

Board Office Use: Legislative File Info.	
File ID Number	16-1620
Introduction Date	6/29/16
Enactment Number	16-1268
Enactment Date	6/29/16



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Board of Education  
Antwan Wilson, Superintendent

**Board Meeting Date** June 29, 2016

**Subject** **Marion L. McWilliams, General Counsel**

**Action Requested** **Approval of Employment Agreement Marion L. McWilliams, General Counsel**

**Background and Discussion** Marion L. McWilliams is appointed to the position of General Counsel for the District, reporting to both the Board of Education and the Superintendent. The term of her Agreement is July 1, 2016 to June 30, 2019, at an annual salary not to exceed \$198,000.

**Fiscal Impact** Funding Source – GP not to exceed \$198,000

**Attachments** Employment Agreement

## **EMPLOYMENT AGREEMENT**

### **Marion L. McWilliams, General Counsel**

In consideration of the mutual promises made herein, the Oakland Unified School District, ("OUSD") a local public entity pursuant to Government Code § 811.2 and by the California Education and Government Codes (hereinafter "District"), and Marion L. McWilliams, 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 this employment agreement is July 1, 2016 through June 30, 2019 ("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.

#### **Article 2 Duties and Obligations of Employee**

- 2.1 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 senior leadership team and cabinet.
- 2.2 The General Counsel 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 Legal Office, including the Labor Relations Department; 5) 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:

### **Governance & Policy**

- Advises the Board of Education in open and closed session, regular and special meetings.
- Assist in the formulation and development of Board policies and procedures; advise the Board of Education and the Superintendent of unusual trends or problems and recommend appropriate corrective action.
- 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
- Support 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
- Ensure all District employees and partners comply with laws, regulations, policies and the District's strategic plan
- Advises on major policy initiatives
- Advises the District on public records laws, open government laws, election laws, including parcel taxes and bonds, and conflict of interest laws and requirements
- Drafting of legislative proposals presented to the California legislature.
- Draft and review legal documents including rules, regulations, resolutions

### **Management and Leadership**

- Plan, organize and implement long and short-term programs and activities of the Legal Division and Labor Relations.
- Select, train and evaluate the performance of assigned staff.
- Provide for continuing departmental staff training regarding legal issues, process and procedures.
- Direct the preparation and maintenance of a variety of narrative and statistical reports, records and files related to assigned activities and personnel.
- Develop and prepare the annual preliminary budget for the legal division; analyze and review budgetary and financial data; control and authorize expenditures in accordance with established limitations.

### **Labor and Employment**

- Advises the District on public employees' legal rights and duties
- Collaborates with Labor Relations and other departments around issues relating to collective bargaining rights
- Advises on employee discipline and misconduct
- Represents the District in employee discipline and termination proceedings
- Represents the District in Labor and Employment law matters before state and federal courts
- 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**

- Investigates and resolves Government Tort Claims
- Defends the District in litigation against the District

### **Business Operations**

- Drafts, negotiates, and/or reviews contracts and memoranda of understanding (MOU's)
- Advises staff on matters related to procurement, contracts and agreements
- Prepares and coordinates Request for Proposal's, Request for Qualification's, and other contract outreach
- Supports fiscal services audits, waivers and compliance
- 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**

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

### **General Student Matters**

- Investigates and responds to regulatory inquiries from the Office of Civil Rights (OCR) and the California Department of Education (CDOE)
- Facilitates child custody conflicts and abuse reporting responsibilities at school sites
- Responds to student records requests
- Advises school sites and student discipline office in suspension, expulsion, and transfer of students
- Advises on constitutional issues related to student's civil rights, including free speech, searches, nondiscrimination and other related issues

### **Charter Schools**

- Supports compliance with Proposition 39 and charter schools facilities requests
- 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 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 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 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 General Counsel's employment contract or employment status.
- 3.4 District agrees to provide to the 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 General Counsel.
- 3.6 District shall pay annual Employee's dues to the State Bar of California, membership in the Alameda County Bar Association and the California Counsel of School Attorneys.

### **Article 4      Compensation**

- 4.1 The salary of Employee shall be fixed \$198,000 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 a cost of living adjustment equivalent to three percent of her 2016-17 salary, effective July 1, 2017. Employee shall be entitled to salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible.
- 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 commences employment with all accrued and earned vacation, sick and personal leave balances. This agreement does not change the leave balances effective as of July 1, 2016. Employee shall be entitled to twenty (20) 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 vacation days annually without the expressed approval of the Employer.
- 5.2 Employee shall 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 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 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 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.
- 6.3 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, 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 and the Superintendent, and Employee agrees that this Agreement may be terminated by either party for no reason upon sixty days prior written notice given as provided below. In the event the Agreement is terminated 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. Any payment made under this section shall be made no later than thirty (30) days after the last day of employment. The Board and the Superintendent 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 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 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 -, including as it pertains to salary, benefits, duties and responsibilities, or with an employer that is located outside the greater San Francisco Bay Area.

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

7.3 Pursuant to Education Code § 35031, Employee shall be provided written notice at least sixty (60) days in advance of the expiration of her term if she is not to be reemployed.

## **Article 8 Evaluation**

8.1 The Board and Superintendent shall evaluate Employee not less than annually upon a schedule to be determined. The evaluation and assessment shall be reasonably related to

the position description and to the goals and objectives of the District for the year in question.

- 8.2 In the event that the Superintendent and Board of Education determine 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      General Provisions**

- 9.1 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:  
Antwan Wilson, Superintendent  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

To Employee:  
Marion McWilliams, General  
Counsel  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607


To: The Board of Education  
Attn: Board President  
c/o Board Office  
1000 Broadway, Suite 680  
Oakland, CA 94607

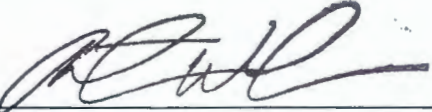
- 9.2 Additional written amendments may be added to the Agreement by mutual consent of the Employee and the Board of Education and Superintendent at any time during the period of this Agreement.
- 9.3 Any controversy between the District and Employee involving the construction or application of any of 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 § 1280 *et seq.*
- 9.4 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th.
- 9.5 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.



- 9.8 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.
- 9.9 This Agreement may be modified or extended only in writing and must be signed by District and Employee.
- 9.10 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.


**By District**

By:   
James Harris  
President, Board of Education  
Oakland Unified School District

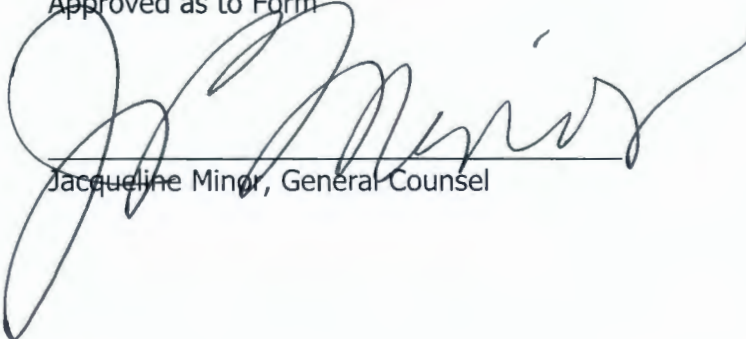
By:   
Antwan Wilson  
Superintendent and Secretary, Board of  
Education  
Oakland Unified School District

**By Employee**

  
Marion L. McWilliams

File ID Number: 16-1620  
Introduction Date: 6/29/16  
Enactment Number: 16-1268  
Enactment Date: 6/29/16 

Approved as to Form

  
Jacqueline Minor, General Counsel