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Memo

To Board of Education

From Jacqueline P. Minor, Co-General Counsel
Gil Echeverria, Deputy Chief 

Board Meeting Date June 22, 2016

Subject **AUTHORIZING EMERGENCY CONTRACTS FOR
TRANSPORTATION SERVICES FOR SPECIAL EDUCATION
STUDENTS**

Action Requested **ADOPTION OF RESOLUTION NO. 1516-0228
AUTHORIZING EMERGENCY CONTRACTS FOR SPECIAL
EDUCATION STUDENTS**

**Background and
Discussion**

By Enactment No. 14-0905, approving Resolution No. 1314-1118, the Board approved a contract for Special Education Transportation Services with First Student, Inc., to provide Special Education (bus) transportation from August 1, 2014 through July 31, 2018, at a cost not to exceed \$7,000,000 per fiscal year.

First Student has given the District notice of its intent to not provide service after August 19, 2016.

The District has made a number of good faith offers to compromise and negotiate the dispute with First Student, including agreeing to increase the contract amount by an additional \$1 million dollars each year for 2016-17 and 2017-18.

First Student, through its legal counsel, informed the District on Friday, June 17, 2016 that unless the District agreed to retain in the agreement the ability of First Student to cancel the agreement for no-cause on 120 days' notice, First Student intended to terminate the contract but would give the District until December 2016 to have alternative transportation in place, provided however First Student would increase all prices charged to the District by 30 percent.



In cases of emergency, the governing board may proceed without giving notice for bids to let contracts for essential services (Pub. Contract Code § 22035).

Emergency work under section 22035 is done pursuant to the terms of Public Contract Code section 22050. Section 22050 requires, in relevant part, that the following steps be taken:

- (1) **Four-fifths** vote of the Board, declaring an emergency and authorizing the District to procure the necessary services without giving notice for bids to let contracts;
- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action;
- (4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

Immediate action must be taken by the District to provide for transportation services for special education students for the 2016-17 school year. The Staff seeks authorization to consider all viable alternatives and options available with the goal of safe transportation services for PEC students. Any final agreements will be subject to ratification by the Board.

Recommendation

ADOPTION OF RESOLUTION NO. 1516-0228 AUTHORIZING EMERGENCY CONTRACTS FOR SPECIAL EDUCATION STUDENTS

Fiscal Impact

Resource – Special Education Fund

Attachments

- Resolution No. 1516-0228

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE OAKLAND UNIFIED SCHOOL DISTRICT
NO. 1516-0228
AUTHORIZING EMERGENCY CONTRACTS FOR TRANSPORTATION SERVICES FOR
SPECIAL EDUCATION STUDENTS**

WHEREAS, by Enactment No. 14-0905, approving Resolution No. 1314-1118, the Board of Education awarded a bid and contract for Special Education Transportation Services to First Student, Inc., to provide Special Education (bus) transportation from August 1, 2014 through July 31, 2018, with an option to extend the contract up to two (2) additional years at a cost not to exceed \$7,000,000 per fiscal year; and

WHEREAS, First Student has given the District notice of its intent to not provide service after August 19, 2016; and

WHEREAS, the District has made a number of good faith offers to compromise and negotiate the dispute with First Student, including agreeing to increase the contract amount by an additional \$1 million dollars each year for 2016-17 and 2017-18; and

WHEREAS, First Student, through its legal counsel, informed the District on Friday, June 17, 2016 that unless the District agreed to retain in the agreement the ability of First Student to cancel the agreement for no-cause on 120 days' notice, First Student intended to terminate the contract but would give the District until December 2016 to have alternative transportation in place, provided however First Student would increase all prices charged to the District by 30 percent;

WHEREAS, transportation for special education students is an essential service that the District must provide;

WHEREAS, options available to the District at this time are limited;

WHEREAS, in cases of emergency, the governing board of the District ("Board") may proceed without giving notice for bids to let contracts (Pub. Contract Code § 22035); and

WHEREAS, an emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, **or essential public services** (Pub. Contract Code, § 1102); and

WHEREAS, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

WHEREAS, section 22050 requires, in relevant part, that the following steps be taken:

- (1) Pursuant to a **four-fifths** vote of the Board, the District may take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;

- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action;
- (4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

WHEREAS, immediate action must be taken by the District to provide for transportation services for special education students for the 2016-17 school year:

WHEREAS, the transportation services must be procured without delay to minimize the potential on District students and their families; and

WHEREAS, District staff must immediately procure alternative transportation services;

NOW THEREFORE, the governing board of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

1. That the above recitals are true and correct;
2. That there is an emergency as defined by applicable statute(s) ("Emergency");
3. That the Board of Education hereby finds that procuring transportation services for special education students must commence immediately, and therefore will not permit the delays which would result from a competitive bidding process, and that approval of this resolution is necessary to respond to the Emergency;
4. That the Board of Education hereby delegates to the Superintendent, subject to ratification by the Board, the authority to enter into contracts as appropriate and as necessary to procure transportation services, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement those contracts;
5. That District staff report on the status of this Emergency to the District's Board at the Board's next regularly scheduled Board meeting and at all subsequent regularly scheduled Board meetings until the Board terminates the Emergency action.

PASSED AND ADOPTED by a four-fifths (4/5) vote by the Board of Education of the Oakland Unified School District this 22nd day of June 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAINED:

CERTIFICATION

I, Antwan Wilson, Superintendent and Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 22nd day of June 2016 with a copy of such Resolution being on file in the Administrative Office of said district.

Antwan Wilson