and return that had a \$10,000 maximum contract amount over a period from July 1 to September 30, 2005. *Id.* PNI's President signed and returned the contract to Paula Williams on June 29, 2005. *Id.*

The next day, June 30, 2005, Paula Williams sent an email to PNI stating that DSHS would not sign the client services contract. *Id.* Region 4 refused to sign the contract despite the fact it knew PNI had numerous clients scheduled for parent-child visitations over the upcoming July 4 holiday weekend. CP at 369-70; *Coy-Monahan Dec.*, at ¶ 16.

At no point did PNI fail to meet all of the requirements necessary to qualify as a client services provider. CP at 367; *Coy-Monahan Dec.*, at ¶ 6. PNI canceled all parent-child visitations scheduled on and after July 1, 2005 and has not been a provider to Region 4 clients since that time. CP at 369-70; *Coy-Monahan Dec.*, at ¶ 16.

With PNI unable to provide services, Region 4 failed to deliver a substantial amount of court-ordered parent-child visitation services to clients. CP at 520-21; *Hasbrook Dec.*, Ex. 8. Because of the significant shortage of providers caused by PNI's elimination, social workers and child welfare officials spent several hours in

contempt-of-court hearings for failing to arrange mandated visits between troubled parents and their children. *Id.*

PNI has had no meaningful revenue since July 1, 2005. CP at 527; *Declaration of Sean Monahan*, at ¶ 3. Before that date, PNI had entered into a preliminary agreement to sell its business. *Id.* Because of PNI's elimination as a provider to Region 4 clients, no sale occurred. *Id.*

6. Region 4 attempted to eliminate businesses run by Priscilla Coy-Monahan

In addition to providing parent-child visitation services, PNI provided security services to three Region 4 offices. CP at 368; *Coy-Monahan Dec.* at ¶ 11. On December 23, 2004, six days before Cris Jones' email falsely stating that PNI's contract had been terminated, Region 4 sent a letter to PNI stating that PNI's security services were no longer needed at the three offices, causing the employees to lose their jobs. CP at 482; *Coy-Monahan Dec.*, Ex. 5.

Further, Priscilla Coy-Monahan and Sean Monahan were also the officers and principals of Community Support Solutions, Inc. ("CSS), a Washington corporation that provided client services in Region 4 for services other than parent-child visitation services. CP at 527; *Declaration of Sean Monahan*, at ¶ 4. Region 4's

business management was aware of that fact. *Id.* At Cris Jones' request, CSS's contracts with Region 4 for Medicaid Personal Care Services and Respite Care and Foster Care Child Support Case Aide Services were cancelled or closed out. CP at 114-15, 169-192; *Declaration of Priscilla Wolfe*, at ¶¶ 9-11, Exs. 3-4.

7. PNI sued DSHS for tortious interference with a business expectancy, breach of contract, and tort against public policy

In June 2008, PNI filed suit against DSHS in King County Superior Court. CP at 37-45. By an amended complaint, PNI alleged that DSHS had (1) tortiously interfered with a business expectancy, (2) breached its contract with PNI, and (3) committed a tort against public policy. *Id.*

DSHS moved for summary judgment. CP at 94-110. The superior court granted DSHS's motion for summary judgment on November 20, 2009, and dismissed the case in its entirety. Appendix (App.) A, Order Granting Defendant's Motion for Summary Judgment. This appeal follows.

D. Standard of Review

This court reviews a trial court's decision on summary judgment de novo. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). Summary judgment is

properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). The burden is on the party moving for summary judgment to prove that there is no genuine dispute as to any material fact, and reasonable inferences from the evidence must be resolved against the moving party. *Folsom*, 135 Wn.2d at 663. Summary judgment should be granted only if, from all of the evidence, a reasonable person could reach only one conclusion. *Id.*

E. Argument

The trial court erred in granting summary judgment to DSHS on PNI's claims of tortious interference with a business expectancy, breach of contract, and tort against public policy. Each claim will be addressed below.

1. There is a genuine issue of material fact of whether Region 4 tortiously interfered with PNI's business expectancy

Region 4 tortiously interfered with PNI's relationship with its clients. The facts viewed in the light most favorable to PNI demonstrate that Region 4's decisions to interfere with PNI's

relationship with a third party were arbitrary and capricious, in bad faith, with the sole intent of eliminating PNI because of a personal grudge.

There are five elements to a claim of tortious interference with a contractual or business expectancy: (1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) that defendants intentional interfered or caused a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damages. *Leingang v. Pierce County Medical Bureau, Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997) (citing *Commodore v. University Mechanical Contractors, Inc.*, 120 Wn.2d 120, 137, 839 P.2d 314 (1992)).

Regarding the first element, the Supreme Court has held that a plaintiff is not required to prove there was an existing enforceable contract at the moment of the defendant's interference. *Scymanski v. Dufault*, 80 Wn.2d 77, 84-85, 491 P2d 1050 (1971). "[A]n existing enforceable contract is not necessary to support an action for interference with business relationships. All that is needed is a relationship between parties contemplating a contract,

with at least a reasonable expectancy of fruition. And this relationship must be known or reasonably apparent, to the interferor.” *Id.*; see also *Commodore*, 120 Wn.2d at 138 (“Washington, too, does not require the existence of an enforceable contract or the breach of one to support an action for tortious interference with a business relationship.”).

Intentional interference requires that there be an improper objective or the use of wrongful means that in fact cause injury to the plaintiff’s business relationship. *Leingang*, 132 Wn.2d at 157. Exercising in good faith one’s legal interests is not improper interference. *Id.*; *Schmerer v. Darcy*, 80 Wn. App. 499, 506, 910 P.2d 498 (1996) (citing Restatement (Second) of Torts § 773 (1977)). “Interference can be ‘wrongful’ by reason of a statute or other regulation, or a recognized rule of common law, or an established standard of trade or profession.” *Pleas v. City of Seattle*, 112 Wn.2d 794, 804, 774 P.2d 1158 (1989). A government entity’s “arbitrary and capricious actions can be considered evidence of a tortious interference with a business expectancy.” *Id.* at 805; *King v. City of Seattle*, 84 Wn.2d 239, 247-48, 525 P.2d 228 (1974).

In *Cherberg v. Peoples Nat'l Bank*, 88 Wn.2d 595, 564 P.2d 1137 (1977), the Supreme Court explicitly rejected the argument that one cannot, as a matter of law, be liable for an intentional tort of interfering with one's own contract. In *Cherberg*, the plaintiffs leased office space from the defendant. *Id.* at 597. The plaintiffs sued for tortious interference for the defendant's failure to repair a wall as required under the lease agreement, causing the plaintiffs to close their business for approximately one week. *Id.* at 598-600. Holding that the plaintiffs could sue the defendant on a tortious interference claim despite the fact that the plaintiffs and defendant were in a contractual relationship, the *Cherberg* Court wrote, "The existence of a valid enforceable contract is not necessary to the maintenance of the [tortious interference] action and the possibility of a remedy in contract does not preclude it." *Id.* at 602.¹

¹The Court further explained that when there is a contract, that contract may privilege one of the parties to interfere. *Id.* at 604-05. The Court added,

A privilege to interfere may be established if the interferor's conduct is deemed justifiable, considering such factors as: the nature of the conduct; the character of the expectancy with which the conduct interferes, the relationship between the various parties; the interest sought to be advanced by the interferor, and the social desirability of protecting the expectancy or the interferor's freedom of action.

In *Houser v. Redmond*, 91 Wn.2d 36, 39-40, 586 P.2d 482 (1978), the Supreme Court limited the ability of a party to a contract to sue the other party for tortious interference when there was an employer/employee relationship. It clarified that an employee cannot allege a tortious interference claim against his or her employer for damages caused by the actions of other employees acting within the scope of their employment. *Id.* If the employees were acting within the scope of their employment, there would be a claim for breach of contract, and not a claim for tortious interference. *Id.* at 41. The court added that if the interfering employees were not acting within the scope of their employment, the plaintiff could have a tortious interference claim against those employees. *Id.* at 40. The Court distinguished itself from *Cherberg* by noting that while the plaintiffs and defendant in *Cherberg* had a contractual relationship, the basis for the tortious interference claim was that the defendant had interfered with the plaintiffs' relationships with their customers. *Id.* at 41.

Id. (citing *Calbom v. Knudtzom*, 65 Wn.2d 157, 396 P.2d 148 (1964) and *Scymanski*, 80 Wn.2d at 77).

Here, DSHS has never argued that its interference was privileged.

Although analyzing a tortious interference claim in the context of the actions of a corporate officer, *Olympic Fish Products, Inc. v. Lloyd*, 93 Wn.2d 596, 598-99, 611 P.2d 737 (1980), is also helpful here in that it explains when a party to a contract can be sued for tortious interference. In that case, the defendants were corporate officers who disrupted a sale of roe herring between their company and another. *Id.* at 597-98. Defending against a claim of tortious interference, the defendants claimed they were privileged from suit because they were corporate officers. *Id.* The Supreme Court held that while corporate officers are generally privileged, the immunity does not apply if the officer does not act in good faith. *Id.* at 598-601.

Looking at *Pleas*, *King*, *Cherberg*, and *Olympic Fish Products, Inc.*, a party to a contract can be liable on a tortious interference claim so long as the defendant wrongfully interferes with a contractual or business relationship separate from its own relationship with the plaintiff. Such wrongful conduct can be evidenced by violation of a regulation or statute, making arbitrary or capricious actions, or acting in bad faith.

Applying the law to the above facts and accepting all reasonable inferences in the light most favorable to PNI, the trial

court erred in dismissing PNI's tortious interference claim. First, PNI had a separate valid business relationship with the clients. While PNI had a contract relationship with Region 4, PNI also owed duties to third parties, the parents and children ordered by court to supervised visitation. If PNI failed in its duties to the parents and children, it could become individually liable to them.² Under the noncompetitive service contract, however, Region 4 explicitly disavowed those same duties to the clients.

PNI also had a business expectation of serving its clients. Without PNI's relationship with its clients, the value of PNI's contract with Region 4 would be zero. Because the maximum value allowed on 1999 through 2005 contracts was "zero" or "fee for services," PNI was dependent upon its reputation for professional, effective, timely, and necessary services to the clients. PNI had an expectation that, so long as it provided a high-

²Contrary to DSHS's argument in its summary judgment motion, *Houser* is not applicable here because the contract specifically provides that PNI is not an employee of DSHS or Region 4. *See Houser*, 91 Wn.2d at 40-41; App. B, at 7-8, ¶¶ 16, 22, 26. Thus, PNI was not acting under respondeat superior when it interacted with its clients. Instead, PNI formed separate business and contractual relationships with its clients, and thus, per the contract itself, was subject to its own liability.

quality service and qualified as a service provider, it would continue its relationship with its clients.

Regarding the second element, it is undisputed DSHS knew of PNI's relationship with its clients.

Third, Region 4 intentionally interfered with and terminated the PNI's relationship or expectation of a relationship with its clients. DSHS did not simply refer to other people; it systematically and repeatedly attempted to eliminate PNI from having any business with its clients. Region 4's management sent an email to all Region 4 employees, social workers and all DCFS management falsely stating that PNI's contract had been terminated. Region 4 also sent a letter attempting to terminate PNI's contract. When the email and letter were rescinded, Region 4 attempted to solicit detrimental information about PNI from PNI's employees. It also talked to PNI's employees and convinced several of them to quit PNI and become PNI's competition as independent contractors. Finally, even though PNI satisfied every one of the qualifications necessary to be a service provider and even though noncompetitive client service contracts are "continually renewed year after year based on a non-competitive award[.]" Region 4 refused to renew PNI's contract. CP at 374-75; *Coy- Monahan Dec.*, Ex. 1, *General*

Policies for Client Service Contracting, Washington State Office of Financial Management Guidelines, § 16.10.25.c. In so doing, Region 4 interfered with PNI's relationship with its clients and with PNI's expectation that it would continue to have a relationship with those clients.

Not only did Region 4 interfere with PNI's relationship with its clients, but Region 4 did so with an improper purpose. Region 4's actions were arbitrary, capricious, in bad faith, and contrary to the ordinary course of its business. Region 4's actions were arbitrary and capricious in that it had no reason to eliminate PNI or not renew PNI's contract. PNI had complied with every requirement requested by DSHS and Region 4, and PNI satisfied every requirement necessary to be a parent-child visitation services provider. Viewing the facts in the light most favorable to PNI, Region 4 acted arbitrarily and capriciously when it actively sought to eliminate PNI and failed to renew PNI's contract without a reason.

Region 4 also acted in bad faith. It acted in bad faith by soliciting detrimental information about PNI from PNI's employees and by trying to convince PNI employees to quit working for PNI and work as independent contractors. Region 4 also aggressively

and actively sought to eliminate PNI from doing business. It did so not just through its own contractual relationship with PNI, but by falsely telling all of Region 4 and DCFS management that PNI could no longer provide the parent-child visitation services. Region 4 also acted in bad faith by denying PNI a renewal of the contract, even though noncompetitive contracts are continually renewed year after year and PNI qualified to receive the contract in all other respects.

Further evidence of Region 4's bad faith is that Region 4 did not simply eliminate PNI as a service provider, but it went after any business connected to PNI's President and officers. While PNI did not seek damages in this case for the termination of its security services contract and CSS's two contracts, Region 4's termination of those contracts demonstrates that PNI's termination was related to a personal grudge rather than PNI's performance.

For the same reasons, Region 4's actions were contrary to the ordinary course of its handling of client services contracts. Region 4 did not usually go out of its way to eliminate one of the service providers it used, and Region 4 certainly did not usually send emails to the entire department falsely stating that a contract with a service provider had been terminated. Region 4 did not

usually contact employees of a contractor to solicit detrimental information or convince the employees to quit working for the contractor. Also, according to its own management, noncompetitive contracts are to be renewed continually year after year. In all of these respects, Region 4 acted against the ordinary course of its business. All of these facts demonstrate Region 4 acted with an improper purpose in its dealings with PNI. A jury ought to hear and determine whether Region 4 acted properly when it interfered between PNI and its clients.

Regarding the final element, PNI suffered damages because of Region 4's tortious conduct. PNI lost all of its business and has not had any revenue since 2005. Before that, PNI also lost referrals for services because social workers were told by Region 4 that its contract had been terminated and that they were not to use PNI.

In sum, Region 4 tortiously interfered with PNI's relationship with its clients, who were third parties to the contract between PNI and Region 4. Region 4 deliberately acted in an arbitrary and capricious manner, in bad faith, and contrary to its ordinary course of business, when it systematically and actively sought to eliminate PNI as a service provider. Further, Region 4 denied renewal of

PNI's contract based on no reason other than that members of Region 4's management did not personally like PNI. Because the facts viewed in the light most favorable to PNI show that it has a cognizable claim for tortious interference, PNI should be allowed to present these facts to a jury.

2. There is a genuine issue of material fact of whether Region 4 breached its contract with PNI

To prove a breach of contract claim, there must be a contract, a material breach of that contract, and resulting damages.³ *St. John Medical Ctr. v. State ex rel. Dep't of Soc. and Health Services*, 110 Wn. App. 51, 64, 38 P.3d 383 (2002).

Viewing the evidence in the light most favorable to PNI, Region 4 breached its contract with PNI. First, there is no dispute that PNI and Region 4 were parties to a series of contracts from 1999 to June 2005. Those contracts provided that the purpose was to "provide services that facilitate and support parent-child visitation for children in the temporary custody of DSHS/[DCFS] for the purpose of reunification of the parent(s) and child." CP at 143; App. B at 3. PNI would be paid for the services Region 4 authorized,

³As pointed out in *Houser*, if the court does not believe there is a dispute of material fact of whether Region 4 interfered with PNI's business expectancy, then such facts may still constitute a breach of contract. 91 Wn.2d at 40-41.

which were requested on an as needed basis. CP at 145; App. B at 5. Additionally, the contract provides that, in the event of an inconsistency, precedence shall be given in the order of “a. Applicable federal, state, and local law and regulations; b. The terms and conditions of this Contract; and c. Any Exhibit, document, or material incorporated by reference.” CP at 148; App B at 8, ¶ 27.

There are three ways the contract can be terminated. First, a provision allows for modification or termination of the contract because of a change in funding to DSHS. CP at 149; App B at 9, ¶ 33. Second, Region 4 can terminate the contract in whole or in part when it is in Region 4’s best interests by giving PNI thirty days notice. CP at 149; App. B at 9, ¶ 34. Finally, the contract can be terminated for default if PNI fails to meet the requirements of the contract, fails to ensure the health or safety of the clients, or violates a law. CP at 149-50; App. B at 9-10, ¶ 35.

Region 4 breached the contract in several respects. First, Region 4 failed to follow the termination process outlined in paragraphs 33 through 35 of the contracts. Instead of sending the notice to PNI or even providing thirty days written notice, Region 4 simply emailed all employees and social workers of DSHS falsely

telling them that PNI's contract had been terminated. In doing so, Region 4 breached the termination provisions of the contract.

Region 4 also breached its obligation to act in good faith and fair dealing. In contracts, there is an implied duty that the parties act in good faith, absent specific provisions providing otherwise. *Frank Coluccio Constr. Co. v. King County*, 136 Wn. App. 751, 766, 150 P.3d 1147 (2007); *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 86 Wn. App. 732, 935 P.2d 628 (1997).

While the service contract gives broad latitude to Region 4 to approve PNI's services, the contract does not give Region 4 a license to solicit detrimental information about PNI from its employees, to try to convince employees of PNI to quit their jobs and become independent contractors, to falsely tell all of Region 4 and DCFS management that PNI's contract had been terminated, or to eliminate PNI from existence, all because some people in Region 4's management have a personal grudge against PNI.⁴ By committing all of these acts, Region 4 did not simply decide not to authorize PNI's services or advise that social workers refer to

⁴This case is also distinguishable from *Myers v. Dep't of Social and Health Servs.*, 152 Wn. App. 823, 828-29, 218 P.3d 240 (2009). The contract in *Myers* had a specific provision providing DSHS did not have to act in good faith. *Id.* Here, there is no such provision.

service providers who provided better services; it actively sought to eliminate PNI from existence, which was against Region 4's own interests. As Region 4 eliminated PNI, the largest service provider in the region, and had no other provider to fill that void, Region 4 acted against its own interests, and thus, is further evidence that Region 4 breached its obligation to act in good faith and fair dealing.

Lastly, Region 4 breached its obligation to renew the contract with PNI. This obligation is derived from several sources. First, DCFS managers acknowledge that noncompetitive contracts are to be renewed continually year after year. This understanding is consistent with the contracting guidelines, as well as the RCWs.

The Office of Financial Management (OFM), which is required by RCW 39.29.100(1) to "adopt uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies," provides in its guidelines that

Non-competitive award means a direct award to a contractor when multiple firms are available to provide the same or similar type of service. Multiple contracts for the same or similar services may be awarded using this approach depending on client needs.

General Policies for Client Service Contracting Washington State Office of Financial Management Guidelines (OFM Guidelines), § 16.10.25.c. The guidelines also provide that the noncompetitive contracts are “continually renewed year after year based on a non-competitive award.” *Id.* Thus, under the applicable rules governing the contract, the contract was supposed to be renewed so long as PNI satisfied the requirements.

While the OFM Guidelines cite to RCW 39.29.040(6) to explain why noncompetitive contracts are not subject to the competition requirements, it appears that RCW 39.29.040(4) describes the noncompetitive contracts used here. RCW 39.29.040 provides, in pertinent part:

This chapter does not apply to:

....

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

...

(6) Contracts for client services except as otherwise indicated in this chapter;

...

(10) Contracts for interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance.

The contract at issue here does not explain whether it is formed under subsection (4) or subsection (6). Subsection (4) appears to control, however, for two reasons. First, subsection (6) states that all client services contracts are exempt except those provided in the chapter. Subsection (4) clarifies a type of client service contracts, much in the same way that subsection (10) clarifies a type of client service contract. Second, the contracts utilized here fit more neatly into subsection (4). Aside from its treatment of PNI, Region 4 followed subsection (4) in utilizing this particular contract with the providers. It compensated providers for their services at a standard rate. Aside from what happened to PNI, Region 4's business manager confirmed that the same contract was available to all qualified applicants.

Thus, Region 4 breached its obligations under the OFM Guidelines and RCW 39.29.040 by failing to renew the contract even though PNI met every qualification necessary to be a service provider. Because Region 4 had no reason to not renew the contract and because a like contract was not available to a qualified

applicant, Region 4 breached its obligations. Under the terms of the contract itself, these laws and regulations have precedence over the terms and conditions of the contract itself. Region 4 breached its regulatory and statutory obligations, and thus breached its contractual obligations.

Because of Region 4's actions, PNI suffered damages. First, Region 4 damaged PNI by convincing its employees to work against it. By turning PNI's employees into its competitors, PNI lost trained employees and revenue sources. Second, Region 4 damaged PNI's reputation by spreading false statements that PNI's contract had been terminated and by soliciting detrimental information from PNI's employees. Because of that lost reputation, PNI lost referrals from social workers. Because of the loss of referrals and loss of employees, PNI's revenues dropped from averaging \$70,000 a month in 2004, to averaging approximately \$60,000 a month in the first six months of 2005.

Next, because of Region 4's actions, PNI no longer has any revenue. PNI went from a company with revenues of \$1.2 million from July 1, 2003 to June 30, 2004, to a company receiving no revenue after July 1, 2005. Additionally, PNI had been in negotiations for the sale of its business. Because Region 4

eliminated PNI's ability to earn any revenue, all negotiations fell through. In short, the elimination of all of PNI's revenue is directly caused by Region 4's actions.

Region 4 was obligated under its contract with PNI to provide notice of termination, to not poach PNI's employees, to act in good faith and fair dealing, and to renew a contract with a qualifying service provider. Region 4 failed to fulfill all of these obligations. As a result, PNI's reputation was harmed and its business was ultimately destroyed. Because the facts in the light most favorable to PNI demonstrate a cognizable breach of contract claim, the trial court erred in granting DSHS's motion for summary judgment.

3. There is a genuine issue of material fact of whether Region 4 committed a tort against public policy

Region 4 committed a tort against public policy by retaliating against PNI for exercising its administrative and legal rights. Such retaliation included undermining PNI's reputation among DSHS and all of its participants and the refusal to renew its contract with PNI.

There are four elements to a tort against public policy: (1) clarity, (2) jeopardy, (3) causation, and (4) absence of justification. *Hubbard v. Spokane County*, 146 Wn.2d 699, 707, 50 P.3d 602

(2002). To understand the meaning of those elements, it is helpful to look in the employment at will context. In *Hubbard*, the Supreme Court explained that to prove a claim for wrongful discharge in violation of public policy, a plaintiff must prove:

(1) the existence of a clear public policy (*clarity* element); (2) that discouraging the conduct in which they engaged would jeopardize public policy (*jeopardy* element); and (3) that the public-policy-linked conduct caused the dismissal (*causation* element). *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 941, 913 P.2d 377 (1996) Finally, the “defendant must not be able to offer an overriding justification for the dismissal” (*absence of justification* element). *Id.*

Id. at 707. The court explained that it applied the tort against public policy in the employment context in four different situations: when an employee is fired “(1) for refusing to commit an illegal act; (2) for performing a public duty or obligation; (3) for exercising a legal right or privilege; and (4) in retaliation for reporting employer misconduct.” *Id.* at 707-08.

The underlying rationale for the tort against public policy is that an employer’s common law right to terminate an employee at will should not be used to shield the employer’s action which frustrates a clear public policy and the community interests it advances. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 231,

695 P.2d 1081 (1984). Those same considerations apply to the contracts at issue here. The contract was not for a specific payment or performance of either of the parties. Instead, the contract allowed PNI to receive referrals and clients, and thereby revenues. Like an at will employment situation, Region 4 was not obligated to give PNI any work and PNI was dependent upon Region 4 for the direction of its work. CP at 145; App. B, at 5, ¶ 6. Further, like an at will employee, it was up to PNI to decide whether to do any or how much work. Like an at will employment situation, the contract provided that it could be terminated at the convenience of either party. CP at 149; App. B, at 9, ¶ 34. Although the contracts were definite in time, they were “continually renewed year after year,” paralleling an at will employment situation where an employee whose performance is satisfactory continues to receive work. As noted above, RCW 39.29.040(4) provides that a like contract should be available to all qualifying applicants, meaning that so long as PNI met the qualifications, a contract should be available to it.

Because the relationship between contractors and Region 4 is similar to that of at will employment, the same concern that Region 4 can use common law doctrines to frustrate a clear

manifestation of public policy apply. According to DSHS's analysis at summary judgment, Region 4 can, as it has done here, terminate contractual relations with a contractor because the contractor : (1) refuses to commit an illegal act; (2) performs a public duty or obligation; (3) exercises a legal right or privilege; or (4) reports Region 4's misconduct. Allowing Region 4 to terminate contracts with such bad intentions not only violates public policy, but harms the public because Region 4 is not fulfilling its obligation to care for children and problem parents. Thus, when a non-competitive services contract is involved and when a contractor has been terminated because it refused to commit an illegal act, performed a public duty or obligation, exercised a legal right or privilege, or reported the contracting agency's misconduct, the terminated contractor is allowed to allege a tort against public policy.

Applying the facts to the elements above, there is a genuine issue of material fact as to the first two elements, clarity and jeopardy. Regarding the "existence of a clear public policy," when an agency claims that a contractor has been overpaid, the contractor has a right to demand a formal hearing before the Office of Administrative Hearings. This right is confirmed in both the Vender Overpayment Notice dated January 4, 2005, and the

Administrative Procedures Act. CP at 27; *Declaration of Kathryn Leonard*, Ex. 4.

The second element, “that discouraging the conduct in which [the plaintiff] engaged would jeopardize the public policy,” has also been fulfilled. PNI asserted its right to the formal hearing, challenging the overpayment claim, and thereby engaging in the conduct allowed under the public policy. By terminating contractual relations with PNI in retaliation for challenging that claim, Region 4 frustrates the ability of PNI, and contractors like PNI, to assert their right to a hearing.

There is a genuine issue of material fact on the third element, that “the public-policy-linked conduct caused the dismissal.” In its summary judgment motion, DSHS argued that because the term “dismissal” was used, the tort can only occur in the employment context. For the reasons explained above, a claim of a tort against public policy is not limited only to the employment context. Additionally, no case states that a claim of a tort against public policy must only occur in employment settings.

Dealing with this particular element, the evidence viewed in the light most favorable to PNI demonstrates that Region 4 did not renew PNI’s contract as retaliation for PNI asserting its right to a

formal administrative hearing. The evidence demonstrates that Region 4 claimed PNI had been overpaid by \$25,969.72. After receiving the claim, PNI provided all requested documentation and responded to all questions asked of it. The documentation and questions demonstrated that the amount claimed was not accurate. Region 4 ignored those facts and, on January 4, 2005, submitted a formal overpayment notice to the Office of Financial Recovery, seeking the full and incorrect amount. PNI exercised its right to challenge the overpayment claim. Around that same time, Region 4 sent an email to all of DSHS employees stating that PNI no longer had a contract with Region 4. When that claim was proven untrue, Region 4 then sent a letter to PNI's old address attempting to terminate the contract. That termination letter was subsequently withdrawn. Then, in June 2005, when it was time to renew the contract, the same people in Region 4's management who had already sent the email and the attempted termination letter, who had instigated the overpayment claim and forwarded on the formal overpayment notice, who had terminated PNI's security services and CSS's contracts, and who had already attempted to solicit detrimental information about PNI from its employees and convinced PNI employees to quit their jobs and become

independent providers, decided not to renew PNI's contract. Viewing those facts in the light most favorable to PNI, Region 4 terminated its contractual relationship with PNI out of retaliation for PNI exercising its right to seek administrative review of the overpayment claim. There is a disputed issue of material fact on this third element.

Finally, the fourth element, that "the defendant must not be able to offer an overriding justification for the dismissal," has been met. DSHS has offered no overriding justification for terminating the contract with PNI. DSHS has argued that it was not obligated to renew the contract, but that argument is not an overriding justification. It is not an overriding justification because it implies that Region 4 could decide not to renew a contract on illegal grounds or grounds contrary to the statutory and regulatory requirements.

The implication of DSHS's argument is that a contractor could bribe Region 4 into denying the renewal of another qualified contractor's contract, and the aggrieved contractor would have no claim for the sole reason that Region 4 could simply choose not to award a new contract. It is akin to arguing that the overriding justification for an employer's termination of an at will employee is

that the employer has the power to terminate its employees. That justification, like the one propounded by DSHS here, is insufficient to override the public policy of providing formal administrative hearings on challenges to agency decisions. As a result, DSHS failed to meet its burden of providing an overriding justification for ending Region 4's contractual relationship with PNI.

Because the evidence viewed in the light most favorable to PNI demonstrates that Region 4 terminated its contractual relationship with PNI to retaliate for PNI asserting its right to have an administrative hearing, Region 4 committed a tort against public policy. The trial court erred in granting summary judgment in favor of DSHS.

D. Conclusion

PNI respectfully requests that this court reverse the trial court's summary judgment decision and remand the case for a jury trial.

Respectfully submitted this 25th day of February, 2010.


Paul M. Crisalli, WSBA # 40681
The Lawless Partnership, LLP
Attorney for Appellant

E. Appendix

A. Order Granting Defendant's Motion for Summary Judgment....A1

B. Client Services Contract.....A3

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APPENDIX - A

The Honorable Laura C. Inveen
Hearing Date and Time: November 20, 2009, 9:00 a.m.
Trial Date: January 11, 2010

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

PROFESSIONAL NETWORK, INC., a
Washington corporation,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,

Defendant.

NO. 08-2-21993-3SEA

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

(PROPOSED)

CLERK'S ACTION REQUIRED

ORDER

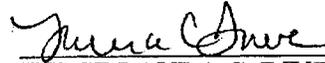
THIS MATTER coming on for hearing on the motion of defendant Washington State Department of Social and Health Services for summary judgment, said defendant appearing by Robert M. McKenna, Attorney General, and Richard A. Fraser, Assistant Attorney General, and Kathryn C. Leonard, Assistant Attorney General, and plaintiff appearing by its attorney, David T. Hasbrook, and the Court having heard argument, considered the records and files herein, including:

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- 1. Defendant's Motion for Summary Judgment and Memorandum in Support and accompanying declarations; *(Declaration of Priscilla Wolfe, Declaration Kathryn Leonard)*
 - 2. Plaintiff's Response; *Declarations of Sean Morahan and Priscilla Morahan*
 - 3. Defendant's Reply; *Declaration of Kathryn Leonard in Support*
- and being fully advised; now, therefore,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED and this matter is DISMISSED in its entirety.

DONE IN OPEN COURT this 20 day of November, 2009.



 JUDGE LAURA C. INVEEN

Presented by:

ROBERT M. MCKENNA
 Attorney General

 RICHARD A. FRASER, WSBA No. 37577
 KATHRYN C. LEONARD, WSBA No. 38762
 Assistant Attorneys General
 Attorneys for Defendant Department of Social
 and Health Services

Copy Received:
 O'SHEA BARNARD MARTIN

 DAVID T. HASBROOK, WSBA #28140
 Attorneys for Plaintiff

APPENDIX - B



CLIENT SERVICE CONTRACT

Parent Child Visitation Services (PCV)

DSHS Contract Number:
0412-64427
Resulting From Solicitation Number:

This Contract is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below.

Program Contract Number:
Contractor Contract Number:

CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
Professional Network, Inc.			
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER
19502 56th Ave W Lynnwood, WA 98036		601-807-795	2097
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
Priscilla Coy-Monahan	(425) 672-8787 Ext: 11	(425) 640-5423	
DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE	
Children's Administration	Division of Children and Family Services	2000XC	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS	
Paula Williams Regional Manager of Contracts		100 W Harrison, South Tower Suite 400 Seattle, WA 98119-4141	
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS	
(206) 691-2505 Ext:	(206) 281-6288	apau300@dshs.wa.gov	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBER(S)	
No			
CONTRACT START DATE	CONTRACT END DATE	CONTRACT MAXIMUM AMOUNT	
12/01/2004	06/30/2005	\$0.00	
EXHIBITS. When the box below is marked with an X, the following Exhibits are attached and are incorporated into this Contract by reference:			
<input checked="" type="checkbox"/> Exhibits (specify): Exhibit A - Statement of Work Exhibit B - Program Requirements Exhibit C - Required Forms			
This Contract contains all of the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind the parties. The parties signing below warrant that they have read and understand this Contract and have authority to enter into this Contract.			
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED
		Priscilla Coy-Monahan	12-1-04
DSHS SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED
		Priscilla Wolf Contracts Manager DSHS, Children's Administration	12/22/04

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:

- a. "Abuse of Client" means the injury, sexual abuse or exploitation, negligent treatment or maltreatment of a client by any person under circumstances which indicate that the client's health, welfare or safety is harmed thereby.
- b. "Agency" means a public or private agency or other organization providing services to DSHS clients.
- c. "Authorized" means approved by a DSHS social worker as evidenced by receipt of an SSPS Social Services notice or other written notice.
- d. "CA" means Children's Administration, which is an Administration under DSHS.
- e. "Central Contract Services" means the DSHS Office of Legal Affairs, Central Contract Services, or successor section or office.
- f. "Client" means any child or adult who is authorized to receive services by DSHS.
- g. "Contract" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, and materials incorporated by reference.
- h. "Contracting Officer" means the Contracts Administrator, or successor, of DSHS Central Contract Services or successor section or office.
- i. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
- j. "Corporal Punishment" means any act that willfully inflicts or causes the infliction of physical pain on a child.
- k. "DCFS" means the Division of Children and Family Services, which is a division of Children's Administration.
- l. "DLR" means the Division of Licensed Resources, which is a division of Children's Administration.
- m. "DSHS" or "the department" or "the Department" means the State of Washington Department of Social and Health Services and its employees and authorized agents.
- n. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- o. "PCV" means Parent Child Visitation.
- p. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. RCW can be accessed at <http://www.leg.wa.gov/rcw/index.cfm>

- q. "Regional PCV Gatekeeper" means regional staff designated by the DCFS Regional Administrator or designee to manage or oversee the PCV Program for the region.
- r. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- s. "SSPS" means the DSHS Social Service Payment System, the service authorization and payment system used by DSHS for this Contract.
- t. "Staffings" means formal or informal meetings of two or more DCFS or professional staff, consultants, parent, or others to review, discuss, or make decisions concerning a client or case.
- u. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
- v. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. WAC can be accessed at <http://www.leg.wa.gov/wac/>.

2. Purpose of Contract.

The purpose of this Contract is to provide services that facilitate and support parent-child visitation for children in the temporary custody of DSHS/CA for the purpose of reunification of the parent(s) and child. Services provided may include transportation of the child to the scheduled visit with the parent(s).

3. Statement of Work.

- a. The Contractor shall provide Parent-Child Visitation Services and/or transportation services as described in the Statement of Work attached as Exhibit A.
- b. This Contract shall supersede any previous contract between DSHS and the Contractor and any previous contract's statement of work for these services.

4. Compensation.

DSHS will pay the Contractor on the basis of the total number of hours spent, and not by the number of children served, in accordance with the regional rate(s) in effect at the time the services are provided per that region's current regional published rate schedules; as follows:

a. Supervision/Monitoring Time: Hourly Rate for Direct Client Time

- (1) Direct Client Time: The time spent supervising or monitoring visits as described in the Statement of Work, Exhibit A. Direct client time for Monitored Visits shall mean the entire time the service worker is on site during the parent-child visit.
- (2) Direct client time does not include time spent for administrative tasks, such as time spent scheduling visits, completing forms or reports required under this Contract, or completing other paper work or tasks related to performing this Contract. Administrative tasks are considered as support of parent-child visits. Administrative support is included in the hourly rate.

b. Transportation Time: Separate Hourly Rate for Transportation Time

- (1) Transportation Time: Round trip time to and from the child's current residence or other agreed upon location, to the location of the parent-child visit.

- (2) Allowable travel time is portal to portal. Travel time shall be calculated as the shortest distance from the service worker's residence, Contractor's place of business, or the county line, whichever is the shortest distance.
- (3) No reimbursement for travel shall be paid for travel between the service worker's residence and the Contractor's place of business. If the Contractor does not have a place of business in the DSHS region served, allowable travel time shall be delineated in the Regional Protocol. No reimbursement for travel shall be paid outside the county where services are provided without written approval from the Regional PCV Gatekeeper, or designee.

c. Cancellations or Missed Appointments

- (1) Confirmed Visit: A visit that is confirmed by all parties within at least 24 hours before the scheduled visit. Per the Statement of Work, the Contractor is responsible for confirming the first scheduled visit at least 24 hours in advance of the visit with all parties, and for confirming a later visit if the client was a "no show" at the previous scheduled visit.
- (2) Client Cancellations or Missed Appointments for confirmed visits:
 - (a) Advance Cancellation: Payment for one (1) hour when a client cancels a confirmed visit with less than 24-hour notice. DSHS will only pay the Contractor for up to three (3) cancellations of confirmed visits per client, unless DSHS re-authorizes services.
 - (b) Missed Appointment: Payment for actual time spent, not to exceed two (2) hours, and mileage if a parent fails to appear for a confirmed scheduled visit, except as approved by the Regional PCV Gatekeeper or designee. DSHS will only pay the Contractor for up to three (3) missed appointments of confirmed visits per client, unless DSHS re-authorizes services.

d. Court Testimony

- (1) Court testimony is not reimbursable under this Contract when requested by or subpoenaed by someone other than DSHS. However, this does not preclude the Contractor from seeking reimbursement from the party who subpoenaed or requested the testimony or court appearance.
- (2) Court testimony is reimbursable as a service provided under this Contract only when requested by DSHS, which request must be in writing, as specified in the Statement of Work attached as Exhibit A.

e. Mileage and Ancillary Costs

- (1) Mileage and ancillary costs shall be paid in accordance with current rates and regulations set by the Washington State Office of Financial Management.
- (2) Allowable mileage is portal to portal. Mileage shall be calculated as the shortest distance from the service worker's residence, Contractor's place of business, or the county line, whichever is the shortest distance. No reimbursement for travel shall be paid for travel between the service worker's residence and the Contractor's place of business. If the Contractor does not have a place of business in the DSHS region served, allowable mileage shall be delineated in the Regional Protocol.

f. Vendor Rate Increase

In the event of a legislatively mandated general cost of living vendor rate increase, the rates shall be adjusted accordingly and shall be incorporated into this Contract on the date the rate(s) become effective. Vendor rate increases that are not a general cost of living increase shall be tied to

increased minimum expectations for service.

5. Billing and Payment.

- a. The Contractor shall render a monthly invoice for services performed under this Contract on Invoice Voucher A-19 or other regional approved invoice, prepared in the manner prescribed by DSHS.
- b. The voucher shall clearly indicate that it is "FOR SERVICES RENDERED IN PERFORMANCE UNDER DSHS CONTRACT NO. _____ FOR THE MONTH OF _____".
- c. The Contractor shall bill for each month of service on a separate A-19. The A-19 shall state the month services were provided.
- d. The Contractor shall submit with each invoice the "Driver/Supervisor: Weekly Visitation and Transportation Billing Log", per attached Exhibit A, which documents Contractor's invoice to claim reimbursement for the month billed. The log shall track actual time to the tenth of one hour:

Minutes	Hour (in Tenths)
1 - 6	0.1
7 - 12	0.2
13 - 18	0.3
19 - 24	0.4
25 - 30	0.5
31 - 36	0.6
37 - 42	0.7
43 - 48	0.8
49 - 54	0.9
55 - 60	hour

The Contractor shall round up the cumulative total for the month to the nearest hour.

- e. Claims for payment submitted by the Contractor shall be paid by DSHS if received by DSHS no later than sixty (60) days from the date services were rendered.
- f. A payment will be generated at the end of the month in which an invoice is submitted.
- g. DSHS may stop payment to the Contractor if reports required under this Contract are not received within 10 working days following the due date.

6. Authorization of Services

- a. DCFS shall have sole responsibility for authorizing services. All authorizations must be initiated in writing by DCFS and signed by the referring social worker.
- b. DCFS shall request services from the Contractor on an as needed basis. This Contract does not obligate DCFS to authorize services from the Contractor.

7. Funding Stipulations

- a. Information for Federal Funding. The Contractor shall cooperate in supplying information to DSHS to determine client's eligibility for federal funding.
- b. Duplicate Billing. The Contractor must not bill other funding sources for services rendered under this Contract which would result in duplicate billing to different funding sources for the same service. Furthermore, the Contractor shall ensure that no subcontractor bills any other funding sources for services rendered under this Contract, which would result in duplicate billing to different

funding sources for the same service.

- c. No Federal Match. The Contractor shall not use funds payable under this Contract as match toward federal funds.
- d. Supplanting. The Contractor shall use these funds to supplement, not supplant the amount of federal, state and local funds otherwise expended for services provided under this Contract.

8. Recovery of Fees for Noncompliance

In the event the Contractor bills for services provided and is paid fees for services that DSHS later finds were either (a) not delivered or (b) not delivered in accordance with applicable standards or the requirements of this Contract, DSHS shall have the right to recover the fees for those services from the Contractor, and the Contractor shall fully cooperate during the recovery process.

9. Overpayments and Assertion of Lien

In the event that DSHS establishes overpayments or erroneous payments made to the Contractor under this Contract, DSHS may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to DSHS, or by doing both.

10. Prohibition of Use of Funds for Lobbying Activities

The Contractor shall not use funds payable under the Contract for lobbying activities of any nature. The Contractor certifies that no state or federal funds payable under this Contract shall be paid to any person to influence, or attempt to influence, either directly or indirectly, an officer or employee of any state or federal agency, or an officer or member of any state or federal legislative body or committee, regarding the award, amendment, modification, extension, or renewal of a state or federal contract or grant.

Any act by the Contractor in violation of this prohibition shall be grounds for termination of this Contract, at the sole discretion of DSHS, and shall subject Contractor to such monetary and other penalties as may be provided by law.

11. Advance Payment and Billing Limitations.

- a. DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
- b. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract. If this Contract is terminated for any reason, DSHS shall pay only for services authorized and provided through the date of termination.
- c. Failure to provide any or all of the services as specified in the Statement of Work and authorized by DSHS may result in nonpayment by DSHS.
- d. Unless otherwise specified in this Contract, DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- e. The Contractor shall not bill DSHS for services performed under this contract, and DSHS shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement for the same services.

12. Assignment. The Contractor may not assign this Contract, or any rights or obligations contained in this Contract, to a third party.

13. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations.
14. **Confidentiality.** The Contractor may use Personal Information and other information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal Information, with the prior written consent of the person to whom the Personal Information pertains. The Contractor shall maintain the confidentiality of all Personal Information and other information gained by reason of this Contract, and shall return or certify the destruction of such information if requested in writing by DSHS.
15. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is in compliance with Chapter 42.52 RCW, Ethics in Public Service, and shall comply with Chapter 42.52 RCW throughout the term of this Contract.
16. **Contractor Not an Employee of DSHS.** For purposes of this Contract, the Contractor acknowledges that the Contractor is an independent contractor and not an officer, employee, or agent of DSHS or the State of Washington. The Contractor shall not hold the Contractor or any of the Contractor's employees out as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The Contractor shall not claim for the Contractor or the Contractor's employees any rights, privileges, or benefits which would accrue to an employee of the State of Washington. The Contractor shall indemnify and hold DSHS harmless from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Contractor or the Contractor's employees, unless otherwise specified in this Contract.
17. **Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by DSHS, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.
18. **Dispute Resolution.** Either party may submit a request for a resolution of a contract dispute. The amount of any rate set by law, regulation, or DSHS policy is not disputable. A party requesting resolution of a contract dispute shall submit a written statement identifying the issue(s) in dispute, and shall include the Contractor's name, address, and contract number. The request must be mailed to the following address within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which is disputed:

DSHS/Children's Administration
Attention: Contracts Management Unit
P.O. Box 45710
Olympia, WA 98504-5710

This dispute resolution process is the sole administrative remedy available under this Contract.
19. **Drug Free Work Place.** The Contractor certifies the Contractor will provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and implemented at 28 CFR Part 67, Subpart F for grantees, as defined at 28 CFR Part 67, Section 67.615 and 67.620.
20. **Execution, Amendment, and Waiver.** This Contract shall be binding on DSHS only upon signature by DSHS. This Contract, or any provision, may be altered, amended, or waived by a written amendment executed by both parties, except that only the Contracting Officer or the Contracting Officer's designee has authority to waive any provision of this Contract on behalf of DSHS.

21. **Governing Law and Venue.** The laws of the State of Washington shall govern this Contract. In the event of a lawsuit involving this Contract, venue shall be proper only in Thurston County, Washington.
22. **Indemnification and Hold Harmless.** The Contractor shall be responsible for and shall indemnify and hold DSHS harmless from all liability resulting from the acts or omissions of the Contractor and any Subcontractor.
23. **Inspection; Maintenance of Records.**
- a. During the term of this Contract and for one (1) year following termination or expiration of this Contract, the Contractor shall give reasonable access to the Contractor, Contractor's place of business, client records, and Contractor records to DSHS and to any other employee or agent of the State of Washington or the United States of America in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and this Contract.
 - b. During the term of this Contract and for six (6) years following termination or expiration of this Contract, the Contractor shall maintain records sufficient to:
 - (1) Document performance of all acts required by law, regulation, or this Contract;
 - (2) Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance; and
 - (3) Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DSHS and all expenditures made by the Contractor to perform as required by this Contract.
24. **Nondiscrimination.** The Contractor shall comply with all applicable federal, state, and local nondiscrimination laws and regulations.
25. **Notice of Overpayment.** If the Contractor receives a Vendor Overpayment Notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding pursuant to RCW 43.20B.
26. **Obligation to Ensure Health and Safety of DSHS Clients.** The Contractor shall ensure the health and safety of any DSHS client for whom services are provided by the Contractor.
27. **Order of Precedence.** In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
- a. Applicable federal, state, and local law and regulations;
 - b. The terms and conditions of this Contract; and
 - c. Any Exhibit, document, or material incorporated by reference.
28. **Ownership of Material.** Materials created by the Contractor and paid for by DSHS as a part of this Contract shall be owned by DSHS and shall be "works for hire" as defined by the U.S. Copyright Act of 1976. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Material which the Contractor uses to perform this Contract, but which is not created for or paid for by DSHS, is owned by the Contractor; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS.
29. **Severability; Conformity.** The provisions of this Contract are severable. If any provision of this Contract is held invalid by any court, that invalidity shall not affect the other provisions of this Contract

and the invalid provision shall be considered modified to conform to existing law.

30. **Single Audit Act Compliance.** If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance titles and numbers, award names and numbers, award years, if awards are for research and development, as well as names of the federal agencies. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DSHS, and the Washington State Auditor's Office. The Contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the Contractor and its Subcontractors who are subrecipients. The Contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the Contractor is a subrecipient and expends \$300,000 or more in federal awards from any and/or all sources in any fiscal year beginning after June 30, 1996, the Contractor shall procure and pay for a single or program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall submit to the DSHS Contact named in this Contract the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.

31. **Subcontracting.** Except as otherwise provided in this Contract, the Contractor may not subcontract any of the contracted services without the prior, written approval of DSHS. The Contractor shall be responsible for the acts and omissions of any Subcontractor.
32. **Survivability.** The terms and conditions contained in this Contract that by their sense and context are intended to survive the expiration or termination of this Contract shall so survive. Surviving terms include but are not limited to: Confidentiality, Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination and Expiration Procedure, Treatment of Assets Purchased by Contractor, and Treatment of DSHS Assets.
33. **Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract are withdrawn or reduced, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.
34. **Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice. The Contractor may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to DSHS at the address listed on page 1 of this Contract.
35. **Termination for Default.** The Contracting Officer may terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
- a. Failed to meet or maintain any requirement for contracting with DSHS;
 - b. Failed to ensure the health or safety of any client for whom services are being provided under this Contract;
 - c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
 - d. Violated any applicable law or regulation.
 - e. If it is later determined that the Contractor was not in default, the termination shall be considered a

termination for convenience.

36. **Termination and Expiration Procedure.** The following provisions apply if this Contract is terminated or expires:
- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration. If the Contract is terminated, the Contractor shall comply with all instructions contained in the notice of termination.
 - b. The Contractor shall immediately deliver to the DSHS Contact named in this Contract, or to his or her successor, all DSHS assets (property) in the Contractor's possession, including any material created under this Contract. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation. The Contractor shall protect and preserve any property of DSHS that is in the possession of the Contractor.
 - c. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
 - d. The rights and remedies provided to DSHS in this paragraph are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential damages and incidental damages. The Contractor may request dispute resolution as provided in this Contract.
37. **Treatment of Assets Purchased by Contractor.** Title to all assets (property) purchased or furnished by the Contractor is vested in the Contractor and DSHS waives all claim of ownership to such property.
38. **Treatment of Client Assets.** Unless otherwise provided in this Contract, the Contractor shall ensure that any adult client receiving services from the Contractor under this Contract has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's personal property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of this Contract, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.
39. **Treatment of DSHS Assets.** Title to all assets (property) purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. The Contractor shall protect, maintain, and insure all DSHS property in the Contractor's possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.
40. **Waiver of Default.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default and shall not be construed to be a modification of the terms and conditions of this Contract.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF WORK

Parent Child Visitation

The Contractor shall provide parent-child visits for children in the temporary custody of DSHS/CA for the purpose of reunification. Visits may occur with extended family members or others who are significant to the child as deemed appropriate by the DCFS Social Worker and approved by the Regional PCV Gatekeeper, or designee. The Contractor shall provide services as follows:

1. Intent of Services

The Contractor shall provide services in a manner that will:

- a. Reunify children and their families to promote permanent placement;
- b. Create an atmosphere and an environment that encourage the parent-child relationship; and
- c. Support and nurture the child.

2. Service Requirements

The Contractor shall ensure that:

- a. Services are scheduled at the convenience of the parent and child and are available during regular workday hours, evenings and weekends;
- b. Visitations are scheduled at times and locations agreeable to the parent, the out-of-home care provider, and the DCFS referring social worker;
- c. Consistency of services for the child is provided by the Contractor assigning a single staff to each child with an identified backup staff to provide assistance as necessary;
- d. Safe and neutral visitation sites are selected;
- e. On-going contact and communication with the DCFS referring social worker are maintained on a regular basis;
- f. Staff are available to testify at court hearings when requested in writing by DSHS and to attend meetings, staffings and child fatality reviews with DCFS staff, when requested in writing by DCFS. Contractor will be reimbursed for time spent in meetings and staffings, or when testifying in court, at the Contractor's hourly rate under this Contract.

3. Provision Of Services

The Contractor shall:

- a. Schedule Visits as follows:
 - (1) Notify all parties when visitation services will begin;
 - (2) Develop a visitation appointment schedule and arrange for the meeting location;

- (3) Complete the Parent Child Visitation (PCV) Request Form, in accordance with attached Exhibit C – Forms and Reports, and return it to the referring DCFS social worker upon arrangement of visits;
 - (4) Confirm the first scheduled visit with all parties, at least 24 hours in advance of the visit, and confirm any later scheduled visit if the client was a "no show" at the previous scheduled visit;
- b. Provide Transportation to Parent-Child Visits:
- (1) If transportation is requested by DSHS, the Contractor shall:
 - (a) Pick up the child at the child's current residence or other agreed upon location;
 - (b) Obtain signature of the out-of-home care provider, parent, or CA approved adult (age 18 or older) at the time of pick-up;
 - (c) Transport the child to the scheduled visitation;
 - (d) Return the child to an agreed upon location;
 - (e) Obtain signature of the out-of-home care provider, parent, or CA approved adult (age 18 or older) at the time of return of the child;
 - (2) The Contractor shall ensure that transportation provided is safe and reliable and in conformance with state and federal safety laws. In particular, the Contractor shall ensure that transportation provided to children served under this Contract complies with the child passenger restraint requirements of RCW 46.61.687 effective July 1, 2002, also known as the Booster Seat Law. See following subsection, "Child Passenger Restraint Requirements."

The Contractor shall also ensure that:

- (a) Drivers shall be age 21 or older; have a current Washington driver's license that is valid for the classification of motor vehicle operated; have a good driving record; and have proof of liability insurance.
 - (b) Driver and/or other staff accompanying clients in the motor vehicle shall have current first aid and CPR training.
 - (c) Motor vehicle is maintained in safe operating condition.
 - (d) Motor vehicle is equipped with appropriate safety devices and individual seat belts or safety seats for each person to be used when the vehicle is in motion.
 - (e) Children less than four years of age and/or less than 40 lbs. are restrained in a restraint system that complies with the child passenger restraint requirements of RCW 46.61.687 as stated below.
 - (f) Number of passengers does not exceed the seating capacity of the motor vehicle nor the number of seat belts or car seats it contains.
 - (g) Children are attended while walking to and from the vehicle.
- (3) Child Passenger Restraint Requirements: The Contractor shall at all times comply, and shall ensure that all employees, volunteers and subcontractors at all times comply, with the child

passenger restraint requirements of RCW 46.61.687, effective as of July 1, 2002, when transporting children or providing transportation to children served under this Contract.

(a) Children under 16 years. Whenever a child who is less than sixteen (16) years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, the driver of the vehicle shall keep the child properly restrained per RCW 46.61.687 as follows:

- Children under 1 year or less than 20 lbs. – Rear-facing infant seat
If the child is *less than one (1) year of age or weighs less than twenty pounds (20 lbs.)*, the child shall be properly restrained in a rear-facing infant seat.
- Children under 4 years or less than 40 lbs. – Forward facing child safety seat
If the child is *more than one year of age but less than four (4) years of age or weighs less than forty pounds (40 lbs.) but at least twenty pounds (20 lbs.)*, the child shall be properly restrained in a forward facing child safety seat restraint system.
- Children under 6 years or less than 60 lbs. – Child booster seat
If the child is *less than six (6) but at least four years of age or weighs less than sixty pounds (60 lbs.) but at least forty pounds (40 lbs.)*, the child shall be properly restrained in a child booster seat.
- Children 6 years and older or more than 60 lbs. – Safety belt or Booster seat
If the child is *six (6) years of age or older or weighs more than sixty pounds (60 lbs.)*, the child shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting booster seat.

(b) Lap belt only available and child more than 40 lbs. The child passenger restraint requirements stated in a (1) through a (4) of the above subsection do not apply in any seating position where there is *only a lap belt available and* the child weighs *more than forty pounds (40 lbs.)*.

(c) Passenger side air bag – Back seat for child less than 6 years or less than 60 lbs. The driver of a vehicle transporting a child who is *under the age of six (6) years old or weighs less than sixty pounds (60 lbs.)*, when the vehicle is equipped with a *passenger side air bag* supplemental restraint system, and the air bag system is activated, *shall transport the child in the back seat positions* in the vehicle where it is practical to do so.

(d) Booster Seat. As used in this section "child booster seat" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 CFR 571.213 and that is designed to elevate a child to properly sit in a federally approved lap/shoulder belt system.

(e) Child Safety Seat Restraint System. As used in this section "child safety seat restraint system" means a child restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 CFR 571.213 and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system.

c. Provide Visits as requested by DSHS at one of three levels of supervision, as follows:

(1) Supervised Visits – Direct Supervision (Highest level of supervision):

(a) The Contractor's staff shall be within sight and sound of the child and all parties to the visit at all times during the visit.

- (b) The Contractor's staff shall situate himself or herself so he or she can hear all conversation and see everything that occurs during the visit.
- (c) At no time shall the child be allowed to be in the presence of the parent without the Contractor's staff present.
- (d) Any of the following actions by the parties to the visit shall be cause for immediate termination of the visit by the Contractor staff supervising the visit:
 - Attempting to distract the Contractor staff;
 - Leaving the area with the child;
 - Hampering or impairing the level of supervision in any other way.
- (e) The Contractor's staff shall complete a Supervision Narrative with a narrative report describing and documenting what occurred during each supervised visit and to and from the visit if transportation is also provided. The Contractor shall submit the narrative report to the referring DCFS social worker not later than 30 days after each visit.

(2) Monitored Visits – Indirect Supervision (Next/second highest level of supervision):

- (a) The Contractor's staff shall be on site during the parent-child visit and shall provide periodic observations approximately every 15 minutes during the visitation.
- (b) The Contractor's staff shall complete a Supervision Narrative with a narrative report describing and documenting what occurred during each monitored visit and to and from the visit if transportation is also provided. The Contractor shall submit the narrative report to the referring DCFS social worker not later than 30 days after each visit.

(3) Unsupervised Visits (Least restrictive level of supervision):

- (a) The Contractor's staff shall pick up and deliver the child to and from agreed upon locations for visits.
- (b) The Contractor's staff shall not be responsible for supervising or monitoring the visits.

4. Reports

The Contractor shall submit the following reports, as listed in attached Exhibit C – Forms and Reports, in a format prescribed by CA/DCFS and at the times stated below. Copies of all reports shall also be provided to the DCFS referring social worker.

- a. Parent Child Visitation (PCV) Request Form: Submit completed form prior to visits to the DCFS referring social worker upon arrangement of visits.
- b. Driver/Supervisor: Weekly Visitation and Transportation Billing Log: Submit with invoice within 5 business days in accordance with section of this Contract titled "Billing and Payment."
- c. Supervision Narrative with Narrative Report: Submit the narrative comments not later than 5 working days after each visit to the referring DCFS social worker.

In the event DSHS develops a standardized reporting format, the Contractor shall adopt and use that reporting format.

5. Referral Process

- a. DCFS shall have sole responsibility for authorizing services. All authorizations must be initiated in writing by DCFS. DSHS will not pay for any services that are not authorized by DCFS.
- b. DCFS shall request services from the Contractor on an as needed basis. This Contract does not obligate DCFS to authorize services from the Contractor.
- c. All authorizations shall expire after 6 months from the date of authorization, or expire if a parent misses 3 confirmed visits, unless DSHS authorizes additional services. In the event services must continue after 6 months, the Contractor shall contact the DCFS referring social worker for a new authorization.
- d. DSHS reserves the right to disallow an individual staff of Contractor from providing services under this Contract if DSHS determines services is not being adequately performed by that individual staff.

6. Notifications

- a. Missed Appointment. The Contractor shall notify the child's DCFS referring social worker in writing within 24 hours if a client misses a scheduled visit or requests to reschedule visits.
- b. Safety Concerns. If the Contractor has any safety concerns related to a missed visit, the Contractor shall immediately notify the child's assigned DCFS social worker by telephone, and shall follow up with written notification by fax to the DCFS social worker within 24 hours.
- c. Change of Address. The Contractor shall notify the referring DCFS social worker within five (5) working days when the Contractor learns a parent has a change of address.

7. Regional or Office Protocols

- a. Upon request by an individual DCFS region or office served, the Contractor shall collaborate with the region or office to develop and adhere to a written local protocol for the day-to-day delivery of services and coordination with DCFS staff under this Contract. Such regional or office protocols shall be in accord with, and not conflict with, this Contract.
- b. Any local protocol shall address at a minimum:
 - (1) Referral process steps;
 - (2) Scheduling process (length, frequency and location of visits);
 - (3) Communication links (contact persons);
 - (4) Training collaboration, if any;
 - (5) Procedures for canceling and rescheduling visits;
 - (6) Report and feedback process;
 - (7) Emergency procedures.
- c. Both parties shall maintain a copy of the written protocol.

8. Qualifications and Training Requirements

- a. Qualifications. The Contractor shall ensure employees, subcontractors, and/or volunteers providing services under this Contract have the following minimum qualifications:
 - (1) High school diploma or GED.
 - (2) One (1) year experience caring for and/or supervising children.
 - (3) Knowledge in the areas of client safety assessment and planning, problem-solving and crisis intervention.

(4) Current certification in first aid and Cardiopulmonary Resuscitation (CPR).

b. Training Requirements. The Contractor shall ensure employees, sub-contractors and/or volunteers complete, at a minimum, not less than twenty (20) hours overall of training on the following topics prior to providing services under this Contract. Training in a particular topic taken within five (5) years is acceptable for meeting this contract requirement, provided the particular training curriculum has not changed substantially from the time it was taken.

- (1) Child Abuse and Neglect (CAN) Basics
- (2) Orientation/Reporting
- (3) Conflict Resolution or Problem Solving Skills
- (4) Communication Skills
- (5) Family Dynamics
- (6) Substance Abuse
- (7) Child Development
- (8) Grief and Loss
- (9) Behaviorally Specific Documentation
- (10) Sexually transmitted diseases, including HIV

c. Alternatively, Foster Parent SCOPE training within 5 years will satisfy this requirement. Regardless of how acquired, all training must be documented; and documentation of training must be maintained either in individual personnel files or in the Contractor's training files, cross-referenced to the individual employee or volunteer.

d. DSHS Visitation Training. If DSHS should provide training on supervising or monitoring visitations, the Contractor shall ensure that Contractor staff attends such training.

PROGRAM REQUIREMENTS**Parent Child Visitation**

The Contractor shall comply with the following Program Requirements in providing services under this Contract:

1. Health and Safety of DSHS Clients

In the delivery of services under this Contract, children's health and safety shall always be the first concern of the Contractor.

- a. Contractors are mandated reporters under Chapter 26.44.030 RCW. The Contractor shall immediately report all instances of suspected child abuse to 1) Child Protective Services (CPS) Intake and 2) the referring CA Social Worker. The verbal notification shall be followed by written notification within 72 hours.
- b. CPS Intake shall make the determination of whether the referral constitutes an allegation of Child Abuse or Neglect that shall be accepted for investigation, a possible licensing compliance issue, or a matter of "information only".
- c. If the Contractor determines that there are additional health and safety concerns, suspected substance abuse and/or other presenting problems, which were not stated in the CA referral to the Contractor, the Contractor shall immediately report this information to the referring CA Social Worker. The verbal notification shall be followed by written notification within 72 hours.

2. Mandated Reporter Training

The Contractor shall obtain a copy of the "Making a CPS Referral: A Guide for Mandated Reporters" video from DSHS. The Contractor shall ensure that all current staff view this video within 30 days of the effective date of this contract and that all future employees view the video within two (2) weeks of initial employment. After viewing, each employee shall sign and date a statement acknowledging his or her duty to report child maltreatment and the Contractor shall retain the signed statement in the employee's personnel file.

3. Corporal Punishment Prohibited

Corporal punishment of children in the Department's care or custody is prohibited. The Contractor, and the Contractor's agents and employees shall not administer corporal punishment to children served under this Contract. As defined in this Contract, corporal punishment means any act that willfully inflicts or causes the infliction of physical pain on a child.

4. Background Checks

This requirement applies only to employees, volunteers and subcontractors who may have unsupervised access to children. This requirement does not apply to licensed foster parents who are affiliated with the Contractor. Licensed foster parents are subject to the criminal history background provisions associated with obtaining and maintaining a current foster license.

- a. The Contractor shall ensure a criminal history background check pursuant to RCW 43.43.832, 43.43.834 and 74.15.030 and WAC 388-06 has been completed through DSHS for all current employees, volunteers and subcontractors, and that a criminal history background check shall be initiated for all prospective employees, volunteers and subcontractors, who may have unsupervised access to DSHS clients. Such persons shall not have unsupervised access to children in care until a satisfactory background check is completed and documentation qualifying the individual for

unsupervised access is returned to the Contractor.

- b. In addition to a satisfactory background clearance through DSHS, the Contractor shall obtain a fingerprint background check from the FBI through DSHS for all prospective employees, volunteers, subcontractors and other persons who may have unsupervised access to DSHS clients if such persons have resided for less than three (3) years in the State of Washington. If the Contractor elects, pursuant to RCW 43.43.832 (7), to provisionally hire a person who has resided in this state for less than three years pending the results of the required FBI background check, the Contractor shall not permit that person to have unsupervised access to children who are served under this Contract or any other contract with Children's Administration until a satisfactory FBI background check is completed. If the FBI check disqualifies the applicant, RCW 43.43.832 requires DSHS to notify the Contractor that the provisional approval to hire is withdrawn and that the applicant may be terminated.

5. Confidentiality of Client Information

The Contractor may use Personal Information and other information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal Information, except with the prior written consent of the person to whom the Personal Information pertains. If that person is a minor, prior written consent shall be obtained from the minor's parent, legal representative or guardian. If a child is a dependent of Washington State then prior written consent shall be obtained from DSHS. The Contractor shall maintain the confidentiality of Personal Information and other information gained by reason of this Contract, and shall return or certify the destruction of such information if requested in writing by DSHS. Contractor agrees to comply with and, upon request of DSHS, to verify compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, PL 104-191, (HIPAA) and applicable regulations contained in 45 CFR 160 and 164.

6. Interpretation and Translation

- a. In accordance with DSHS policy, the Contractor shall provide Limited English Proficient (LEP) clients with certified or otherwise qualified interpreters and translated documents.
- b. In accordance with DSHS policy, the Contractor shall provide deaf, deaf-blind, or hard of hearing clients with the services of a certified sign language interpreter.
- c. Interpreter and translation services shall be provided at no cost to the client. All interpreter and translation costs shall be the financial responsibility of the Contractor. These costs are included in the contracted rate.
- d. Extraordinary costs, which create an undue hardship for the Contractor in providing interpretation and/or translation services to an individual client, may be reviewed and addressed for supplemental reimbursement by the DCFS Regional Administrator or designee on a case by case basis.

7. Culturally Relevant Services

The Contractor shall provide appropriate, accessible, and culturally relevant services to clients and their families. Service delivery shall be culturally competent and responsive to each client's cultural beliefs and values, ethnic norms, language needs, and individual differences. Contractors are encouraged to employ a diverse workforce that reflects the diversity of their clientele and the community.

8. Records

The Contractor shall maintain the following records as documentation of compliance with the terms of this Contract:

a. Client Records

- (1) Referral from Children's Administration;
- (2) Parent Child Visitation (PCV) Request(s);
- (3) Supervision Checklist(s) with narrative report;
- (4) Missed Appointment Report(s), if applicable.

b. Administrative Records

The Contractor shall retain the following records:

- (1) Driver/Supervisor: Weekly Visitation and Transportation Billing Logs.
- (2) Fiscal records that shall substantiate costs charged to DSHS under this Contract.
- (3) Audits, license review, contract monitoring and corrective actions required, and action taken.
- (4) Annual Reports.
- (5) Protected group data:

(a) A list of current staff by position that addresses date of birth, sex, and identified protected group status, including race, Vietnam Era Veteran, Disabled Veteran, and person of disability.

(b) A list of all clients served that addresses date of birth, sex, and race.

When collecting protected groups data, the Contractor shall inform staff and clients that (1) the furnishing of the information is entirely voluntary; (2) the refusal to furnish the data shall not have adverse effects.

c. Personnel Records

The Contractor shall retain the following records on (1) all of Contractor's staff and employees, whether full-time or part-time, and (2) volunteers who may have contact with DSHS clients in performing duties or providing services under this Contract:

- (1) Criminal history background checks;
- (2) Current license(s), registration(s), or certification(s) to practice in the state of Washington and/or in the state in which services are provided, as applicable;
- (3) Employment and experience history;
- (4) Job description;
- (5) Annual performance evaluations;
- (6) Verification of training required under this Contract;
- (7) Hours worked and payment records;
- (8) Proof of valid driver's license and current automobile liability insurance, if staff or volunteer provides transportation to DCFS clients.

d. Subcontractor Records

The Contractor shall retain the following records on any subcontractor's staff and employees who may have contact with DSHS clients in performing duties or providing services under this Contract:

- (1) Criminal history background checks;

- (2) Documentation of academic history and credentials, as applicable;
- (3) Current license(s), registration(s), or certification(s) to practice in the state of Washington and/or in the state in which services are provided, as applicable;
- (4) Employment and experience history;
- (5) Job description;
- (6) Annual performance evaluations;
- (7) Verification of training required under this Contract;
- (8) Hours worked and payment records;
- (9) Proof of driver's license and automobile liability insurance, if staff or subcontractor provides transportation to DSHS clients.
- (10) Copy of each signed subcontract or other agreement for any subcontractors.

9. Auditing and Monitoring

- a. If the Contractor is required to have an audit or if an audit is performed, the Contractor shall forward a copy of the audit report to the DSHS Contact listed on page 1 of this Contract.
- b. If federal or state audit exceptions are made relating to this Contract, the Contractor must reimburse the amount of the audit exception, and any other costs including, but not limited to, audit fees, court costs, and penalty assessments.
- c. DSHS may schedule monitoring visits with the Contractor to evaluate performance of the program. The Contractor will provide at no further cost to DSHS reasonable access to all program-related records and materials, staff and/or subcontractor time.

10. Evaluation of Contractor

DSHS may evaluate the Contractor's performance. Areas of review, may include, but are not limited to, the following:

- a. General service provision documentation;
- b. Quality of reports;
- c. Effective collaborative efforts with CA and all parties involved with the child;
- d. Consumer satisfaction;
- e. Compliance with federal and state statutes.

11. Insurance

The Contractor shall, at all times during the term of this Contract, comply with the following insurance requirements:

- a. **Commercial General Liability Insurance (CGL)**

The Contractor shall maintain Commercial General Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract, including tort liability of another assumed in a business contract. The State of Washington, DSHS, its elected and

appointed officials, agents, and employees shall be named as additional insureds.

b. Business Auto Policy (BAP)

The Contractor shall maintain Business Automobile Liability Insurance on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident. The Contractor's carrier shall provide DSHS with a waiver of subrogation to prevent the insurer from attempting to recover loss payments from DSHS if the Contractor caused the loss.

c. Professional Liability Insurance (PL)

If the Contractor provides professional services, either directly or indirectly, the Contractor shall maintain Professional Liability Insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000.

d. Worker's Compensation

The Contractor shall comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed by the Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

g. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "separation of insureds" provision.

h. Insurers

The Contractor shall obtain insurance from insurance companies authorized to do business within the State of Washington, with a "Best's Reports" rating of A-, Class VII or better. The DSHS Office of Administrative Resources must approve any exception. Exceptions include placement with a "Surplus Lines" Insurer or an insurer with a rating lower than A-, Class VII.

i. Evidence of Coverage

The Contractor shall submit Certificates of Insurance to DSHS for each coverage required of the Contractor under the Contract. The Contractor shall submit the Certificates of Coverage to the DSHS Risk Manager, Office of Administrative Resources, Post Office Box 45882, Olympia, Washington 98504-5882. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract shall execute each Certificate of Insurance. The Certificate of Insurance for each required policy shall reference the DSHS Contract

Number for the Contract. The Contractor is not required to submit to DSHS copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under the contract.

The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor has and maintains insurance as required by the Contract.

j. Material Changes

The insurer shall give DSHS Office of Administrative Resources 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance notice of cancellation.

k. General

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State. The Contractor waives all rights against the State of Washington and DSHS for the recovery of damages to the extent they are covered by insurance.

REQUIRED FORMS

1. Parent Child Visitation (PCV) Request and instructions which is attached to this Exhibit as Attachment 1
2. Driver/Supervisor: Weekly Visitation and Transportation Billing Log which is attached to this Exhibit as Attachment 2
3. Visitation Narrative Report as prescribed by the Regional PCV Gatekeeper or designee

DIVISION OF CHILDREN AND FAMILY SERVICES

(Visitation/Transportation Request)

DATE	CHILD'S NAME	IDENTITY
CASE NUMBER	ADDRESS	CHILD'S WEIGHT
SOCIAL WORKER AND PHONE NUMBER	SUPERVISOR	
NAME OF FOSTER PARENT (IF APPLICABLE)	IDENTIFICATION NUMBER	
PARENT'S SIGNATURE	DATE OF VISIT OR PICKUP	

Telephone Numbers: _____ **Alternatives:** _____
Alternatives to Transportation/Supervision Program Considered: Foster Parents Case Aides/Intern Other:

SERVICES REQUESTED

Transportation: YES NO **Type of Visit:** SUPERVISED MONITORED UNSUPERVISED
Pickup: YES NO **RETURN TRIP:** YES NO
Frequency of Visit: _____
Length of Visit: _____ for _____ months.
Pickup Child at (Address): _____
Responsible Person at Pickup: _____
Phone Number: _____
Visit Location: _____
Return Child To: _____
Responsible Person at Return Location: _____
Phone Number: _____
Visit to be Coordinated with Other Cases (Name): _____
Is Time for Visit Negotiable? YES NO If not, required day and time for visit? _____

NOTES: Special Concerns/Limitations: _____

GATEKEEPER SIGNATURE: _____

VISIT SCHEDULE (to be completed by Contracted Provider)

Starting Date: _____ **Day(s) of Visit:** _____
Time of Pickup: _____ **Time of Visit:** _____ **Time of Return:** _____
Assigned Driver: _____ **Visit Supervisor (if different):** _____
Phone Number: _____ **Provider Agency:** _____

MANDATORY
Visitation Changes - Effective: _____

When Returned to DCFS (Visitation/Transportation Coordinator) - Date: _____

DIVISION OF CHILDREN AND FAMILY SERVICES (DCFS)
CONTRACTED SUPERVISED VISITATION/TRANSPORTATION/ PROGRAM
DCFS REFERRAL PROCEDURES

1. Obtain Visitation/Transportation Request form from your Regions Visitation/Transportation Coordinator.
2. Complete top and middle sections of the Request Form: *Top* – Identification of child, foster parents, relatives and visiting parents *Middle* – Services Requested Section.
3. Return completed form to appropriate Visitation/Transportation Coordinator.
4. Be prepared to receive telephone call from the driver/visit supervisor to staff case and confirm schedule. This step is *mandatory* before services start. Please inform contractor of special concerns regarding child or parents.
5. After telephone staffing, Social Worker will receive copy of the request form with the “Visit Schedule” section completed.
6. *Contractor* will notify all parties as to when services will begin and schedule for transporting and visits.
7. All changes in visitation/transportation schedule require approval of Social Worker.
8. If Social Workers are aware of cancellations of visits, need to change schedules or termination of services, they are required to notify contractor.
9. Concerns about the contracted services should be addressed to the Coordinator in the local DCFS office.

The Supervised Visitation/Transportation Services is a fee-for-service contract made possible by an allotment to each Region in DCFS as an effort to deal with Social Worker workload issues and services enhancement.

SUPERVISION CHECKLIST

Agency name _____

Child(ren) name _____ Date _____

Child time of arrival _____ Parent time of arrival _____ LATE? YES NO
 Child time of departure _____ Parent time of departure _____ LEAVE EARLY? YES NO

All present at visit _____

Supervised by: _____

A = ALWAYS F = FREQUENTLY S = SELDON N = NEVER N/A

	A	F	S	N	N/A
Parent/child hug each other					
Parent/child kiss each other					
Siblings interact appropriately					
Parent initiates contact/touch					
Child initiates contact/touch					
Parent smiles at child					
Child smiles at parent					
Parent/child have eye contact					
Parent/child natural flow of conversation					
Parent listens to child communication					
Parent uses reasonable tone of voice					
Parent attends to diaper needs appropriately					
Appropriate food/drink brought					
Parent assists appropriately with feeding					
Appropriate toys and/or play were engaged					
Parent encourages child in positive way					
Parent encourages behaviors allowed					
Parent manages behaviors appropriately					
Parent establishes consequences for behaviors					
Child responds to parent's directions					
Parent sets guidelines for child					
Parent asks about child's school/activities					
Child shares school/activities with parent					

At any time was the child's potential health threatened? YES NO
 At any time did you have to warn/advise the parent? YES NO

Overall rate the child(ren)'s experience: excellent good fair poor very poor
 Overall rate the parent's experience: excellent good fair poor very poor

COMMENTS: (provide comments/narrative on back) _____

Proof of Service

On February 25, 2010, I caused to be served via legal messenger service, true and correct copies of this Appellant's Brief herein addressed to:

Richard A. Fraser, III
Assistant Attorney General
Torts Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, this 25th day of February, 2010.

A handwritten signature in black ink, appearing to read "Paul M. Crisalli", is written over a horizontal line.

The Lawless Partnership, LLP
Paul M. Crisalli, WSBA # 40681
Attorney for Appellants