

Board Office Use: Legislative File Info.	
File ID Number	16-2756
Introduction Date	1-11-2017
Enactment Number	17-0098
Enactment Date	1-11-17



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF THE GENERAL COUNSEL

# Memo

**To** Board of Education

**From** Marion McWilliams, General Counsel

**Board Meeting Date** January 11, 2017

**Subject** **Linda Lu – OUSD Approval of Amendment No. 1 to the Professional Services Agreement for service on the Pupil Disciplinary Hearing Panel (DHP)**

**Action Requested** Ratification by the Board of Education of Amendment No. 1 to the Professional Services Agreement (Enactment 14-1333) between District and Linda Lu, Oakland, CA, for the latter to serve on the Pupil Disciplinary Hearing Panel (DHP) through June 30, 2018.

**Summary** Ms. Lu 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. Ms. Lu has been appointed by the Board of Education (Enactment 14-1333) 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. This amendment extends the services term by one year.

**Fiscal Impact** General Purpose Fund, at a rate not to exceed \$100 per case.

**Recommendation** Ratification by the Board of Education of Amendment No. 1 to the Professional Services Agreement (Enactment 14-1333) between District and Linda Lu, Oakland, CA, for the latter to serve on the Pupil Disciplinary Hearing Panel (DHP) through June 30, 2018.

**Attachments**

- Amendment No. 1 to the Agreement Between OUSD and Linda Lu for Professional Services
- Enactment 14-1333, Professional Services Agreement

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**AMENDMENT NO. 1 TO THE AGREEMENT**

**Between**

**Oakland Unified School District**

**And**

**Linda Lu for Professional Services**

By Enactment No. 14-1333, the Board of Education approved an Agreement with Linda Lu, a retired certificated administrator, to serve on the Pupil Disciplinary Hearing Panel (DHP) as provided in Board Resolution 1011-1137. The Agreement is for the term July 1, 2014 through June 30, 2017 at a rate not to exceed \$100 per case.

The Parties hereby agree to amend said Agreement as follows:

1. The term of the Agreement is hereby extended to June 30, 2018.
2. Except as expressly provided above, the Agreement is unchanged.
3. This Amendment to the Agreement between Linda Lu and the District constitutes as the entire understanding and agreement between the Parties.
4. All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, expressed or implied, oral or written, have been made by or between the Parties concerning the subject of this Amendment. This is an integrated agreement. It may not be altered, modified, or otherwise changed in any respect except in a writing signed by each party.

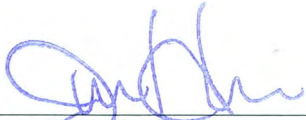
IN WITNESS WHEREOF, the parties hereto agree to be bound and have executed this Amendment No. 1 to the Agreement.

LINDA LU

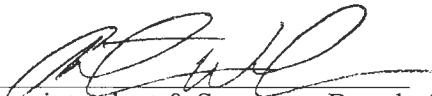


Linda Lu

OAKLAND UNIFIED SCHOOL DISTRICT



President, Board of Education  
Oakland Unified School District



Superintendent & Secretary, Board of Education  
Oakland Unified School District

Approved As to Form



Marion McWilliams, General Counsel

File ID Number: 16-2756  
Introduction Date: 1-11-17  
Enactment Number: 17-0098  
Enactment Date: 1-11-17  
By: J

File ID Number: 14-1514  
Introduction Date: 6-25-14  
Enactment Number: 14-1333  
Enactment Date: 6-25-14  
By:

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

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

**1. SCOPE OF 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 administrative certificate as required by Section 48918(d) of the Education Code.

**2. TERMS AND CONDITIONS**

- 2.1 **Term of Agreement.** The term of this agreement shall be July 1, 2014 to June 30, 2017.
- 2.2 **Fees.** Consultant fees are payable as follows:  
A per case fee of \$100.00. 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.
- 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:

<b>OUSD Representative:</b>		<b>CONSULTANT:</b>	
Name:	<u>Theresa Clincy</u>	Name:	<u>Linda Lu</u>
Site /Dept.:	<u>Lakeview School</u>	Title:	<u></u>
Address:	<u>746 Grand Ave</u>	Address:	<u>1440 Denton Ave</u>
	<u>Oakland, CA 94610</u>		<u>Hayward, CA 94545</u>
Phone:	<u>(510) 434-7923</u>	Phone:	<u>(510) 783-6496</u>
Email:	<u>Theresa.Clincy@ousd.k12.ca.us</u>	Email:	<u>Linda.Lu@ousd.k12.ca.us</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. 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

Oakland Unified School District  
746 Grand Ave  
Oakland, CA 94610  
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.

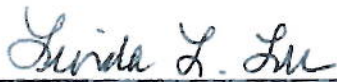
**10. SEVERABILITY**

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.

**11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

The District certifies to the best of 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.epls.gov/eplis/search.do>)

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]

  
\_\_\_\_\_  
President, Board of Education  
Oakland Unified School District

6-26-14

  
\_\_\_\_\_  
Secretary, Board of Education  
Oakland Unified School District

6-26-14

Approved As to Form

  
\_\_\_\_\_  
Jacqueline Minor, General Counsel

File ID Number: 14-1514  
Introduction Date: 6-25-14  
Enactment Number: 14-1333  
Enactment Date: 6-25-14  
By: \_\_\_\_\_



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With *Every* Consent Agenda Contract.**

**Legislative File ID No.** \_\_\_\_\_

**Department:** General Counsel

**Vendor Name:** Linda Lu

**Contract Term:** Start Date: July 1, 2017 End Date: August 30, 2018

**Annual Cost:** \$ 100 per case

**Approved by:** General Counsel

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

Ms. Lu has been appointed by the Board of Education to serve on the Disciplinary Hearing Panel. This amendment to the agreement (Enactment 14-1333) extends term of service by one year.

**Summarize the services this Vendor will be providing.**

As provided in Board of Education Resolution No. 1011-1137, enacted on August 10, 2011, Ms. Lu has been 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.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

As provided in Board of Education Resolution No. 1011-1137, enacted on August 10, 2011, the rate will not exceed \$100 per case.



2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception:**