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By	



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

To: Board of Education

From: Tony Smith, Ph.D., Superintendent
 By: Maria Santos, Deputy Superintendent, Instruction, Leadership & Equity-
 in-Action Maria Santos
 Vernon Hal, Deputy Superintendent, Business & Operations

Board Meeting Date: 12/12/12

Subject: Memorandum of Understanding (MOU) – Elder Alliance Center – Oakland
 Adult Career Education

ACTION REQUESTED:

Approval by the Board of Education of a Memorandum of Understanding (MOU) between District and Elder Care Alliance, Oakland, CA.

BACKGROUND:

Oakland Adult & Career Education provides courses in many community-based organizations throughout the city of Oakland. These courses are taught by adult education teachers on a year-round basis and provide adult learners with skills and knowledge in many subject areas. The MOU delineates what Oakland Adult & Career Education provides as a partner in offering these classes and what the community-based organization provides as a partner to Oakland Adult & Career Education.

DISCUSSION:

Approval by the Board of Education of a Memorandum of Understanding (MOU) between District and Elder Care Alliance, Oakland, CA, for the provision of Adult and Career Education classes on the latter's owned premises at 3134 Foothill Blvd., Oakland, CA, and 2361 E. 29th Street, Oakland, CA respectively, pursuant to the terms and conditions stated in said MOU, for the period December 30, 2012 through June 30, 2015. There is no fiscal impact.

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RECOMMENDATION:

Approval by the Board of Education of a Memorandum of Understanding (MOU) between District and Elder Care Alliance, Oakland, CA, and to accept same, pursuant to the terms and conditions thereof and to submit amendments thereto, for the MOU if any.

FISCAL IMPACT: No fiscal impact to the District.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Administrative Understanding ("MOU") is entered into by and between the Oakland Unified School District, a California public school district under its Oakland Adult Career Education department (hereinafter "OUSD/OACE"), and **Elder Care Alliance** (hereinafter "the Agency"). This MOU shall serve as the foundation for the programming of adult education classes between OUSD/OACE and the Agency.

RECITALS

WHEREAS, the Agency is the owner/leaseholder of the real property located at **Mercy Retirement and Care Center (3431 Foothill Blvd) and Salem Lutheran Home (2361 E. 29th)** ("Program Site");

WHEREAS, the Agency desires to provide space at the Program Site to OUSD/OACE for the purposes of conducting adult education classes and programming services and OUSD/OACE desires to provide the programming and educational services at the Program Site under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Agency and OUSD/OACE agree as follows:

RESPONSIBILITIES OF THE PARTIES

1. OUSD/OACE shall provide the Agency and Program Site with the services of instructor(s) for agreed upon scheduled hours to meet the educational needs of the students. The agreed upon schedule of hours under this MOU shall be as follows:

SEE ATTACHMENT

2. The instructor(s) shall be responsible for providing appropriate instruction in accordance with the standards set by the California Department of Education, the Oakland Unified School

District, and the Agency.

3. The Agency shall be responsible for providing a suitable area at no charge (preferably a separate room) for the appropriate performance of all classes under the MOU. If a lobby or any other multi-purpose room must be utilized, no other activity shall occur in that area during the scheduled class session(s), so that it is as free from interruptions, distracting influences, and outside noises as possible.
4. The Agency shall provide adequate storage space for supplies, equipment and teacher needs.
5. The Agency agrees to provide a safe work environment to all OUSD/OACE employees while on the premises of the Agency. The Agency further warrants that at the time of the signing of this MOU and/or at the time of delivery of possession of the Program Site, the facilities are in clean, safe and sanitary condition, are in repair and free from rodents and vermin; and are in compliance with all other applicable laws and regulations such as those of the City of Oakland relating to health and safety and as further specified herein.
 - OUSD/OACE is responsible for the instructional program in its entirety.
 - OUSD/OUSD will insure supervision and instruction of students will be performed by qualified instructors and employees.
 - OUSD/OACE will insure no more than 15 students to one instructor in the clinical setting.
 - OUSD/OACE will provide to the clinical site a list of students, the name of the qualified instructor, dates and times of training.
 - OUSD/OACE will insure attestation that all students have had a criminal screen and health clearance. (Live Scan finger prints submitted upon enrollment; a health exam that includes a medical history and physical exam, a PPD test for tuberculosis unless medically contraindicated; a report signed by the physician's assistant, or nurse that indicates the student does not have any health conditions that would create a hazard to himself/herself or patients).
 - OUSD/OACE will comply with all State and Federal requirements regarding instructor qualifications and content of the CNA training program.

6. The Agency shall, at its own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county or municipal relating to any use and occupancy of the Program Site, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of any portion of the Program Site, the Agency shall procure and maintain it throughout the term of this MOU, with any reasonably necessary assistance from OUSD/OACE. The Agency agrees that it will provide sufficient and ongoing custodial services to the Program Site at the sole cost and expense of the Agency. Sufficient custodial services shall include, at a minimum, daily cleaning of the Program Site classrooms and restrooms.

INSTRUCTION RELATED PROVISIONS

7. All adult education class sessions shall have no more than fifteen (15) students in attendance for each hour the class is scheduled per instructor.
8. Instructional assistants, volunteers, or other personnel provided by the Agency to assist in the instructional process shall work under the immediate supervision of the certificated adult education teacher during the time the classes are in session.
9. Teacher selection, placement, and evaluation are solely the responsibility of the OUSD/OACE Program Administrator. Agency concerns about staff performance should be communicated directly to the OUSD/OACE Program Administrator; in no case shall such concerns be directed to the staff member.
10. Adult education instructors employed by the Oakland Unified School District and assigned to the agency program will receive the appropriate rate of pay as bargained for by their "employee representatives".
11. Any additional hours of work requested of the instructors by the Agency will be a matter of

separate negotiations between the instructors and the Agency. Any terms and conditions of such additional employment will not affect, nor be affected by, the terms and conditions of employment reached between the school district and the bargaining unit.

12. It will not be a condition of continued employment in, or assignment to, the Agency program that Oakland Unified School District-funded instructors consent to work any additional hours.
13. For the hours the instructors are assigned by the Oakland Unified School District, matters of discipline, grievances, and other terms of employment will be governed solely by Oakland Unified School District personnel policies.
14. In the event substitute teachers are required to temporarily fill any particular instructional vacancy, OUSD/OACE will provide such substitute personnel in accordance with its standard procedures.
15. The hours of instruction must be observed as agreed upon. Any change must be negotiated between the OUSD/OACE Program Administrator and the Agency.
16. Only OUSD/OACE shall be entitled to collect apportionment from the California Department of Education for the operation of the class.

TERM

17. The term of this MOU shall commence on the date on which it is approved and executed by the Board of Education, and shall continue, for a period of three (3) years, and be irrevocable for that period unless terminated as set forth below. Upon the expiration of the three (3) year term, at the termination of this MOAU, renewal of the terms may be executed by mutual agreement of the Parties.

TERMINATION

18. Either party may terminate this MOU at anytime and for any reason by providing thirty (30) days formal written notice of the intent to terminate to the non-terminating Party.
19. All classes at the Program Site shall be operated by mutual agreement. Classes shall be maintained so long as they remain productive, students manifest interest in them, and attendance of each session totals a minimum of twenty to twenty five (20-25) or more persons.
20. For cause termination may be made by either party upon fifteen days written notice to the other party stating the grounds for such termination.

INSURANCE REQUIREMENTS

21. Unless specifically waived by OUSD/OACE, the following insurance is required:
 - a. If the Agency employs any person to perform work in connection with this Agreement, Agency shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Workers' Compensation Insurance limits shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
 - b. The Agency shall maintain general liability insurance of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to Agency and shall name OUSD/OACE as an additional insured. A Certificate of Insurance shall be attached to this MOU as evidence that the Agency has met the insurance requirements hereunder. Inclusion of OUSD/OACE as an additional insured shall not affect OUSD/OACE's rights to any claim, demand, suit or judgment made, brought or recovered against the Agency. The policy shall protect the Agency and OUSD/OACE in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in

the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

- c. The Agency shall forward all insurance documents to Oakland Unified School District, Risk Manager, 1025 Second Avenue, Street, Oakland, California, 94606.

INDEMNIFICATION

22. The Agency agrees to hold harmless, indemnify, and defend OUSD/OACE and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. Agency also agrees to hold harmless, indemnify, and defend OUSD/OACE and its officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Agency in connection with the performance of this Agreement. This provision survives termination of this Agreement.
23. OUSD/OACE agrees to hold harmless, indemnify, and defend the Agency and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. OUSD/OACE also agrees to hold harmless, indemnify, and defend the Agency and its officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to OUSD/OACE in connection with the performance of this Agreement. This provision survives termination of this Agreement.

PROHIBITED USES

24. The Parties to this MOU shall not use the Program Site, or permit any portion of the premises on which the Program Site is located to be used, in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, the Parties shall

not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Program Site.

STANDARD PROVISIONS

25. No Rights in Third Parties: This MOU does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
26. Limitation of Liability: Notwithstanding any other provision of this MOU, in no event, shall OUSD/OACE 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 MOU for the services performed in connection with this MOU.
27. Confidentiality: The Agency 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.
28. Integration/Entire Agreement of Parties: This MOU constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This MOU may be amended or modified only by a written instrument executed by both Parties.
29. Litigation: If any litigation is initiated to enforce or interpret this MOU, the prevailing party shall be entitled to reasonable attorney's fees and costs. This Agreement shall be performed in Oakland, CA and is governed by the laws of the State of California.
30. Approval: This Agreement is not effective until it is approved. OUSD/OACE approval requires signature by the Superintendent, the Board of Education, and/or their designee.
31. Signature Authority: The person(s) signing this MOU on behalf of each Party has been

given the proper authority and empowered to enter into this MOU.

- 32. Counterparts: This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 33. Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Oakland Unified School District, a California public school district under its Oakland Adult and Career Education department and Elder Care Alliance have executed this Memorandum of Understanding as of the date written below:

OAKLAND UNIFIED SCHOOL DISTRICT

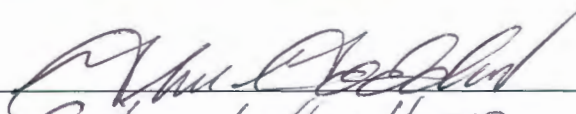
Jody London, President, Board of Education

12/12/12
Date

Edgar Rakestraw, Jr., Secretary, Board of Education

12/12/12
Date


ELDER CARE ALLIANCE



Sabour Leathers-House

11/16/12
Date

APPROVED AS TO FORM:



Jacqueline Minor, General Counsel
Catalina Bassoff, Facilities Co-PM

11.16.12
Date

CLASS SCHEDULE FOR ADULT AND CAREER EDUCATION

ELDER CARE ALLIANCE

Course Title	Days/Time	Teacher
Nurse Assistant	7:45 am -1:15 pm	Margaret Clement