

Board Office Use: Legislative File Info.	
File ID Number	19-1997
Introduction Date	10/23/19
Enactment Number	19-1602
Enactment Date	10/23/19 os



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Josh Daniels, General Counsel
Misha Karigaca, Coordinator, Attendance & Discipline Support Services

Board Meeting Date October 23, 2019

Subject Professional Services Contract
Contractor: Theresa Clincy
Services For: Pupil Disciplinary Hearing Panel (DHP)

Action Requested and Recommendation Ratification by the Board of Education of Professional Services Contract between the District and Theresa Clincy, Oakland, CA, for the latter to serve on the Pupil Disciplinary Hearing Panel (DHP) for the period of September 10, 2019 through June 30, 2022 in an amount not to exceed \$100.00 per case.

Background
(Why do we need these services? Why have you selected this vendor?) Theresa Clincy will serve on the Pupil Disciplinary Hearing Panel, as provided in Board Resolution 1011-1137 enacted on August 10, 2011, at a rate not to exceed \$100 per case. Theresa Clincy is being appointed by the Board of Education to conduct, on a rotating basis, pupil expulsion hearings, and admission, reinstatement and readmission hearings pursuant to Education Code Sections 48900-48927 for the term of this Agreement.

Competitively Bid Was this contract competitively bid? No
If no, exception: Professional services contract of less than \$92,600

Fiscal Impact Funding resource(s): General Purpose

Attachments

- Professional Services Contract

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

PROFESSIONAL SERVICES CONTRACT (DHP)

This Agreement is entered into between Theresa Clincy (CONTRACTOR) and Oakland Unified School District (OUSD). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services:** As provided in Board of Education Resolution No. 1011-1137, enacted on August 10, 2011, Consultant is being appointed by the Board of Education to conduct, on a rotating basis, pupil expulsion hearings, and admission, reinstatement and readmission hearings pursuant to Education Code Sections 48900-48927 for the term of this Agreement. Consultant agrees that he/she has a current, valid credential as required by Section 48918(d) of the Education Code.
2. **Term:** The term of this Agreement shall be from September 10, 2019 to June 30, 2022 and may be extended for an additional fiscal year (2022-2023) by written agreement of both parties.

3. **Compensation:** CONTRACTOR fees are payable as follows:

A per case fee of \$100.00. Consultant may hear up to three cases per day. (For example, in the event Consultant hears 3 cases on one day, Consultant's fee shall be \$300.00.) The per case fee is inclusive of all fees, expenses and costs, and OUSD shall have no obligation to pay any additional fees or costs to Consultant.

4. **Invoicing:**

- a. Invoices for CONTRACTOR fees must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or invoices should be addressed to:

Misha Karigaca, Program Manager, Discipline Office
Oakland Unified School District
1000 Broadway, Suite 150
Oakland, CA 94607
Misha.Karigaca@ousd.org

- b. The District will not pay for amounts not reflected on bills or invoices.
 - c. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.
5. **Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

	OUSD Representative:	CONTRACTOR:
Name:	<u>Misha Karigaca</u>	<u>Theresa Clincy</u>
Address:	<u>1000 Broadway, Suite 150</u> <u>Oakland, CA 94607</u>	<u>1866 Melvin Road</u> <u>Oakland, CA 94602</u>
Phone:	<u>(510) 434-7923</u>	<u>(510) 919-7735</u>
Email:	<u>Misha.Karigaca@ousd.org</u>	<u>Theresa.Clincy@ousd.org</u>

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address.

6. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it shall not be considered an officer, employee, agent, partner, or joint venture of OUSD, and is not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
7. **Insurance:** CONTRACTOR is not required to maintain any insurance under this agreement. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.
8. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR.
9. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, 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. 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, sexual orientation, or other legally protected class.
10. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
11. **Termination:**
 1. **For Convenience by OUSD:** OUSD may at any time terminate this Agreement upon 30 days prior 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.

2. **With Cause by District.** OUSD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - i. material violation of this Agreement by the CONTRACTOR; or
 - ii. any act by CONTRACTOR exposing OUSD to liability to others for personal injury or property damage; or
 - iii. CONTRACTOR is adjudged bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors, or a receiver is appointed on account of CONTRACTOR's insolvency.

Written notice by OUSD shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, OUSD may secure the required Services from another CONTRACTOR. If the expense, fees, and/or costs to OUSD exceeds the cost of providing the Services pursuant to this Agreement, CONTRACTOR shall immediately pay the excess expense, fees, and/or costs to OUSD upon the receipt of OUSD's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to OUSD.

Upon termination, CONTRACTOR shall provide OUSD with all documents produced maintained or collected by CONTRACTOR pursuant to this Agreement, whether or not such documents are final or draft documents.

12. **Conduct of CONTRACTOR:** By signing this Agreement, CONTRACTOR certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, which include:
 1. **Tuberculosis Screening:** CONTRACTOR is required to screen employees who will be working at OUSD sites for more than six hours. CONTRACTOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code 49406 within the prior 60 days. If tuberculosis risk factors are identified, CONTRACTOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, the CONTRACTOR agent shall obtain an x-ray of the lungs. At his/her discretion, CONTRACTOR agent may choose to submit to the examination instead of the risk assessment.
 2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contact with OUSD pupils in providing services to the District under this Agreement."

In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an OUSD school site and, or property, CONTRACTOR shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

13. **No Rights in Third Parties:** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
14. **OUSD's Evaluation of CONTRACTOR.** OUSD may evaluate CONTRACTOR in any manner which is permissible under the law. OUSD's evaluation may include, without limitation:
 1. Requesting that OUSD employee(s) evaluate the performance of CONTRACTOR.
 2. Announced and unannounced observance of CONTRACTOR.
15. **Limitation of OUSD Liability:** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD 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 Agreement for the services performed in connection with this Agreement.
16. **Confidentiality:** CONTRACTOR shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR 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.
17. **Conflict of Interest:** CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.
18. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals 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/>).
19. **Severability:** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
20. **Provisions Required By Law Deemed Inserted:** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

21. **Captions and Interpretations:** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
22. **Calculation of Time:** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified.
23. **Copyright/Trademark/Patent/Ownership:** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD (specifically excluding any underlying pre-existing intellectual property). OUSD may, with CONTRACTOR's prior written consent, use CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
24. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
25. **Incorporation of Recitals and Exhibits:** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. CONTRACTOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
26. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
27. **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, or CONTRACTORS are to use controlled substances, alcohol or tobacco on these sites.
28. **Counterparts:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
29. **Signature Authority:** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
30. **W-9 Form:** If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.
31. **Indemnification:** To the furthest extent permitted by California law, CONTRACTOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants,

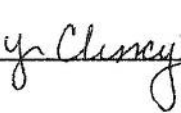
employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of or in any way related to the performance of this Agreement. CONTRACTOR shall, to the fullest extent permitted by California law, defend the Indemnified Parties at CONTRACTOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that CONTRACTOR proposes to defend the Indemnified Parties. This provision survives termination of this Agreement.


- 32. **Contract Publicly Posted:** This contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- 33. **Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

OAKLAND UNIFIED SCHOOL DISTRICT

CONTRACTOR

 10/4/19
Date

Theresa Clincy  9/6/19
Theresa Clincy Date

- President, Board of Education
 - Superintendent
 - Chief or Deputy Chief
-  10/24/19
Secretary, Board of Education Date

Form approved by OUSD General Counsel for 2019-20 FY