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Enactment Date	6-29-11 YZ



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From **GARY YEE, PRESIDENT**

Subject: **AMENDMENT TO EMPLOYMENT AGREEMENT JACQUELINE P. MINOR, GENERAL COUNSEL**

Board Meeting Date June 29, 2011

Subject **Approval of the Amendment to the Employment Agreement with General Counsel - Jacqueline P. Minor**

Action Requested Approval of the amendment to the employment agreement with General Counsel Jacqueline P. Minor

Background By Enactment 09-1086 dated May 27, 2009, the Board of Education approved an Employment Agreement between JACQUELINE P. MINOR as the General Counsel for the Board and as the chief legal officer for the governing authority of the District.

Discussion The Amendment extends the terms of the employment agreement until September 30, 2011 to allow the Board an opportunity to complete the General Counsel's evaluation.

Recommendation Approval by the Board of Education of the Amended Employment Agreement between the District and JACQUELINE P. MINOR.

Fiscal Impact Funding resource name: (GP) not to exceed \$185,000 per fiscal year.

Attachments

- Amendment to the Employment Agreement
- Employment Agreement

**AMENDMENT [NO. 1] TO EMPLOYMENT AGREEMENT –GENERAL COUNSEL
OAKLAND UNIFIED SCHOOL DISTRICT**

By Enactment 09-1086 dated May 27, 2009, the Board of Education approved an Employment Agreement between JACQUELINE P. MINOR (hereinafter "Employee") and the Oakland Unified School District (hereinafter the "District") for the former to service as the General Counsel for the District and as the chief legal officer for the governing authority of the District. The Parties now agree to amend the Employment Agreement as follows:

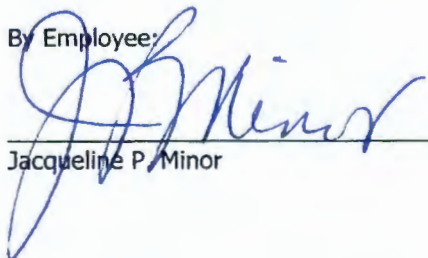
1. Paragraph 1.2 is hereby deleted and changed as follows:

The term of employment shall be extended until September 30, 2011 to allow the Board an opportunity to complete Employee's evaluation ("Term"), unless extended in writing by mutual agreement of District and Employee or terminated sooner at the discretion of District.

2. Except as expressly provided above, the Agreement is unchanged. This Amendment to the Employment Agreement 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.

This Employment Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.

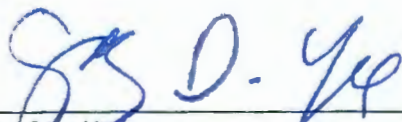
By Employee:



Jacqueline P. Minor

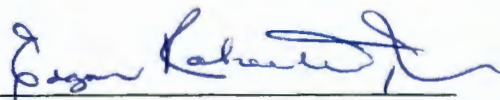
Date: 6/30/2011

By District:

By: 

Dr. Gary Yee
President, Board of Education
Oakland Unified School District

Date: 6/30/11

By: 

Edgar Rakestraw, Jr.
Secretary, Board of Education
Oakland Unified School District

Date: 6/30/11

EMPLOYMENT AGREEMENT – GENERAL COUNSEL OAKLAND UNIFIED SCHOOL DISTRICT

In consideration of the mutual promises made herein, the Oakland Unified School District, a local public entity pursuant to Government Code § 811.2 and by the California Education and Government Codes (hereinafter "District"), and Jacqueline P. Minor, an individual (hereinafter "Employee"), enter into this Employment Agreement ("Agreement") and agree as follows:

Article 1 Acceptance of Employment and Term

- 1.1 District hereby employs Employee and Employee hereby accepts employment with the District on the terms and conditions stated herein. In approving and adopting this Agreement, the Governing Board hereby resolves and designates the position of General Counsel as senior management of the classified service pursuant to Education Code § 45100.5. In entering into this Agreement, Employee hereby acknowledges and agrees that, as General Counsel, she is a member of the senior management of the classified service and that no other employment classification is applicable to her employment with the District.
- 1.2 The term of employment shall be two years commencing on June 4, 2009 and ending June 30, 2011 ("Term"), unless extended in writing by mutual agreement of District and Employee or terminated sooner at the discretion of District.
- 1.3 District and Employee agree that Employee shall act as the chief legal advisor (hereinafter "General Counsel") for District and agree that all information exchanged is attorney-client privileged or confidential business information and that all services provided hereunder are legal services.
- 1.4 District and Employee agree that upon execution of this Agreement and prior to June 4, 2009, District shall cooperate and assist Employee in the transition of Employee assuming the role of General Counsel and District agrees to provide Employee with such information as may be reasonably requested and Employee agrees to treat all such information as attorney-client privileged or confidential business information.

Article 2 Duties and Obligations of Employee

- 2.1 Employee shall serve as the General Counsel of the District. In this capacity, Employee shall be the chief legal officer for the governing authority of the District, and shall represent or provide for the legal representation for that authority pursuant to Education Code § 35041.5 and Senate Bill 39, and as further agreed to by District and Employee. As General Counsel, Employee shall plan, organize, manage, budget for, direct, staff and control the legal work of the District; report to the Board, and the Superintendent, on the legal matters of the District; and shall serve as a member of the Superintendent's cabinet.
- 2.2 Except as agreed to herein, Employee agrees to devote her full time, attention and energy to the performance of Employee's duties pursuant to this Agreement.

- 2.3 Employee shall adhere to and comply with all laws, statutes, regulations, policies and administrative bulletins that presently or prospectively govern District and the conduct of its employees.
- 2.4 District and Employee agree that any intellectual property created by Employee related to or concerning the legal work of the District is owned jointly. Employee shall grant to District the right to share equally in any royalties received by Employee arising out of any intellectual property created by Employee related to or concerning the legal work of the District.
- 2.5 District may use Employee's name during the term of employment as necessary or convenient without additional compensation to Employee.
- 2.6 Employee warrants and represents that she has the ability and authority to enter into this Agreement, that there are no restrictions or limitations on entering into this Agreement, and that entering into this Agreement will not violate any agreement(s) Employee has with any third parties.

Article 3 Obligations of District

- 3.1 District agrees Employee shall have final authority over the selection of personnel and allocation of resources within the Office of General Counsel, provided that authority is exercised in accordance with the laws, statutes, regulations, policies and administrative bulletins that presently or prospectively govern District and the conduct of its employees.
- 3.2 District agrees Employee shall have the sole authority to retain, supervise and discharge outside legal counsel for the District, and implement such policies and procedures for the retention of outside counsel that are in the best interests of the District.
- 3.3 District agrees to provide to the Office of the General Counsel sufficient resources to adequately represent and defend the District in legal proceedings.
- 3.4 District shall provide Employee within the Office of General Counsel with the office, equipment, material and resources reasonably necessary to fulfill the duties, responsibilities and obligations of General Counsel, and shall provide the standard issue of equipment for District department heads.
- 3.5 District agrees to defend, indemnify and hold Employee harmless against any claims, demands, actions, lawsuits, losses or damages of any kind or nature arising out of or related to the course and scope of Employee's discharge of her duties as General Counsel. District may continuously maintain throughout the term of employment adequate insurance for such purpose.

Article 4 Compensation

- 4.1 The salary of Employee shall be fixed at One Hundred Eighty-Five Thousand Dollars (\$185,000) per year, payable on the same schedule as other non-represented senior management employees, or at such other times as the District may provide for the payment of employee salaries. Employee shall be entitled to salary increases provided to all unrepresented management staff.
- 4.2 District shall have the right and obligation to deduct or withhold from compensation due Employee those sums required for applicable federal, state and local income taxes and Social Security taxes.
- 4.3 Employer shall fund Employer's portion of PERS retirement based upon the salary herein.

Article 5 Vacation, Sick and Personal Leave

- 5.1 Employee shall be entitled to twenty-five (25) annual vacation days with pay. Employee is encouraged to take all vacation days during the year in which such days are earned. At District's option, Employee may be reimbursed annually at her daily rate of pay for any unused days not to exceed twenty (20) per year. Employee shall not accrue more than twenty-five vacation days annually without the expressed approval of the Employer.
- 5.2 Employee is entitled to commence employment with a balance of 18 days of sick leave (in acknowledgment of her balance of sick leave with her prior employer). Employee shall further be entitled to accrue paid sick leave at the rate of 1.0 days per month up to 12 days per year. If Employee does not utilize the total amount of accrued sick leave authorized during any year, Employee may carry over the unused time to sick leave in the subsequent year.
- 5.3 Employee is entitled to accrue annual paid personal leave at the rate of 7 days per year. If Employee does not utilize the total amount of accrued personal leave authorized during any year, such leave may be carried over to unused sick leave in the subsequent year.

Article 6 Employee Health Benefits and Expense Reimbursement

- 6.1 District agrees to pay directly to Employee's or future existing health, dental and vision providers, not to exceed the maximum benefits afforded to any other employee, the insurance premiums associated with Employee, and her qualified dependents under Internal Revenue Code § 152. District further agrees to maintain during the term of employment long term disability insurance for Employee.
- 6.2 District shall pay annual Employee's dues to the State Bar of California, the District of Columbia Bar Association, membership in the Alameda County Bar Association and the California Counsel of School Attorneys.

- 6.3 District shall pay the reasonable expenses of Employee to attend appropriate professional and official meetings at the local, state and national level subject to constraints of the budget of the Legal Office.
- 6.4 District shall reimburse Employee, pursuant to the policies and practices of District, the necessary costs and expenses incurred by Employee in performing the duties of General Counsel, including but not limited to gas, travel, materials, supplies and related expenditures, all of which is properly documented by receipts.

Article 7 Termination of Employment

- 7.1 District and Employee agree Employee shall serve at the pleasure and will of the Board. District and Employee agree that this Agreement may be terminated by either party for no reason upon thirty days written notice given pursuant to Section 10.1 below. In the event the Agreement is terminated by the governing authority for no cause, in accordance with Government Code § 53260, Employee shall be entitled to an amount equal to the monthly salary of Employee multiplied by the number of months left of the unexpired term of the Agreement. However, if the unexpired term of the Agreement is greater than six (6) months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 6. No other or additional non-cash settlement may be agreed to, except that health benefits may be continued, limited to the same time restrictions as for cash settlement, or until new employment is found, whichever occurs first. In addition, Employee shall be entitled to cash any unused vacation and sick days. Any payment made under this section shall be made no later than thirty (30) days after the last day of employment. The Board may terminate this Agreement for cause, pursuant to Section 7.2c below, in which case the above shall not apply. Copies of this Agreement and any settlement shall be made available to the public upon request.
- 7.2 This employment contract may otherwise be terminated by:
 - a. Retirement of Employee.
 - b. Death or disability of Employee. For purposes of this Agreement, "disability" means Employee's inability, by reason of physical or mental infirmity or both, to perform the duties contemplated under this Agreement for a period of 120 consecutive days or 150 days in the aggregate in a consecutive twelve (12) month period. "Disability" shall be determined by a licensed physician acceptable to District and Employee. The physician's fee shall be paid by District. Any termination for disability shall not prejudice any rights under any disability policies benefiting Employee.
 - c. Discharge for Cause. For purposes of this Agreement, "cause" shall mean Employee's (a) conviction (or a No Lo Contendre plea) to any felony; (b) dishonesty in performing her duties under this Agreement; (c) repeated and willful misconduct under this Agreement; or (d) willful neglect of her duties under this Agreement.

Prior to final determination by the Board of Education of cause for termination, Employee must have been given forty-five (45) calendar days written notice of such possible action, and of the grounds therefore, and a reasonable opportunity to be heard by the Board of Education in the way of explanation or defense.

In the event that such termination is determined by the Board of Education (or later adjudicated) to be "without cause," the sole remedy shall be to make Employee whole in salary and benefits for the balance of the term hereof, subject to the following: (i) Employee's duty to mitigate such loss through alternative available employment; (ii) offset for Employee's earnings from any active alternative employment or contractual engagements; and (iii) the limitations of Government Code § 53260 (if the remaining contract term exceeds six (6) months). The term "alternative available employment" shall not be construed to require Employee to seek, obtain or mitigate her loss through employment that is not comparable to the position of General Counsel, including as it pertains to salary, benefits, duties and responsibilities, or with an employer that is located outside the greater San Francisco Bay Area.

- 7.3 Pursuant to Education Code § 35031, Employee shall be provided written notice at least forty-five (45) days in advance of the expiration of her term if she is not to be reemployed.

Article 8 Evaluation

- 8.1 Employer shall evaluate Employee not less than annually upon a schedule to be determined by Employer. The evaluation and assessment shall be reasonably related to the position description of the Employee and to the goals and objectives of the Board of Education for the year in question.
- 8.2 In the event that the Board of Education determines that the performance of the Employee is unsatisfactory in any respect, it shall describe in writing and in reasonable detail specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board of Education deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the Employee. Employee shall have the right to make a written response to the evaluation and be placed in the personnel file along with the evaluation.

Article 9 Changes in Agreement

- 9.1 Additional written amendments may be added to the Agreement by mutual consent of the Employee and the Board at any time during the period of this Agreement.

Article 10 General Provisions

- 10.1 All notices required to be given under this Agreement shall be delivered via hand delivery, by first class mail or via email as follows:

To District:
Board of Education
Oakland Unified School District
1025 Second Avenue, Rm. 320
Oakland, CA 94606
Email: boe@ousd.k12.ca.us

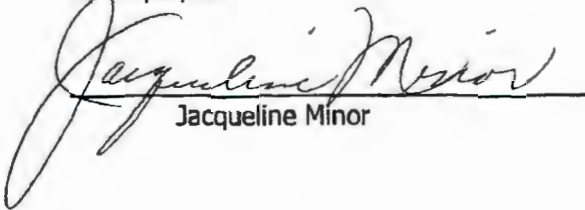
To Employee:
Jacqueline P. Minor
1934 17TH Avenue
San Francisco, CA 94116
Email: minorjackie@gmail.com

District or Employee may change the designated address for the giving of notices by providing to the other amended notice information in writing.

- 10.2 Any controversy between District and Employee involving the construction or application of any of the terms, provisions, or conditions of this Agreement shall, on the written request of either party served on the other, be submitted to binding arbitration. Arbitration shall comply with and be governed by the provisions of the California Arbitration Act. District and Employee shall agree on the selection of one person to hear and determine the dispute. If the parties are unable to agree on a single arbitrator to hear the dispute, they shall obtain a list of arbitrators from the American Arbitration Association and select the arbitrator by alternative strike method. The arbitration shall be governed by the California Arbitration Act, Code of Civil Procedure § 1280 *et seq.*
- 10.3 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th.
- 10.4 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 10.5 This Agreement constitutes the entire agreement between District and Employee concerning the subject matter of this Agreement. Any prior agreements or understandings between District and Employee concerning the same subject matter not contained within this Agreement are null and void.
- 10.6 This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education, and to the lawful rules and regulations of the Board.
- 10.7 If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under Federal or State law, the remainder of the Agreement not affected by such a ruling shall remain in force.
- 10.8 This Agreement may be modified or extended only in writing and must be signed by District and Employee.

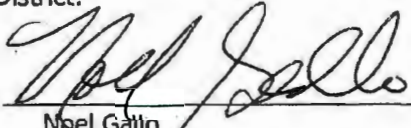
10.9 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.

By Employee:

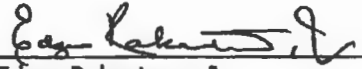

Jacqueline Minor

Date: 5/27/2009

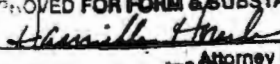
By District:

By: 
Noel Gallo
President, Board of Education
Oakland Unified School District

Date: 5/27/09

By: 
Edgar Rakestraw, Jr.
Secretary, Board of Education
Oakland Unified School District

Date: 5/27/09

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: 
Attorney at Law

File ID Number: 09-1695
Introduction Date: 5/27/09
Enactment Number: 09-1086
Enactment Date: 5-22-09
By: 