

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	13-0367
Introduction Date	2-27-13
Enactment Number	
Enactment Date	



OAKLAND UNIFIED  
SCHOOL DISTRICT

*Community Schools, Thriving Students*

# Memo

**To** Board of Education  
**From** Jacqueline Minor, General Counsel  
**Board Meeting Date** February 27, 2013  
**Subject** Amendment to MOU WITH Olson, Hagel & Fishburn a law firm

**Action Requested** **Approval of AMENDMENT TO MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT and Olson, Hagel & Fishburn**

**Background** Olson, Hagel & Fishburn has represented the District before the Education Audit Appeals Panel on appeals of the State Controller's Office audit findings since 2002.

**Discussion** The purpose of this Amendment is to increase the fees for 2012-13 to an amount not to exceed \$300,000. The reason for the increase is that the budget for 2011-12 was underestimated by \$58,000. The hearings before the Education Audit Appeals Panel in 2011-12 related to the appeal of the 2006-07 audit findings and were lengthy, complex and required the testimony of central office staff and 10 teachers. During the current fiscal year, for the appeal of the 2007-08 audit findings, 29 District employees testified. Because of the number of witnesses and the length of the hearings, the legal costs escalated. This is one more cost to the District associated with State Administration.

**Recommendation** Approval by the Board of Education of the Amendment to Agreement with Olson, Hagel & Fishburn to provide legal services

**Fiscal Impact** Funding resource name: General Purpose

**Attachments**

- Amendment
- Memorandum of Understanding

**AMENDMENT TO MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT  
POLICY  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT and  
OLSON, HAGEL & FISHBURN, LLP  
2012-2015**

By Enactment No 12-2336 approved by the Board of Education on August 22, 2012, the Oakland Unified School District (the "District") entered into a MOU with Olson, Hagel & Fishburn, LLP, a Sacramento law firm (the "Attorney") for the term from July 1, 2012 to June 30, 2015. Olson, Hagel & Fishburn has represented the District before the Education Audit Appeals Panel on appeals of the State Controller's Office audit findings since 2002.

The Parties hereby agree to further amend said Agreement as follows:

**FEES.** For fiscal year 2012-13, the fees payable under the MOU shall be increased by an amount not to exceed \$300,000 subject to the billing and invoicing requirements of this Agreement.

Except as expressly provided above, the MOU is unchanged.

This Amendment to the MOU between the COUNSEL and the District constitutes the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

We hereby execute this Amendment.

**OLSON, HAGEL & FISHBURN, LLP**

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RICHARD C. MIADICH

**OAKLAND UNIFIED SCHOOL DISTRICT**

A handwritten signature in blue ink, appearing to read 'J. Minor', is written over a horizontal line.

JACQUELINE MINOR, GENERAL COUNSEL

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President, Board of Education  
Oakland Unified School District

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Secretary, Board of Education  
Oakland Unified School District

Board Office Use: Legislative File Info.	
File ID Number	12-2256
Introduction Date	August 22, 2012
Enactment Number	12-2336
Enactment Date	8-22-12



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** August 22, 2012

**Subject** **MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY – OAKLAND UNIFIED SCHOOL DISTRICT - OLSON, HAGEL & FISHBURN, LLP**

**Action Requested** Approval by the Board of Education of Memorandum of Understanding between the District and Olson, Hagel and Fishburn, a Sacramento law firm, for the period of July 1, 2012 to June 30, 2015, to provide legal services to the District in connection with audit findings by the State Controller's Office, including compliance waivers and appeals to the Education Audit Appeals Panel pursuant to Education Code section 41344 and 41344.1, in an amount not to exceed \$200,000 per fiscal year.

**Background**  
*A one paragraph explanation of why the consultant's services are needed.*

Olson Hagel has represented the District before EAAP on appeals of State Controllers' Office audit findings since 2002.

**Discussion**  
*One paragraph summary of the scope of work.*

We seek approval of an MOU with Olson Hagel, to provide legal services to the District in connection with audit findings by the State Controller's Office, including compliance waivers and appeals to the Education Audit Appeals Panel pursuant to Education Code section 41344 and 41344.1, in an amount not to exceed \$200,000 per fiscal year.

**Recommendation** Approval by the Board of Education of the Memorandum of Understanding with Olson, Hagel & Fishburn to provide Legal Services.

**Fiscal Impact** Funding resource name: (GP) not to exceed \$200,000 per fiscal year

**Attachments**

- Memorandum of Understanding

Board Office Use: Legislative File Info.	
File ID Number	12-2250
Introduction Date	August 22, 2012
Enactment Number	12-2336
Enactment Date	8-22-12 <i>lf</i>

**MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT and  
OLSON, HAGEL, & FISHBURN**

**1. INTENT**

**Intent of this Memorandum of Understanding.** This Memorandum of Understanding (hereinafter "MOU") authorizes the Oakland Unified School District Office of General Counsel (hereinafter or "General Counsel") to establish professional services agreements in the form of Letters of Engagement with Olson, Hagel & Fishburn Law Firm (hereinafter "Counsel" or "Contractor") to provide legal services to Oakland Unified School District on an as needed basis. The cumulative amount of Letters of Engagement under this MOU shall not exceed \$200,000 in a fiscal year. Olson, Hagel & Fishburn is approved panel counsel under the District's insurance program. As provided in the District's insurance program, some legal expenses incurred may be paid on behalf of the District.

This MOU is effective immediately and shall govern the engagement of Counsel for the Oakland Unified School District ("District" or "OUSD") on or after July 1, 2012. This MOU shall be applicable to services provided by Counsel after July 1, 2012 where no written engagement letter currently exists. Any exceptions to this MOU must be approved in writing by the General Counsel.

**2. TERMS AND CONDITIONS**

**2.1 Term of Agreement.** The term of this agreement shall be July 1, 2012 to June 30, 2015 and may be extended by written agreement of both parties.

**2.2 Notice of Termination.** OUSD may at any time terminate this Agreement upon not less thirty (30) days written notice to Counsel. OUSD shall compensate Counsel for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this agreement for cause should Counsel fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, Counsel shall pay the additional cost. OUSD's right to terminate this Agreement is not its exclusive remedy but is in addition to all other remedies available to the OUSD by law, in equity, or under the provisions of this Agreement. Upon any termination of this Agreement, Counsel shall immediately provide OUSD with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to OUSD. Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.

**2.3 Choice of Laws.** This Agreement is governed by the laws of the State of California.

**2.4 Licenses and Permits.** Counsel shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

**2.5 Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**2.6 Conflict of Interest.** Counsel shall not hire any officer or employee of OUSD to perform any service by this Agreement. Counsel affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Counsel's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing. Counsel has undertaken a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to OUSD or has obtained a written conflicts waiver from the General Counsel.

**2.7 Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.

**2.8 Anti-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under this MOU, Counsel shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. Counsel agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, Counsel agrees to require like compliance by all its subcontractor(s).

**2.9 Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

### **3. AREAS OF AUTHORITY**

**3.1 Independent Contractor.** This is not an employment contract. Counsel, is an independent contractor or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. Counsel understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Counsel shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes with respect to Counsel's employees. In the performance of the work herein contemplated, Counsel is an independent contractor, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

**3.2 No Rights in Third Parties.** This agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**3.3 Ownership of Documents.** All documents created by Counsel pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Counsel, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation. The OUSD shall be entitled to access to and copies of these materials during the progress of the work. Any such materials in the hands of Counsel or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. Counsel may retain a copy of all materials produced under this Agreement for its use in its general business activities.

**3.4 Copyright/Trademark/Patent/Ownership.** Counsel understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD.

**3.5 Confidentiality.** The Counsel and all Counsel's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information and documents received. Counsel understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

#### **4. INDEMNIFICATION**

Counsel shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Counsel or loss of or damage to property, arising directly or indirectly from Counsel's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Counsel, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

In addition to Counsel's obligation to indemnify the District, Counsel specifically acknowledges and agrees that Counsel has an immediate and independent obligation to defend the District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Counsel by the District and continues at all times thereafter.

#### **5. INSURANCE**

Without in any way limiting Counsel's liability pursuant to the "Indemnification" section of this Agreement, throughout the term of the MOU, Counsel shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:

Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

Professional Liability Insurance with limit not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than fifty thousand dollars (\$50,000) each claim, covering legal malpractice arising from any services provided under this Agreement.

Except for Professional Liability Insurance, all liability policies that this Section requires Counsel to maintain shall provide for the following: (i) name as additional insureds the District, the School Board, the State Trustee, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

Within thirty (30) days of approval of this Agreement, Counsel shall deliver to the General Counsel a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the General Counsel.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of the OUSD and endorsed to name the Oakland Unified School District, its officers, employees, volunteers or agents, as additional insured. Said Additional Insured endorsement shall be provided to the Oakland Unified School District prior to this Master MOU becoming valid. If at any time said policies of insurance lapse or become canceled, this agreement shall become void. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or Counsel to OUSD.

## **6. Case Analysis and Budget**

Within sixty (60) days of the date of this engagement letter, or sooner as may be required by the General Counsel, Counsel engaged for litigation matters shall provide to the General Counsel a proposed litigation budget and, if requested, by the General Counsel, a preliminary case analysis and. The litigation budget shall be consistent with Attachment A. Within ninety (90) days of engagement, or sooner as may be required by the General Counsel, a budget for litigation matters shall be established by the General Counsel.

The case analysis, if requested, shall include the following information:

- a. A brief summary of facts and plaintiff's legal theories;
- b. An assessment of the strengths and weaknesses of the case;
- c. An overview of counsel's strategy for handling the matter including whether counsel recommends filing dispositive motions and utilizing Alternative Dispute Resolution.

## **7. Billing and Invoices**

All Counsel representing the District are to provide the following information on bills or invoices submitted to the District for payment of legal services provided:

- a. Name of the project or matter;
- b. The matter or number or other designation contained in the engagement letter;



- c. Description of the services sufficient for the District to understand what case-related task was performed by each attorney or paralegal on a daily basis;
- d. The name of each attorney or paralegal working on the matter;
- e. The hours worked by each billing person for each task described (task billing) daily to the nearest .1 of an hour;
- f. The hourly rate for each billing person;
- g. An itemization of any cash or cost disbursements;
- h. The name of the General Counsel attorney authorizing the work or to whom Counsel reports;
- i. Total fees and costs billed to date; and
- j. Total fees and costs paid by the District to date.

A one-page summary with each statement or invoice indicating (a) the firm name submitting the invoice/statement; (b) the OUSD assigned matter number and firm reference number; (c) total hours billed and corresponding fees and costs for the current billing period; (d) payments credited during the current billing period; (e) any past-due amount; and (f) total amount due. Do not include any description of services performed on this one-page summary.

All invoices shall be accompanied by the following verification statement signed by the lead attorney assigned to the matter:

**I personally reviewed this invoice dated \_\_\_\_\_ . All entries are in accordance with the Letter of Engagement or other agreements and instructions pursuant to which this invoice is submitted. I have ensured that the statement of services and the fees, costs and any other items on the invoice are correct and that the services and costs were incurred in compliance with all agreements between me and/or my firm and the General Counsel of the Oakland Unified School District.**

Invoices or bills not containing all the information required above shall be returned unpaid with a request for resubmission in the proper form.

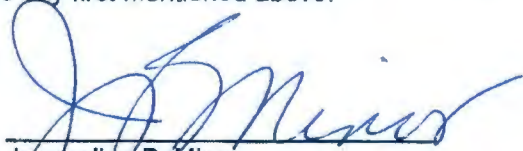
### **8. Important Billing and Payment Notes**

- a. Bills for counsel fees and expenses must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or legal invoices should be addressed to:

General Counsel  
Office of the General Counsel  
Oakland Unified School District  
1025 Second Avenue, Room 406  
Oakland, CA 94606

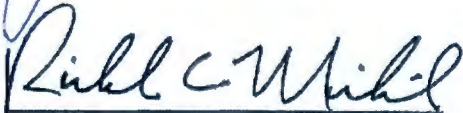
- b. The District will not pay for amounts not reflected on bills or invoices.
- c. The District shall not reimburse for time spent for filing, file indexing, proofreading, typing, court filing and the like, unless approved in advance by the General Counsel. Unless approved in advance by the General Counsel, the District shall not pay for secretarial overtime or associated expenses, office supplies, local telephone calls and/or invoice preparation. The District does not reimburse or pay for long distance travel costs, which is travel outside of the San Francisco Bay Area, or travel time without the prior written approval of the General Counsel.
- d. The District will pay only the actual costs for reasonable expenses without any premiums or markups.
- e. The District shall reimburse Counsel for necessary photocopying and other expenses at cost, subject to the following limitation:

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.



Jacqueline P. Minor  
General Counsel, Oakland Unified School District

Date: 8/8/12



Richard C. Miadich  
Olson, Hagel & Fishburn, LLP

Date: 8/8/12



Judy Taylor  
President, Board of Education  
Oakland Unified School District

Date: 8/23/12



Lynn Robertson, Esq.  
Secretary, Board of Education  
Oakland Unified School District

Date: 8/23/12

File ID Number: 12-2256  
Introduction Date: 8-22-12  
Enactment Number: 12-2336  
Enactment Date: 8-22-12  
By: lf