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Enactment Date	4/23/14



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Curtiss Sarikey, Associate Superintendent
 Jacqueline Minor, General Counsel
Board Meeting Date April 23, 2014
Subject Implementation of Expungement Policy Consultant – Linda Lu

Action Requested **Approval of the Professional Services Agreement between Oakland Unified School District and Linda Lu to support the District’s successful implementation of BP 5144.3.**

Background The Board of Education approved Board Policy 5144.3 which creates a process whereby students, their parents/guardians or the Superintendent on behalf of a student can request expungement of student discipline records if certain criteria are met, including, but not limited to, non-violent offenses which do not involve the possession or use of a weapon, the possession or use of marijuana, and does not violate California Education Code Section 49079(a) (which provides that under some circumstances, a school district shall inform the teacher if a pupil was expelled during the previous three school years). BP 5144.3 allows for the expungement (removal) of student discipline records that might hinder a student’s future educational and career choices.

Discussion Linda Lu, is a retired OUSD administrator who is very experienced with discipline related matters, including serving on the DHP panel. Consultant is being retained to support the District’s successful implementation of BP 5144.3 for the term from March 1, 2014 to June 30, 2017 at an amount not to exceed \$10,000 during the contract term.

Recommendation **Approval of the Professional Services Agreement between Oakland Unified School District and Linda Lu to support the District’s successful implementation of BP 5144.3**

Fiscal Impact Funding resource name: General Purpose

Attachments

- Professional Services Agreement

AGREEMENT
Between
Oakland Unified School District
And
Linda Lu for Professional Services

This Agreement, effective as of March 1, 2014, is by and between the Oakland Unified School District ("OUSD"), and Linda Lu, a retired certificated administrator ("**Consultant**").

1. SCOPE OF SERVICES

The Board of Education approved Board Policy 5144.3 which creates a process whereby students, their parents/guardians or the Superintendent on behalf of a student can request expungement of student discipline records if certain criteria are met, including, but not limited to, non-violent offenses which do not involve the possession or use of a weapon, the possession or use of marijuana, and does not violate California Education Code Section 49079(a) (which provides that under some circumstances, a school district shall inform the teacher if a pupil was expelled during the previous three school years). BP 5144.3 allows for the expungement (removal) of student discipline records that might hinder a student's future educational and career choices. The policy recognizes that students make mistakes, and with appropriate support and guidance, they can learn from their mistakes. Consultant is being retained to support the District's successful implementation of BP 5144.3.

2. TERMS AND CONDITIONS

- 2.1 **Term of Agreement.** The term of this agreement shall be March 1, 2014 to June 30, 2017 and may be extended for an additional fiscal year (2017-18) by written agreement of both parties.
- 2.2 **Fees.** Consultant fees are payable as follows:
Consultant shall be paid at the established daily rate for retired administrators of \$350 per day, not to exceed \$10,000 during the contract term.
- 2.3 **Notice of Termination.** OUSD may at any time terminate this Agreement upon not less thirty (30) days written notice to CONSULTANT. OUSD shall compensate CONSULTANT for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this agreement for cause should CONSULTANT fail to perform any part of this Agreement. Upon any termination of this Agreement, CONSULTANT shall immediately provide OUSD with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to OUSD. CONSULTANT further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.
- 2.4 **Choice of Laws.** This Agreement is governed by the laws of the State of California.
- 2.5 **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.
- 2.6 **Conflict of Interest.** CONSULTANT affirms to the best of her knowledge, there exists no actual or potential conflict of interest between CONSULTANT'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.

- 2.7 **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, CONSULTANTS, or subcontractors are to use drugs on these sites.
- 2.8 **Anti-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, CONSULTANT 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. CONSULTANT 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.
- 2.9 **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.

3. AREAS OF AUTHORITY

- 3.1 **Independent Contractor.** This is not an employment contract. CONSULTANT is an independent contractor. CONSULTANT understands and agrees that he/she is not an officer, employee, agent, partner, or joint venture of OUSD, and is not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes. In the performance of the work herein contemplated, CONSULTANT is an independent contractor, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
- 3.2 **No Rights in Third Parties.** The obligations under this Agreement shall not be assigned by without the express prior written consent of OUSD. This agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 3.3 **Ownership of Documents.** All documents created by CONSULTANT pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by CONSULTANT, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation. The OUSD shall be entitled to access to and copies of these materials during the progress of the work. Any such materials in the hands of CONSULTANT or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. CONSULTANT may retain a copy of all materials produced under this Agreement for its use in its business activities.
- 3.4 **Confidentiality.** The CONSULTANT shall maintain the confidentiality of all information and documents received. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

4. CONDUCT OF CONSULTANT.

CONSULTANT will adhere to the following requirements and provide OUSD with evidence of staff qualifications, consistent with invoicing requirements outlined in Section 8, which include:

4.1 **Tuberculosis Screening**

4.2 **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONSULTANT's services under this Agreement and CONSULTANT certifies its compliance with these provisions as follows: "CONSULTANT certifies that CONSULTANT has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONSULTANT'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 CONSULTANT, 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. CONSULTANT further certifies that it has received and reviewed fingerprint results for each of its Employees and CONSULTANT has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.

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:

Name: Theresa Clincy
Site /Dept.: Oakland Unified School District
Address: Lakeview School
746 Grand Avenue Oakland, CA
Room 5
Phone: (510) 273-1677
Email: Theresa.Clincy@ousd.k12.ca.us

CONSULTANT:

Name: Linda Lu
Title:
Address: 1440 Denton Ave
Hayward, CA 94545
Phone: (510) 783-6496
Email: Linda.Lu@ousd.k12.ca.us

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. CONSULTANT 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.

6. **BILLING**

- a. Bills for CONSULTANT 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 Theresa Clincy, Program Manager, Discipline Office, 746 Grand Avenue Oakland, CA Room 5, Oakland Unified School District, Theresa.Clincy@ousd.k12.ca.us
- b. The District will not pay for amounts not reflected on bills or invoices.

7. **MODIFICATION OF AGREEMENT**

The parties may amend this Agreement in writing by mutual consent. Changes shall only be effective upon proper Board approval and execution of a duly authorized written amendment to this Agreement.

8. **SECTION HEADINGS**

The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

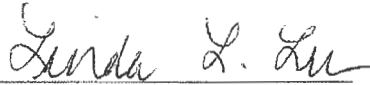
9. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and supersedes all other oral or written provisions.

10. SEVERABILITY


If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.

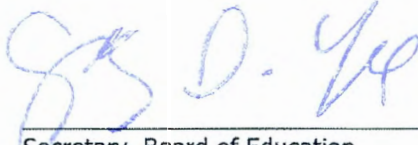


Consultant

Federal Employer Number
[do not complete until after Board approval]

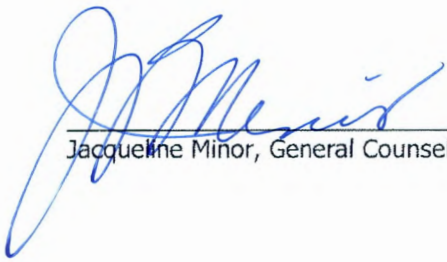
 4/24/14

President, Board of Education
Oakland Unified School District

 4/24/14

Secretary, Board of Education
Oakland Unified School District

Approved As to Form



Jacqueline Minor, General Counsel