

ESUCC
SPED Committee Meeting
Wednesday, September 3, 2014, 3:30 PM
Educational Service Unit No. 10 76 Plaza Blvd Kearney, NE 68845, 6949 South 110th Street,
LaVista, NE 68128

Attendance Taken at 3:29 PM.

Beatty ESU 16:	Present
Jeff West (NE):	Absent
Radford ESU 17:	Present
Uhing ESU 01:	Present
Dr Larianne Polk (ESU 07):	Present

1. Call to Order

2. Roll Call

3. Agenda Item

3.1. Wade Fruhling - SRS Report

3.1.1. SRS Report

3.1.2. Project Para

3.1.3. ILCD

3.1.4. AAP

3.2. ESUCC Application Systems Analyst

3.2.1. ESUCC Application Systems Analyst Job Description

3.2.2. Approve Programmer Timeline

4. Next Meeting Agenda Items

4.1. ESUCC Programmer

5. Executive Session

6. Adjournment

{{Name: Agenda Item Name}}
{{Discussion: Agenda Item Discussion}}
{{Comments: Agenda Item Comments}}
{{Actions: Agenda Item Actions}}

MEMORANDUM

56627- 1

TO: Dave Ludwig, ESUCC Executive Director
FROM: Steve Williams
DATE: August 29, 2014
RE: Termination of Soliant Consulting Service Contract

You have asked whether ESUCC may lawfully terminate a Service Contract with Soliant Consulting for the Special Education Student Record System (SRS) without penalty and, if so, who owns the work product created under the agreement.

Conclusion. Assuming that the ESUCC is a party to the Soliant Contract and or it gets an assignment of rights from NDE, ESUCC can lawfully terminate the contract without penalty by providing 30 days written notice to Soliant. Soliant appears to have conceded that the work product from the agreement is a “work for hire,” meaning that ESUCC owns the work product from the agreement. I recommend that ESUCC enter into a written agreement to ensure a smooth transition and termination of the agreement.

Who are the Contracting Parties? A preliminary issue that must be addressed is whether ESUCC is even a party to the contract. We reviewed two contracts with Soliant. One provides a start date of July 1, 2008, and an end date of October 31, 2008. This Service Contract lists the client name as “Nebraska Department of Education (SRS)” and the billing contact as Wade Fruhling at ESU 1. The other contract provides a start date of September 1, 2010, and an end date of August 31, 2011. The second Service Contract lists the client name as “Nebraska Department of Education” and the billing contact is Deb Hericks with ESUCC’s Omaha address. In addition, the second contract lists NDE on the signature block. While all operations under the second contract have been between the

ESUCC and Soliant, the listed party on the most recent contract made available to us still lists NDE as the client. We must first make sure that NDE is not making any ownership claim to the SRS system or any work product created under the Soliant agreement(s). If this matter ended up in litigation, the issue of whether or not ESUCC is a party to the contract is likely to be raised as a defense. A simple way to address this, if NDE is willing, is to have NDE assign all of its rights that it has or may have under the contract to ESUCC.

Termination of the Contract. Assuming that we are able to resolve the preliminary issue in favor of the ESUCC being the proper party to the contract, termination of the contract is relatively simple and straightforward. The agreement states as follows:

Notice of Cancellation

Either you or we may cancel the terms of this contract at any time provided the other party receives at least 30 days written notice (which may be by e-mail). The notice is effective upon (a) delivery; or (b) if by e-mail, upon receipt by sender of a confirmation indicating that the e-mail has been received.

Therefore, the contract can be terminated by providing written notice to Soliant at least 30 days before the proposed date of termination. However, since the Soliant agreement isn't written in the clearest terms and ESUCC the ESUs, and member school district could suffer significant harm if there was any delay or denial of access to SRS, I would recommend that ESUCC explore entering into a termination or transition agreement that lists the terms and expectations of the parties for the transition.

Work Product Ownership. Under federal law (the 1976 Copyright Act), the person that creates a work is generally considered the author and copyright owner. However, there is an exception to this general rule for "works made for hire." If a work is made for hire, the employer or other person for whom the work was prepared is considered the author and owns the copyright unless the parties have expressly agreed otherwise in a writing signed by both parties. The rationale behind the "work for hire" doctrine is that when an employer hires an employee to create a copyrightable work, the fruits of the employee's endeavors properly belong to the employer. Classification as a work for hire not only determines initial copyright ownership, who may register the copyright, and who can sue for copyright infringement of it, but also effects the duration of the copyright,

renewal rights, termination rights, and the right to import certain goods bearing the copyright.

While the work for hire analysis can be complicated in some situations, Soliant appears to have conceded that the SRS work product is a work for hire. In late 2003, John Recknor sent a letter to The Moyer Group, Soliant's predecessor, on behalf of ESU 1 (ESUCC/NDE's contracting predecessor) raising the issue of ownership of SRS. In an e-mail response to Bob Uhing dated December 19, 2003, Steve Lane, Vice President of The Moyer Group, wrote:

With regard to the note Mr. Recknor sent us: our position on the ownership rights of systems we create is that the systems themselves are a work for hire. We take the position that we do not impede the rights of our clients to use and reuse that work product in any way they see fit.

Therefore, ESUCC is the author and copyright owner of the work in question.

I hope that this information is helpful to you and the Council. Please let me know if you have any additional questions.

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Job Description: Application Systems Analyst
Educational Service Unit Coordinating Council
September 2014

Department: ESUCC

Job Title: Application Systems Analyst

Education Level: 2 or 4-year degree in Computer Science, Management Information Systems or related field

Certification/Licensure: Zend Certification preferred

Knowledge & Experience:

1. Ability to participate in a collaborative team environment
2. Active listening and responsiveness to team, partner and user questions and concerns
3. A friendly, cooperative, professional attitude of service
4. Effective personal communication skills
5. Ability to research and develop logical and creative solutions to problems with team members
6. Detail-oriented
7. Programming experience and general programming skills in more than one development environment

Essential Functions of Position:

1. Collaborate, consult and communicate effectively with Technology and Project directors, advisory groups and partners to develop clear system specifications, design documents, goals and priorities.
2. Develop and maintain application algorithms, processes and code that are efficient and effective at meeting system specifications.
3. Write and maintain thorough documentation of all work within code and through supporting documents.
4. Implement and utilize an organization-wide revision control system to assist in tracking and documenting system revisions.
5. Research and recommend system changes to keep applications in stable, current and supported technologies.
6. Deliver, design, modify, develop, write, implement and maintain highest quality software applications for the company.
7. Design, build, test, debug, troubleshoot, tune and re-factor new and existing code within Eclipse or Zend Studio and using PHP 5.x, Zend framework, JavaScript, jQuery, PHP Unit and Selenium.
8. Develop PHP applications in a UNIX/Linux environment.
9. Administer databases using PostgreSQL.
10. Use JQuery, Ajax, JavaScript, HTML, JSON, XML and CSS as development tools to provide the desired user experience.
11. Provide project plans and level-of-effort estimates regarding completion for all projects and commit to plans
12. Ensure that deployed applications are properly maintained throughout their lifecycle
13. Provide technical-level application support to troubleshoot issues and work with the appropriate resources/parties to resolve them

Physical Requirements: (Place an "X" in the column pertinent to your job duties)

	Never 0%	Occasional 1-32%	Frequent 33-66%	Constant 67% +
Standing		X		
Walking		X		
Sitting				X
Bending/Stooping		X		
Reaching/Pushing/Pulling		X		
Climbing	X			
Driving		X		
Lifting (50# max)		X		
Carrying (25 feet)		X		
Manual Dexterity Tasks (using telephone, computer, adding machines, copiers, printers, other office equipment, etc.)				X

**Application Systems Analyst (Position Timeline)
Educational Service Unit Coordinating Council
September 2014**

The following timeline has been established for the employment of an Application Systems Analyst:

September 15-October 3, 2014	Position Announcement
October 6-10, 2014	Review of Applications Development of Interview Questions
October 13-24, 2014	Interview Top Five Candidates
November 10, 2014	Recommendation for Employment and Candidate Contact
November 18-19, 2014	Ratification of Employment (ESUCC Meeting)
December 1, 2014	First Day of Employment