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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, Chief Governance Officer
Tara Gard, Chief Talent Officer

Board Meeting Date June 28, 2023

Subject Employment Agreement with Jenine Lindsey as Interim General Counsel

Action Approval by the Board of Education of the Employment Agreement with Jenine Lindsey to serve as Interim General Counsel, for the term July 1, 2023 through January 1, 2024, with a base salary of \$213,955 plus additional pay of \$9,600, District paid benefits of \$35,737 and other fringe benefits of \$35,394 for 2023-24, some of which increase annually.

Background The General Counsel of the District jointly reports to the Board of Education and the Superintendent and is, among other things, the primary legal advisor and legal representative of the District. Joshua R. Daniels, who previously served in the role of General Counsel, now serves as the Chief Governance Officer, which incorporates the duties of the General Counsel.

At the beginning of June, Mr. Daniels announced that he will be leaving the District, with his last day occurring on August 13, 2023. The Board and the Superintendent have jointly decided to offer the position of Interim General Counsel to Jenine Lindsey, currently the Deputy General Counsel, Labor and Employment. Separately, Ms. Lindsey will receive a promotion to the position of Assistant General Counsel as of July 1, 2023.

Under the proposed Employment Agreement, Ms. Lindsey will work with Mr. Daniels, the Board, and the Superintendent to support in the transition of Mr. Daniels during the period from July 1, 2023 through August 13, 2023. Starting on August 14, 2023, Ms. Lindsey shall take over as the Interim General Counsel and begin performing the duties of the position as set forth in the Agreement.

Recommendation

Approval by the Board of Education of a Interim Employment Agreement with Jenine Lindsey to serve as Interim General Counsel, for the term July 1, 2023 through January 1, 2024, with a base salary of \$213,955 plus additional pay of \$9,600, District paid benefits of \$35,737 and other fringe benefits of \$35,394 for 2023-24, some of which increase annually.

Fiscal Impact

Jenine Lindsey currently is employed as Deputy General Counsel. The fiscal impact would be the difference between her current position salary that is funded by the General Fund and the Interim General Counsel position, amounting to \$31,525 for one year. However, there is term flexibility within the agreement, therefore if the agreement ends by January 1, 2024 the fiscal impact would be \$15,763 The salary increase will be paid by ESSER funds. Ms. Lindsey is filling this position while maintaining the functions of her current position, Deputy General Counsel. This means the salary savings from the vacant General Counsel position offsets the cost of the salary increase resulting in no fiscal impact to the District above the approved budget.

State law requires the Board to report a summary of the salaries or compensation paid in the form of fringe benefits of a local agency executive.

Jenine Lindsey would receive \$9,600 in additional pay (eligible stipends), \$35,737 in District-Paid Benefits (including health, vision, and dental insurance; long term disability insurance; life insurance), and \$35,394 in fringe benefits (Supplemental Retirement Plan payment). Most of these costs increase each year.

Attachment

- Employment Agreement with Jenine Lindsey as Interim General Counsel

EMPLOYMENT AGREEMENT

Jenine Lindsey, Interim General Counsel

In consideration of the mutual promises made herein, the Oakland Unified School District (“OUSD” or “District”) and Jenine Lindsey (“Employee”), enter into this Employment Agreement (“Agreement”) and agree as follows:

Article 1. Acceptance of Employment and Term

- 1.1. The term of this Agreement shall be July 1, 2023 through January 1, 2024 (“Term”). OUSD, as its sole option may extend the Term by up to six (6) months. Regardless of the length of the Term, District and Employee may terminate this Agreement sooner as set forth herein.
- 1.2. District offers, and Employee hereby accepts, employment as Interim General Counsel for the District for the Term, subject to the terms and conditions stated herein.
- 1.3. District and Employee agree that Employee shall act as the chief legal advisor (hereinafter “Interim 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.

Article 2. Duties and Obligations of Employee

- 2.1. As Interim 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 senior leadership team and cabinet.
- 2.2. The Interim General Counsel jointly reports to the Board of Education and the Superintendent and is the primary legal advisor and legal representative of the District. The primary responsibilities include: 1) providing legal advice to the Board of Education on a vast array of complex governance and policy issues, including but not limited to public meeting laws, election laws, bonds and parcel taxes, and conflict of interest laws; 2) providing legal advice to the Board of Education, Superintendent and the District senior leadership team on legal issues, including general public education law, special education law, labor and employment law, litigation and claims, contracts, bids, construction, real property, and charter school law; 3) managing and supervising the District’s Legal Office, Labor Relations Department, and other departments assigned to the Chief Governance Office Division as of the date of this Agreement; 4) protecting and preserving the legal, ethical and financial stability of the District; and 5) as a member of the senior management team, serving as a highly visible representative of the school district and a participant in all major policy discussions.

Specific Duties include:

Transition of Duties from Chief Governance Officer

- a. During the period from July 1, 2023 through August 13, 2023, Employee will work with Chief Governance Officer Joshua R. Daniels, the Board, and the Superintendent to support the transition of Chief Governance Officer Joshua R. Daniels.
- b. Between July 1, 2023 through August 13, 2023, Joshua R. Daniels shall retain all rights, duties and responsibilities as Chief Governance Officer and General Counsel of the District pursuant to his existing Employee Agreement with OUSD. Nothing herein may or is intended to void or otherwise alter his existing Employee Agreement with OUSD.
- c. Commencing on August 14, 2023, Employee shall serve as the Interim General Counsel with duties as set forth in this Agreement below and will support the Board and Superintendent in determining the interim and ongoing role of the General Counsel.

Governance & Policy

- a. Advises the Board of Education in certain open and closed session, regular and special meetings.
- b. Assists in the formulation and development of Board policies and procedures; advises the Board of Education and the Superintendent of unusual trends or problems; and recommends appropriate corrective action.
- c. Advises the Board of Education, Superintendent, school sites and departments on legal requirements, and the development of and compliance with board policies and administrative regulations.
- d. Supports the District's five year strategic plan, "Community Schools, Thriving Students" to ensure that every student graduates from high school as a caring, competent, critical thinker, ready for college and career.
- e. Ensures all District employees and partners comply with laws, regulations, policies and the District's strategic plan.
- f. Advises on major policy initiatives.
- g. Advises the District on public records laws, open government laws, election laws, including parcel taxes and bonds, and conflict of interest laws and requirements.
- h. Drafts legislative proposals presented to the California legislature.
- i. Drafts and reviews legal documents including rules, regulations, and resolutions.
- j. Interacts, as directed, with external stakeholders, regulators and governmental officials.

Management and Leadership

- a. Plans, organizes and implements long and short-term programs and activities of the Legal Division and Labor Relations.
- b. Selects, trains and evaluates the performance of assigned staff.
- c. Provides for continuing departmental staff training regarding legal issues, processes and procedures.

- d. Directs the preparation and maintenance of a variety of narrative and statistical reports, records and files related to assigned activities and personnel.
- e. Develops and prepares the annual preliminary budget for the legal division; analyzes and reviews budgetary and financial data; and controls and authorizes expenditures in accordance with established limitations.

Labor and Employment

- a. Advises the District on public employees' legal rights and duties.
- b. Collaborates with Labor Relations and other departments around issues relating to collective bargaining rights.
- c. Advises on employee discipline and misconduct.
- d. Represents the District in employee discipline and termination proceedings.
- e. Represents the District in Labor and Employment law matters before state and federal courts.
- f. Investigates and responds to complaints filed with the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment and Housing (DFEH) and other agencies.

Litigation/Claims

- a. Investigates and resolves Government Tort Claims.
- b. Represents the District in litigation.

Business Operations

- a. Drafts, negotiates, and/or reviews contracts and memoranda of understanding (MOUs).
- b. Advises staff on matters related to procurement, contracts and agreements.
- c. Prepares and coordinates Request for Proposals, Requests for Qualifications, and other contract outreach.
- d. Supports fiscal services audits, waivers and compliance.
- e. Supports the District's Facilities and Buildings and Grounds programs and services, including the Bond program modernization programs, local business program and Project Labor Agreement.

Special Education

- a. Handles state and federal special education and Section 504 compliance issues.
- b. Represents the District at special education mediations and due process hearings.
- c. Represents the District in special education litigation.

General Student Matters

- a. Investigates and responds to regulatory inquiries from the Office of Civil Rights (OCR) and the California Department of Education (CDOE).
- b. Facilitates child custody conflicts and abuse reporting responsibilities at school sites.
- c. Responds to student records requests.

- d. Advises school sites and student discipline office in suspension, expulsion, and transfer of students.
- e. Advises on constitutional issues related to student's civil rights, including free speech, searches, nondiscrimination and other related issues.

Charter Schools

- a. Supports compliance with Proposition 39 and charter schools facilities requests.
 - b. Reviews charters for legal compliance.
- 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 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 Interim General Counsel. District may continuously maintain throughout the term of employment adequate insurance for such purpose.
- 3.2. District agrees Employee shall have final authority over the selection of personnel and allocation of resources within the Legal Department/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.
- 3.3. Except for matters related to the Interim General Counsel's employment contract or employment status, the 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. The Board and Superintendent reserve the right to retain outside counsel as necessary or appropriate on matters related to the Interim General Counsel's employment contract or employment status.

- 3.4. District agrees to provide to the Legal Department/Office of the General Counsel sufficient resources to adequately represent and defend the District in legal proceedings.
- 3.5. 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 Interim General Counsel.
- 3.6. District shall pay Employee's annual dues to the State Bar of California as well as membership in the California Council of School Attorneys and other reasonably selected memberships to support the professional development of Employee.

Article 4. Compensation

For the Term, Employee shall be paid the total base salary of \$213,955 for services provided under this Agreement, payable monthly in the same manner as other confidential administrators, and 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 step increases on the salary schedule consistent with District policy and salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible.

- 4.1. 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.
- 4.2. District shall fund Employer's portion of CalPERS retirement based upon the salary herein.

Article 5. Vacation, Sick and Personal Leave

- 5.1. Employee may retain all accrued but unused leave balances that she currently has with the District as of August 13, 2023. Under this Agreement, Employee shall be entitled to continue to accrue vacation at the rate of twenty (20) annual vacation days with pay.
- 5.2. Employee shall be entitled to continue 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 continue to accrue annual paid personal leave at the rate of five (5) 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 existing or future 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 section 152. District further agrees to maintain during the term of employment long term disability insurance for Employee.
- 6.2. 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 Department/Office of the General Counsel.
- 6.3. District shall reimburse Employee, pursuant to the policies and practices of District, the necessary costs and expenses incurred by Employee in performing her duties, including but not limited to gas, travel, materials, supplies and related expenditures, all of which must be properly documented by receipts.

Article 7. Termination of Employment

- 7.1. District and Employee agree Employee shall jointly serve at the pleasure and will of the Board and the Superintendent, and Employee agrees that this Agreement may be terminated by:
 - a. The District at any time during this Agreement by providing the Employee with fifteen (15) days written notice. In such case, Employee shall be reinstated to her permanent prior position as Assistant General Counsel on the date immediately following the effective date of termination. Alternatively, Employee may at her sole discretion elect (in writing) to be reinstated as Deputy General Counsel, Labor and Employment on the date immediately following the effective date of termination.
 - b. Employee at any time during this Agreement by providing the District with thirty (30) days written notice. In such case, Employee shall be reinstated to her permanent prior position as Assistant General Counsel on the date immediately following the effective date of termination.
 - c. Mutual written agreement between the District and the Interim General Counsel at any time. In such case, Employee shall be reinstated as Deputy General Counsel, Labor and Employment or as per the terms of the mutual agreement.

- d. Retirement of Employee.
- e. 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.
- f. Discharge for Cause. For purposes of this Agreement, "cause" shall mean Employee's 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 sixty (60) 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 and Superintendent (or later adjudicated) to be "without cause," the remedy shall be to make Employee whole in salary and benefits to which she would have otherwise been entitled under this Agreement and to immediately reinstate Employee as prescribed in section 7.1 (a) of this Agreement.

The Board and Superintendent reserve the right to appoint a different Interim General Counsel in the event of temporary or permanent disability or extended unavailability of the Interim General Counsel.

- g. Expiration of the Term. No further notice is required for this Agreement to terminate at the end of the Term. Upon expiration of the Term, Employee shall be entitled to reinstatement to her permanent prior position as Assistant General Counsel on the date immediately following the expiration date of this Agreement.

Article 8. General Provisions

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

<u>District</u>	<u>Employee</u>
Kyla Johnson-Trammell, Superintendent	Jenine Lindsey

Oakland Unified School District
1011 Union St.
Oakland, CA 94607
Kyla.Johnson@ousd.org

Interim General Counsel
Oakland Unified School District
1011 Union St., Site 946
Oakland, CA 94607
Jenine.Lindsey@ousd.org

Board of Education
Attn: Board President
c/o Board Office
1011 Union St., Site 940
Oakland, CA 94607
Edgar.Rakestraw@ousd.org

- 8.2. Additional written amendments may be added to the Agreement by mutual consent of the Employee and the Board of Education and Superintendent at any time during the period of this Agreement.
- 8.3. Any controversy between the 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 section 1280 *et seq.*
- 8.4. "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th.
- 8.5. No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 8.6. 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.
- 8.7. 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.
- 8.8. 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.

- 8.9. This Agreement may be modified or extended only in writing and must be signed by District and Employee.
- 8.10. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- 8.11. This Agreement shall be effective upon execution by Employee, the President (which can only be given subsequent to a majority vote of the Board of Education approving this Agreement) and the Superintendent.

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IN WITNESS WHEREOF, the PARTIES hereto agree and execute this AGREEMENT and to be bound by its terms and conditions:

EMPLOYEE

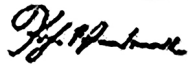
Name: Jenine Lindsey Signature: 

Position: Deputy General Counsel, Labor & Employment Date: 6/25/2023

OUSD

Name: Mike Hutchinson Signature: 

Position: Board President Date: 6/29/2023
 Board President (for approvals)
 Chief/Deputy Chief/Executive Director (for ratifications)

Name: Kyla Johnson-Trammell Signature: 

Position: Superintendent Date: 6/29/2023

Approved as to form by OUSD Legal Counsel on June 25, 2023
