

Board Office Use: Legislative File Info.	
File ID Number	12-1815
Introduction Date	6/27/12
Enactment Number	12-1808
Enactment Date	6/27/12



OAKLAND UNIFIED  
SCHOOL DISTRICT

expect Success

every student. every classroom. every day.

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** June 27, 2012

**Subject** **AMENDMENT III TO THE GENERAL RETAINER -- OLSON, HAGEL & FISHBURN, LLP**

**Action Requested** Approval of Amendment III to the General Retainer Agreement with Olson, Hagel & Fishburn LLP, a law firm.

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

Olson, Hagel has represented the District for several years in connection with the audit appeals to the EAAP related to the State Controller's Office adverse audit findings. We anticipate appeals involving the 2006-07 audit findings and the 2007-08 audit findings during the term of this Amendment III.

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

Due to increased costs associated with the State Controller's Office audits and appealing adverse audit findings, we seek approval by the Board of Education of Amendment III to add an additional \$30,000 for the current fiscal year and thereby increase the "not to exceed" cap in the General Retainer Agreement with Olson, Hagel for the term from July 1, 2011 to June 30, 2012 to \$180,000.

**Recommendation** Approval by the Board of Education of.

**Fiscal Impact** Funding resource name: (GP) not to exceed \$180,000 for FY 2011-12.

**Attachments**

- Amendment to the General Retainer Agreement
- General Retainer Agreement

**AMENDMENT III TO THE GENERAL RETAINER AGREEMENT  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT and  
OLSON, HAGEL & FISHBURN, LLP  
2010-2012**

This is Amendment III to the Retainer Agreement between the Oakland Unified School District (the "District" or the "Client") and Olson, Hagel & Fishburn, LLP (the "Attorney") for the term from July 1, 2010 to June 30, 2012.

WHEREAS, on September 22, 2010 by Enactment # 10-1769, the Board of Education approved Amendment No. 1 to the General Retainer between the District and the Attorney for an amount not to exceed \$75,000 in Fiscal Year 2010-11 and \$75,000 in Fiscal Year 2011-12;

WHEREAS, on August 10, 2011 by Enactment # 11-1427, the Board of Education approved Amendment No. II to the General Retainer between the District and the Attorney for an amount not to exceed \$100,000 in Fiscal Year 2010-11 and \$150,000 in Fiscal Year 2011-12;

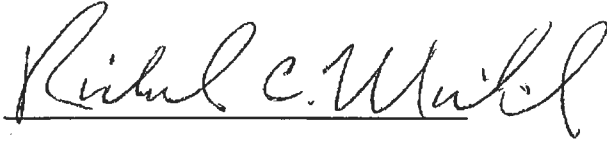
WHEREAS, due to increased costs associated with the State Controller's Office audits and associated appeals to the Education Audit Appeals Panel ("EAAP"), including extensive testimony from ten District teachers in the EAAP appeal of the 2006-07 audit, the parties hereby agree to revise Amendment No. II to the General Retainer agreement as follows:

1. The contract amount for Fiscal Year 2011-12 shall be increased by \$30,000 and shall not exceed a total of \$180,000. Except as expressly provided herein, the General Retainer Agreement is unchanged.

2. The General Retainer Agreement as amended by Amendment I, II and III herein constitute the entire understanding and agreement between the Parties in connection with Counsel representing the District before the EAAP and any further appeals. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Agreement as amended herein. 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.

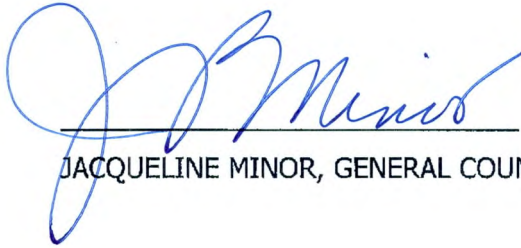
We hereby execute this Amendment.

**OLSON, HAGEL & FISHBURN, LLP**

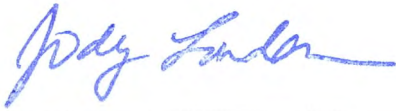


RICHARD C. MIADICH

**OAKLAND UNIFIED SCHOOL DISTRICT**



JACQUELINE MINOR, GENERAL COUNSEL



President, Board of Education  
Oakland Unified School District



Secretary, Board of Education  
Oakland Unified School District

OUSD or the District verifies that  
the Contractor does not appear on  
the Excluded Parties List at  
[www.epls.gov/epls/search.do](http://www.epls.gov/epls/search.do).

Board Office Use: Legislative File Info.	
File ID Number	11-1654
Introduction Date	8/11/11
Enactment Number	11-1427
Enactment Date	8-10-11 <i>ES</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** June 29, 2011

**Subject** **AMENDMENT II TO THE GENERAL RETAINER -- OLSON, HAGEL & FISHBURN, LLP**

**Action Requested** Approval of Amendment II to the General Retainer Agreement with Olson, Hagel & Fishburn LLP, a law firm, for the term from July 1, 2010 to June 30, 2012 to represent the District before the Education Audit Appeals Panel (the "EAAP") in connection with audit appeals related to the State Controller's Office adverse audit findings. The cumulative amount under this Amendment II shall not exceed \$100,000 in Fiscal Year 2010-11 and \$150,000 in Fiscal Year 2011-12.

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

Olson, Hagel has represented the District for several years in connection with the audit appeals to the EAAP related to the State Controller's Office adverse audit findings. We anticipate appeals involving the 2007-08 audit findings and the 2008-09 audit findings during the term of this Amendment II.

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

Due to increased costs associated with the State Controller's Office audits and appealing adverse audit findings, we seek approval by the Board of Education of Amendment II to increase the "not to exceed" cap in the General Retainer Agreement with Olson, Hagel for the term from July 1, 2010 to June 30, 2012 to \$100,000 for FY 2010-11 and \$150,000 for FY 2011-12.

**Recommendation** Approval by the Board of Education of the Amendment to the General Retainer Agreement between the District and Olson, Hagel & Fishburn LLP, for the term from July 1, 2010 to June 30, 2012.

**Fiscal Impact** Funding resource name: (GP) not to exceed \$100,000 for FY 2010-11 and not to exceed \$150,000 for FY 2011-12.

**Attachments**

- Amendment to the General Retainer Agreement
- General Retainer Agreement

**AMENDMENT II TO THE GENERAL RETAINER AGREEMENT  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT and  
OLSON, HAGEL & FISHBURN, LLP  
2010-2012**

This is Amendment II to the Retainer Agreement between the Oakland Unified School District (the "District" or the "Client") and Olson, Hagel & Fishburn, LLP (the "Attorney") for the term from July 1, 2010 to June 30, 2012.

WHEREAS, on September 22, 2010 by Enactment # 10-1769, the Board of Education approved Amendment No. 1 to the General Retainer between the District and the Attorney for an amount not to exceed \$75,000 in Fiscal Year 2010-11 and \$75,000 in Fiscal Year 2011-12 (the "Amendment");

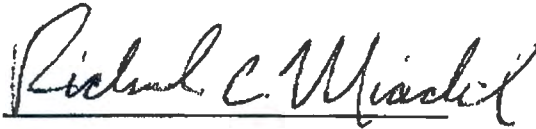
WHEREAS, due to increased costs associated with the State Controller's Office audits and associated appeals to the Education Audit Appeals Panel, the parties hereby agree to revise Amendment No. 1 to the General Retainer agreement as follows:

1. The contract amount for Fiscal Year 2010-11 shall not to exceed \$100,000 and for Fiscal Year 2011-12, the contract amount shall not exceed \$150,000. Except as expressly provided herein, the General Retainer Agreement and Amendment No. 1 are unchanged

2. The General Retainer Agreement as amended by Amendment No. 1 and Amendment II herein constitute the entire understanding and agreement between the Parties in connection with Attorney representing the District before the EAAP and any further appeals. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Agreement as amended herein. 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.

We hereby execute this Amendment.

**OLSON, HAGEL & FISHBURN, LLP**

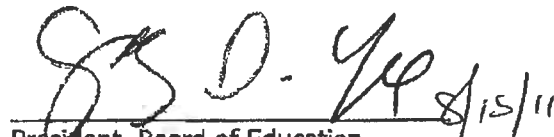
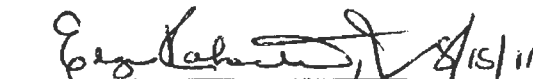


RICHARD C. MIADICH

**OAKLAND UNIFIED SCHOOL DISTRICT**



JACQUELINE MINOR, GENERAL COUNSEL

  
President, Board of Education  
Oakland Unified School District  
Secretary, Board of Education  
Oakland Unified School District

**Legislative File**

File ID Number: 11-1654  
Introduction: 8-1-11  
Enactment Number: 11-1427 *BJ*  
Enactment Date: 8-10-11

Board Office Use: Legislative File Info.	
File ID Number	10-2239
Introduction Date	9/13/10
Enactment Number	10-1769
Enactment Date	9-22-10 <i>MS</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

*EXCELLENCE*

every student. every classroom. every day.

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel *JM*

**Board Meeting Date** September 22, 2010

**Subject** **AMENDMENT TO THE GENERAL RETAINER -- OLSON, HAGEL & FISHBURN, LLP**

**Action Requested** Approval of the Amendment to the General Retainer Agreement with Olson, Hagel & Fishburn LLP, a law firm, for the term from July 1, 2010 to June 30, 2012 to represent the District before the Education Audit Appeals Panel (the "EAAP") in connection with audit appeals related to the State Controller's Office adverse audit findings. The cumulative amount under this Amendment shall not exceed \$75,000 in Fiscal Year 2010-11 and Fiscal Year 2011-12.

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

Olson, Hagel has represented the District for several years in connection with the audit appeals to the EAAP related to the State Controller's Office adverse audit findings. We anticipate appeals involving the 2007-08 audit findings and the 2008-09 audit findings

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

Approval by the Board of Education of the Amendment to the General Retainer Agreement with Olson, Hagel for the term from July 1, 2010 to June 30, 2012 to represent the District before the EAAP in connection with audit appeals related to the State Controller's Office adverse audit findings.

**Recommendation** Approval by the Board of Education of.

**Fiscal Impact** Funding resource name: (GP) not to exceed \$75,000.00 per fiscal year.

**Attachments**

- Amendment to the General Retainer Agreement
- General Retainer Agreement

**AMENDMENT TO THE GENERAL RETAINER AGREEMENT  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT and  
OLSON, HAGEL & FISHBURN, LLP  
2010-2012**

This is an Amendment to the Retainer Agreement between the Oakland Unified School District (the "District" or the "Client") and Olson, Hagel & Fishburn, LLP (the "Attorney") for the term from July 1, 2010 to June 30, 2012 for an amount not to exceed \$75,000 in Fiscal Year 2010-11 and \$75,000 in Fiscal Year 2011-12 (the "Amendment"). The Amendment modifies the General Retainer Agreement approved by the Board of Education of the District as Enactment Number 10-1250 on June 23, 2010 (the "Agreement") wherein Attorney was retained to represent the District before the Education Audit Appeals Panel (the "EAAP") in connection with audit appeals related to the State Controller's Office adverse audit findings.

A. The Parties hereby agree to amend the Agreement as follows:

1. Paragraph 4 at page 1 of the Agreement is deleted in its entirety, and in its place, the following is substituted: "This agreement shall govern the provision of legal services rendered by Attorney to Client for the 2010-11 and 2011-12 Fiscal Years."
2. Paragraph 5, the second full sentence at page 1 of the Agreement is deleted in its entirety, and in its place, the following is substituted: "Effective July 1, 2011, Client shall pay to Attorney the amount of \$270.00 per hour, or portion thereof for any attorney assigned to work on Client matters under this Agreement and the rate of \$110.00 per hour, or portion thereof for any law clerk or paralegal assigned to work on Client matters under this Agreement."
3. Paragraph 10 at page 2 of the Agreement is deleted in its entirety, and in its place, the following is substituted: "Dispute: In any action or proceeding arising out of this Agreement or the performance of services pursuant to this Agreement, the Parties shall, acting in good faith, meet and confer to resolve any such dispute. Only in the event the Parties are unable to resolve such a dispute after meeting and conferring in good faith, may a Party initiate legal proceedings. Venue for any such legal action or proceeding shall be in Alameda County"
4. Add a new Paragraph 14 entitled "Insurance" as follows:

"Insurance:

Without in any way limiting Attorney's liability under this Agreement, as amended, throughout the term, Attorney shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:



Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

Comprehensive Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limits for bodily injury and property damage, including coverage for owned and non-owned and hired auto coverage, as applicable; and

Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

Professional Liability Insurance with limit not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than fifty thousand dollars (\$50,000) each claim, covering legal malpractice arising from any services provided under this Agreement.

Except for Professional Liability Insurance, all liability policies that this Paragraph requires Attorney to maintain shall provide for the following: (i) name as additional insureds the District, the School Board, the State Trustee, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

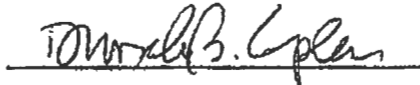
Within thirty (30) days of approval of this Agreement, Attorney shall deliver to the General Counsel a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the General Counsel.

B. Except as expressly provided below, the General Retainer Agreement is unchanged.

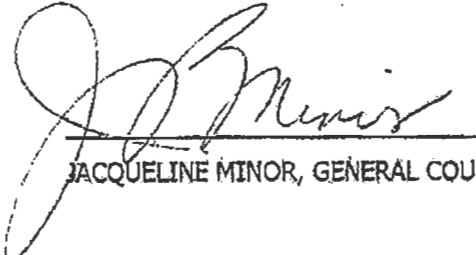
C. The General Retainer Agreement as amended herein constitutes the entire understanding and agreement between the Parties in connection with Attorney representing the District before the EAAP. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Agreement as amended herein. 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.

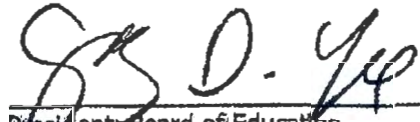
We hereby execute this Amendment.

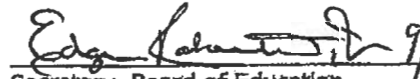
**OLSON, HAGEL & FISHBURN, LLP**

  
DEBORAH B. CAPLAN

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
JACQUELINE MINOR, GENERAL COUNSEL

 9/23/00  
President, Board of Education  
Oakland Unified School District

 9/23/00  
Secretary, Board of Education  
Oakland Unified School District

## GENERAL RETAINER AGREEMENT

THIS AGREEMENT is made between OLSON, HAGEL & FISHBURN, LLP, referred to as "Attorney" and OAKLAND UNIFIED SCHOOL DISTRICT, referred to as "Client."

This Agreement will become effective, and Attorney will be obligated to provide legal services, when Client returns a signed copy of this Agreement.

### SERVICES PROVIDED

1. Attorney hereby offers to provide legal services in connection with appeals by Client from adverse state-compliance audit findings in final audit reports issued by the State Controller, including without limitation, advice and representation related to administrative or judicial proceedings regarding the same.

2. Client may direct Attorney, either verbally or in writing, to perform additional legal services for Client unrelated to the above-specified matter. Unless such additional services are the subject of a separate written Agreement for legal services, Client and Attorney agree that such additional legal services shall be considered within the scope of services under this Agreement and subject to all of the terms and conditions set forth here.

### DUTIES OF CLIENT

3. Client agrees to cooperate and be truthful with Attorney, inform Attorney of any developments, render payment of Attorney's billing statements when due, advise Attorney of any changes in Client's address or telephone number, and to abide by this Agreement.

### FEES AND TERMS

4. This agreement shall govern the provision of legal services rendered by Attorney to Client for the 2009-2010 Fiscal Year as provided below.

5. Client shall pay to Attorney the amount of \$250.00 per hour, or portion thereof, based on the attached fee schedule, for legal services rendered during the period July 1, 2009 through December 31, 2009. Client shall pay to Attorney the amount of \$260.00 per hour, or portion thereof, based on the attached fee schedule, for legal services rendered on or after January 1, 2010. Attorney reserves the right to adjust the hourly rates after providing 30 days written notification to Client of any such changes. Generally, rates are adjusted on January 1st of each calendar year.

6. Attorney billing is detailed and lists the attorney name, amount of time, and description of services rendered. Attorney will charge for time expended on telephone calls relating to Client's matter, including calls with Client; opposing counsel, court personnel, etc. The legal personnel assigned to Client's matter will confer among themselves regarding Client's matter, as required. When they do confer, each person will charge for their time expended. If more than one of Attorney's legal personnel attends a meeting, court hearing, or other proceeding, each will charge for their time expended. Attorney will charge for waiting time in court and other proceedings and for travel time, including both local and out-of-town. Attorney also charges for time expended on legal research and

preparation of memos, letters, and other documents. Attorney believes it is a necessary part of the practice of law to provide this kind of documentation, even if the result of Attorney's research simply confirms Attorney's preliminary opinions.

Attorney may not charge for certain services in some cases, without waiving its right to charge for these items should they reoccur in the future. This is a matter of goodwill and solely at the Attorney's discretion. Such "no charges" are often indicated either by not having a sum by the Attorney's name on the billing statement, or by a "credit adjustment" at the end of the bill. Since all billing is detailed, Attorney expects Client to review the bills before payment is due, and to raise any questions or concerns before the next billing statement. Otherwise, Attorney assumes Client agrees with the charges and will render payment.

7. A. Direct Costs: Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for those costs and expenses, in addition to the hourly fees. The costs and expenses commonly include fees fixed by law or assessed by public agencies, long distance telephone charges, telecopy charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, charges for computer research time, and other similar items.

B. Travel Costs: Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney's personnel. Client will also be charged the hourly rates for legal personnel travel time.

C. Litigation: In the event Client's matter involves arbitration or litigation, Client agrees to pay costs required by an arbitrator or court, or deemed necessary by Attorney to effectively present Client's case. In addition to the other costs and charges set forth in subsections (a) through (c) above, arbitration and litigation frequently include such costs as filing fees, court reporter fees, transcript costs and expert witness fees.

D. Investigators: To aid in the preparation or presentation of Client's case, it may become necessary to hire outside investigators. Client agrees to pay their fees and charges. Attorney will select any investigators to be hired.

8. Attorney will send Client monthly statements for fees and costs incurred, which are due and payable upon receipt and will be considered delinquent if not paid within thirty (30) days of the statement date.

9. Client understands and agrees that commencing the 30th day following the date of statement for Attorney's services, Attorney will charge interest at the rate of ten percent (10%) per annum on any and all amounts then due and unpaid.

10. Dispute: In any action or proceeding arising out of this Agreement or the performance of services pursuant to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Venue for any action or proceeding shall be in Sacramento County.

11. Discharge and Withdrawal: Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of the Agreement, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material

matter, or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After Attorney's services conclude, Attorney will, upon Client's request, deliver Client's file to Client, along with any of Client's funds or property in Attorney's possession.

12. Disclaimer Of Guarantee: Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee regarding the outcome of Client's matter. Attorney makes no such promises or guarantees. Attorney's comments regarding the outcome of Client's matter are expressions of opinion only.

13. Client understands that Attorney represents many clients who participate in the governmental and political process, primarily in California, but also nationwide. By signing this agreement, Client confirms that it does not object to Attorney's representation of clients whose general political or governmental objectives and philosophies may be contrary to Client's. Client also confirms that it does not object to Attorney providing political law compliance advice to any such clients and/or assisting them in preparing disclosure forms required under federal, state, or local laws. This general acknowledgment does not permit Attorney, without Client's written consent, to accept representation of another client in direct opposition to the specific project for which Client has engaged Attorney.

Client has read and understands the foregoing and agrees to all of the terms and conditions set forth in this Retainer Agreement.

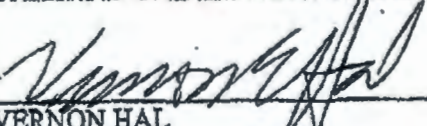
DATED: October 20, 2009

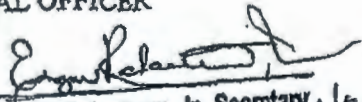
OLSON, HAGEL & FISHBURN, LLP

  
DEBORAH B. CAPLAN

DATED: 6/24/10

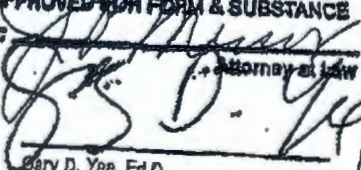
OAKLAND UNIFIED SCHOOL DISTRICT

  
VERNON HAL  
CHIEF FINANCIAL OFFICER

  
Edgar Rekestraw, Jr., Secretary 6/24/10  
Board of Education

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File ID Number: 10-1673  
Introduction Date: 6-14-10  
Enactment Number: 10-1250  
Enactment Date: 6-23-10  
By: BT

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:   
Gary D. Yee, Ed.D.  
President, Board of Education 6/24/10

**FEE SCHEDULE**  
**(July 1, 2009 – December 31, 2009)**

PARTNERS .....	\$250.00 per hour
SENIOR ATTORNEYS .....	\$250.00 per hour
SENIOR ASSOCIATE ATTORNEYS .....	\$250.00 per hour
JUNIOR ASSOCIATE ATTORNEYS .....	\$250.00 per hour
LAW CLERKS/PARALEGALS.....	\$105.00 per hour

**FEE SCHEDULE**  
**(for legal services rendered on or after January 1, 2010)**

PARTNERS .....	\$260.00 per hour
SENIOR ATTORNEYS .....	\$260.00 per hour
SENIOR ASSOCIATE ATTORNEYS .....	\$260.00 per hour
JUNIOR ASSOCIATE ATTORNEYS .....	\$260.00 per hour
LAW CLERKS/PARALEGALS.....	\$110.00 per hour