

Board Office Use: <b>Legislative File Info.</b>	
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Enactment Number	13-1554
Enactment Date	8/14/13 <i>ok</i>



# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel *[Signature]*

**Board Meeting Date** August 14, 2013

**Subject** **Approval of AGREEMENT with First Student, Inc To Provide School Pupil Activity Bus ("SPAB") transportation services for District school sites and programs**

**Action Requested** **Approval of the AGREEMENT with First Student, Inc of Concord To Provide SPAB transportation services for District school sites and programs**

**Background**  
*A one paragraph explanation of why the consultant's services are needed.*

The District issued an RFP for School Pupil Activity Bus (SPAB) providers to contract with for local/short trips and longer distance/overnight field trips. In issuing the RFP the District's intent was to have an approved list of SPAB providers and to authorize District school sites and school programs that need bus transportation to select from the preapproved list.

**Discussion**  
*One paragraph summary of the scope of work.*

The District has initially selected five SPAB vendors to provide transportation services as a part of the RFP process. The five vendors are Walker Charter of Oakland, Delta Charter of Stockton, Michael's Transportation of Vallejo, Durham of Concord and First Student of Richmond. The term of the Agreements is August 1, 2013 to June 30, 2016; with an option to extend for two additional one year terms.

**Recommendation** **Approval of AGREEMENT with First Student, Inc To Provide SPAB transportation services for District school sites and programs**

**Fiscal Impact** School Bus Costs for Field Trips are funded by each site using a variety of funds

**Attachments**

- Agreement

**AGREEMENT FOR SCHOOL PUPIL ACTIVITY BUS  
TRANSPORTATION SERVICES**

**THE OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
FIRST STUDENT, INC.**

THIS AGREEMENT ("Agreement") is entered into as of August 1, 2013 between First Student, Inc. ("Contractor") and the Oakland Unified School District (the "District"), for Contractor to provide School Pupil Activity Bus ("SPAB") transportation services for District school sites and programs.

NOW THEREFORE, for a valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

**A. Term and Termination**

The term of this Agreement shall commence on August 1, 2013 and shall terminate June 30, 2016. After the initial term, the Agreement may be extended for two additional one year terms upon mutual agreement of both parties. The Agreement may be terminated by Contractor at any time with 90 days prior written notice. OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.

**B. Vehicles**

The Contractor agrees to supply, at its sole cost and expense, such vehicles ("Vehicles") as may be necessary to lawfully perform the Services and which are SPAB certified or exceed SPAB certification requirements. All such Vehicles shall fully comply with all applicable laws and regulations. The Contractor shall be solely responsible for all Vehicles used in transporting students.

The Contractor agrees to permit the District's duly authorized agents, to inspect said bus(es) at any reasonable time, during normal business hours, subject to coordination with Contractor relative to location, and the maintenance schedules of the bus(es). The time and place of such inspection shall be as mutually agreed.

Upon arrival for scheduled bus service:

- Bus(es) shall be clean and in good working order.
- Excessively ripped or stained seat cushions will not be deemed acceptable.

- Rest rooms will be clean, stocked and functioning.
  - Floors will be vacuumed and no trash is to be found (e.g., storage area or seatback magazine holders)
- Appropriate environment for the transport of students .

### **C. Contractor's Personnel**

1. The Contractor or subcontracted drivers must:
  - a. Have all applicable state vehicle permits and licensing.
  - b. Be licensed in accordance with all applicable federal and state regulations and policies.
  - c. Have a good driving record as verified by the state and other applicable regulatory bodies.
    - (i) The Contractor shall verify each driving record upon initiation of service and then every six (6) months thereafter. Such records shall be placed into the driver's file and must be accessible upon request.
    - (ii) The Contractor shall not use drivers to provide services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or controlled substance-related violation.
  - d. Drive in a careful and prudent manner, exercising at all times the highest degree of care, and observing and complying with state mandated rules of the road and traffic regulations.
  - e. Abstain from using tobacco products while students are present in the vehicle or on school grounds. Drivers as well as their vehicles must not smell of smoke or any other offensive odor.
  - f. Not provide service to the District when any background check or findings indicate criminal history convictions, as obtained through state and national searches (DOJ and FBI).
    - (i) The Contractor shall verify and be liable for the payment of all driver criminal record checks prior to transporting students. Such verification shall be placed in the driver's file. The Contractor shall ensure that all drivers display their current driver's license upon request of a school official or the District authorized individual.

The Contractor shall have standards addressing professional dress and hygiene – code for its drivers. Professional dress includes clean clothes (pants, skirts, and shirts with sleeves and collars). The drivers must not wear attire that might generally be considered offensive. Hygiene includes clean shaven, groomed hair (including facial) and refraining from the use from the use of heavy, offensive colognes. Drivers must also not display offensive tattoos and piercings.

**Child Abuse and Neglect Reporting Act.** CONTRACTOR and their personnel will comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code § 11164 – 11174.

2. The Contractor shall maintain records on all employees, drivers or sub-Contractors that demonstrate that all requirements of this Agreement have been met. The file shall include but not necessarily be limited to applicable current copies of the following:

- a) Department of Motor Vehicle Record's Check – historical driving record.
  - b) Department of Justice (DOJ) background checks that meet or exceed state laws.
  - c) Federal Bureau of Investigation (FBI) background check, to include Child Index.
  - d) Verification of enrollment in an on-going drug/alcohol testing at random, and "for cause" drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs in the performance of their duties under this contract. In addition, drivers will not be under the influence of alcohol or drugs during the performance of their duties under this contract. The Contractor shall be liable for all Drug and Alcohol Testing. No driver may be utilized for this contract that fails a drug and/or alcohol test.
  - e) Verification of a negative test result for Tuberculosis (TB testing).
  - f) Current driver's license and certifications appropriate for driving the vehicle type that corresponds with the assignment, and include SPAB or higher certification.
- Training records

3. Contractor shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. Contractor shall **not** permit its drivers to smoke on the vehicle at any time students are on the vehicle. Contractor shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.

4. Contractor shall be responsible for hiring and discharging personnel employed by Contractor; provided, however, that the District shall have the right to require Contractor to remove from service any employee who, in the District's sole discretion, is deemed unsuitable for the performance of transportation services for the District. The District may make a request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by the District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District or to the welfare and bests interest of the students being transported

#### **D. Assignment of Contractor's Rights**

Except as it relates to the hiring of independent Contractor drivers, the Contractor shall have no right to assign its rights or obligations under this Agreement, it being understood that this is a personal services agreement.

#### **E. Indemnity (Hold Harmless) of the District**

CONTRACTOR shall indemnify, hold harmless and defend OUSD and each of its officers, officials,



employees, volunteers and agents from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by OUSD, CONTRACTOR or any other person and from any claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONTRACTOR's obligations under the preceding sentence shall apply jointly and severally regardless of whether OUSD or any of its officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss of liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of OUSD. If CONTRACTOR should subcontract all or any portion of the work or activities to be performed under this MOU, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend OUSD, its officers, officials, employees, volunteers or agents in accordance with the terms of the preceding paragraph. Contractor also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, Contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Agreement. This provision survives termination of this Agreement.

#### **F. Independent Contractor**

In providing the Services, the Contractor shall be and act as an independent Contractor in all respects and shall not, for any purpose hereunder, be or act as an employee or agent of the District. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between either of the parties to this Agreement with each other. The Contractor understands and agrees that as an independent Contractor, it will not be eligible to participate in any benefits or privileges given or extended by the District to its employees. The Contractor shall be solely responsible for the payment when due to appropriate taxing authorities of all federal and state income taxes and related obligations of any nature whatsoever on any consideration paid pursuant to this Agreement, as well as any interest, penalties or other sums due thereon and shall indemnify, defend and hold the District, its Board Members, Officers, employees and agents free and harmless therefrom.

#### **G. Notices**

All notices or other communication required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile or email transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof.

Contractor will provide a customer service single point of contact 24x7x365 for the District users to contact during bus trips should issues of scheduling, service, quality, bus breakdowns or other issues arise and require immediate remedy by the Contractor.

The District shall designate agents who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be the District's liaison to Contractor. The District will designate a crisis management contact person for emergency contact with Contractor. By August 30<sup>th</sup> of each calendar year, the District shall inform Contractor of the name(s), contact telephone number(s) and address(es) of such management personnel. All accidents shall be reported to the District's Risk Manager at 510-273-0475 and Claims Manager at 510-273-3282 in addition to the school site principal.

Contractor: Paul Egger  
First Student, Inc.  
13200 Crossroads Parkway, Suite 450  
City of Industry, CA 91746  
ph: 562-271-4413

The District: Rebecca Cingolani  
955 High Street  
Oakland, Ca 94601  
Ph: (510) 535-2750  
[Rebecca.cingolani@ousd.k12.ca.us](mailto:Rebecca.cingolani@ousd.k12.ca.us)

#### **H. Waivers**

The waiver by each party of a breach or violation of any provisions of this agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this agreement.

#### **I. Force Majeure**

Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities by the Government, or any other occurrence which is beyond the control of the Contractor, when satisfactory evidence thereof is presented to the District.

#### **J. Compliance with the Law**

Notwithstanding any contrary provision in this Agreement, Contractor shall comply with federal, state and local laws, rules and regulations in providing transportation services described herein.

#### **K. Dispute Resolution**

The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the difference between the parties are not likely to be

reconciled through further negotiation, then the parties agree to submit such dispute to non-binding arbitration under the Commercial Rules of American Arbitration Association. Such arbitration will be held as promptly as possible in Alameda County, California and will be conducted before a panel of three (3) members. The District and the Contractor shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.

#### **L. Laws Governing Contract**

This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in the County of Alameda, in the State of California. The parties further stipulate that the County of Alameda, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

#### **M. No Rights in Third Parties**

The Agreement does not create any rights in or inure to the benefit of any third party.

#### **N. Submittal of Documents**

CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved evidence of the following:

1. Individual consultants:
  - Tuberculosis Clearance – Documentation from health care provider showing negative TB status within the last four years.
  - Insurance Certificates and EndorsementsAgencies or organizations:
  - Insurance Certificates and Endorsements – Workers' Compensation

#### **O. Contractors Insurance**

Commercial General Liability Insurance: The following insurance is required:

- i. If Contractor employs any person to perform work in connection with this Agreement, Contractor 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' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
- ii. Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

2. Contractor shall maintain Commercial General Liability insurance, including automobile coverage with limits of Five Million Dollars (\$5,000,000) per occurrence and which shall include coverage for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.
  - iii. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance and additional insured endorsement must be attached.
  - iv. Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Contractor. The policy shall protect Contractor and the District 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.

#### **P. Licenses and Permits**

CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

#### **Q. Non-Discrimination**

2. **Non-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under Contracts, CONTRACTOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR agrees to comply with applicable Federal and California laws prohibiting discrimination against students.

In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s).

#### **R. Drug-Free / Smoke Free Policy**

No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

#### **S. Local Business Program**

In order to provide economic opportunity for Oakland residents and businesses and stimulate economic development in Oakland, the District has implemented a Local, Small Local and Small Local Resident Business Enterprise Program. ("Local Business Program"). The 20% local business participation requirement must be met with a maximum participation of 10% for Local Business Enterprises (LBE) and a minimum participation of 10% for Small Local and Small Local Resident Business Enterprises (SLBE / SLRBE). Any percentage combination of SLBE's and SLRBE may be used to calculate the full 20% requirement. More details about this Program are provided in the bid packet.

Contractors claiming preference as a *certified* Oakland Small Business must attach a copy of their certification letter to their bid. (*Information at Exhibit \_\_\_*)



### **T. Severability**

If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.


### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>


### **U. Entire Agreement**


This Agreement and the attached proposal constitute the entire Agreement between the parties with respect to the provision of the Service and may not be amended except by a writing signed by each of the parties.

Contractor: FIRST STUDENT, INC.

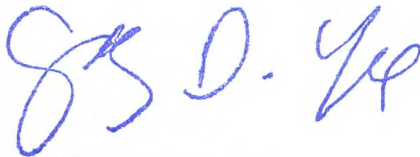
  
Name: Paul Egger

Date: 8/8/13

  
Title

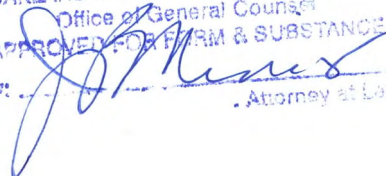
  
David Kakishiba,  
President, Board of Education  
Oakland Unified School District

Date: 8/13/13

  
Gary Yee  
Acting Superintendent and Secretary  
Board of Education  
Oakland Unified School District

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