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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** May 8, 2013

**Subject** **EMPLOYMENT CONTRACT FOR DR. GARY YEE, ACTING SUPERINTENDENT**

**Action Requested** Approval of Employment Contract for Acting Superintendent Dr. Gary Yee

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

Under the terms of the employment contract with Dr. Yee, he will consult on at .5 FTE (that is, half time) from May 9, 2013 to June 30, 2013 and from July 1, 2013 to June 30, 2014, he will serve on a full time basis, as the Acting Superintendent for the District. During the full contract term, Dr. Yee will be paid \$250,000 (i.e., .5 FTE from May 9, 2013 to June 30, 2013; 1 FTE July 1, 2013 to June 30, 2014). During the period from May 9, 2013 to June 30, 2013, Dr. Yee will work with the Board and senior staff of the District to support the transition of Dr. Smith. During the transition period Dr. Yee will meet and confer with Dr. Smith, the senior staff, the Board and key District stakeholders in preparation for becoming Acting Superintendent on July 1, 2013. During the transition period, Dr. Smith retains all rights, duties and responsibilities of Superintendent of the District as provided in Section 35035 of the Education Code.

**Recommendation** Approval of Employment Contract for Acting Superintendent Dr. Gary Yee

**Fiscal Impact** Funding resource name: GP \$250,000

**Attachments**

- Agreement

**OAKLAND UNIFIED SCHOOL DISTRICT  
EMPLOYMENT AGREEMENT  
FOR SERVICES OF DISTRICT ACTING SUPERINTENDENT**

This Employment Agreement for Services of District Acting Superintendent ("Agreement") is effective the ninth day of May, 2013 and is made and entered into between the GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT (the "Board"), on behalf of the OAKLAND UNIFIED SCHOOL DISTRICT (the "District"), and DR. GARY YEE (the "Acting Superintendent" or "Dr. Yee").

WHEREAS, the Board desires to employ Dr. Yee as Acting Superintendent for the District and desires to provide Dr. Yee with a written contract in order to enhance the administrative stability within the schools, which the Board believes generally improves the quality of the District's overall educational program; and

WHEREAS, the Board and the Acting Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the District.

NOW, THEREFORE, the Board and the Acting Superintendent, for consideration herein, agree as follows:

1. **TERM.** The Board retains Dr. Yee as a consultant for the period from May 9, 2013 to June 30, 2013 at .5 FTE for the purpose of facilitating the transition related to the resignation of Superintendent Tony Smith. The Board also offers, and Dr. Yee accepts, employment as the Acting Superintendent of Schools for the District, for the period from July 1, 2013 to June 30, 2014, subject to the terms and conditions set forth herein.

2. **DUTIES AND RESPONSIBILITIES.**

2.1. During the period from May 9, 2013 to June 30, 2013, Dr. Yee will work with the Board and senior staff of the District to support the transition of Dr. Smith. During the transition period Dr. Yee will meet and confer with Superintendent Smith, the senior staff, the Board and key District stakeholders in preparation for becoming Acting Superintendent on July 1, 2013. During the transition period, Dr. Smith shall retain all rights, duties and responsibilities of Superintendent of the District as provided in Section 35035 of the Education Code.

2.2. Commencing July 1, 2013, the Acting Superintendent shall have charge of the administration of the District in accordance with all applicable state and federal laws and regulations and the directives, rules, regulations and policies of the Board.

2.3. Commencing July 1, 2013, the Acting Superintendent shall serve as the District's Chief Executive Officer, in charge of all educational and financial matters pertaining to the administration and operation of the District. Although the Board retains ultimate power and authority over decisions affecting the District, the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Acting Superintendent, but the Board retains the right to question, approve, or disapprove in its discretion, as it deems appropriate, the recommendations and decisions that the Acting Superintendent makes.

2.4. Commencing July 1, 2013, the Acting Superintendent shall perform the duties and exercise the powers prescribed for a Superintendent by Section 35035 of the California

Education Code. The Acting Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions with the understanding that all personnel are subject to the approval of the Board; hire, terminate, assign and direct employees of the District; and organize, reorganize and arrange central office, administrative and supervisory staff, as he believes best serves the District.

2.5. Commencing July 1, 2013, the Acting Superintendent shall give his exclusive professional services to the District during the period of this Employment Contract and he shall attend all regular and special meetings of the Board, including Closed Session where no conflict of interest exists, unless otherwise excused by the Board. He shall faithfully and diligently perform the duties and responsibilities regularly performed by Superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state. For his services to the District he shall accept as full payment the compensation provided in this Agreement.

2.6. Pursuant to California Education Code Section 35029, the Board waives the requirement that Dr. Yee hold a credential enabling service as a District Acting Superintendent and issued by the Commission on Teacher Credentialing, State of California.

2.7. This Agreement shall not be assigned to any other position, except in cases of disability (as described in this Agreement), or have his duties reassigned without his consent.

2.8. The Acting Superintendent shall render services in accordance with the District's standard work year for confidential administrators and he shall be entitled to the same holidays as are other non-represented managers of the District.

### 3. SALARY & BENEFITS.

3.1. Dr. Yee shall be paid total compensation in the amount of \$250,000 for services provided under this Agreement. During the period from May 9, 2013 to June 30, 2013, Dr. Yee shall be paid as .5 FTE at the Daily Rate of Pay, as defined in Section 4.2 below, based upon total compensation of \$250,000 for the period from May 9, 2013 to June 30, 2013. Commencing July 1, 2013 through June 30, 2014, Dr. Yee shall be paid the remaining compensation, payable in twelve equal monthly installments.

3.2. Effective July 1, 2013, the Acting Superintendent and his dependents, if any, shall be entitled to paid coverage under the District's health, vision, and dental insurance plans, except that the Acting Superintendent shall pay all co-pays required by health care providers. The District shall not require the Acting Superintendent to contribute to insurance premium costs.

3.3. The District shall pay the Acting Superintendent's membership dues and reasonable related expenses to belong to a reasonable number of relevant professional organizations, including the Association of California School Administrators. Any such expenses in excess of \$5,000 shall be approved by the Board.

3.4. The District shall provide the Acting Superintendent with the same life insurance benefits as it does for all other confidential administrators.

3.5. In addition to paying the employer contribution to the California State Teachers' Retirement System ("STRS"), and in addition to the annual salary under 3.1, the District shall pay the Acting Superintendent's total employee contribution to STRS. This employer-paid employee contribution shall be an additional component of the Acting Superintendent's base salary that shall be paid to STRS as a payroll deduction from the Acting Superintendent's monthly check.

4. **VACATION & LEAVE.**

4.1. The Acting Superintendent shall be entitled to twenty-five (25) annual vacation days with pay. The Acting Superintendent is encouraged to take all vacation days during the year in which such days are earned. The Acting Superintendent shall provide the Board with reasonable advance notice of any travel, including any planned use of vacation, before any such travel or vacation is taken.

4.2. Upon termination or expiration of this Agreement, the Acting Superintendent shall be entitled to receive payment for any accrued and unused vacation time equal to the number of accrued but unused vacation multiplied by his Daily Rate of Pay, subject to the limitations on the accrual of vacation time set forth in this Agreement. Payment for any such accrued and unused vacation time shall be made within ten (10) business days of the end of the fiscal year. The Acting Superintendent's Daily Rate of Pay shall be defined as his then-current annual salary divided by 240.

4.3. The Acting Superintendent shall be entitled to accrue paid sick leave at the rate of 1.0 days per month up to 12 days per year. If the Acting Superintendent does not utilize the total amount of accrued sick leave authorized during any year, he may carry over the unused time to sick leave in the subsequent year.

5. **EXPENSES.** The Acting Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing his professional responsibilities for the District, including reasonable expenses for travel outside the District. The District shall reimburse the Acting Superintendent for automobile travel at the then-current deductible mileage rate as provided by the Internal Revenue Service or provide the District authorized stipend available to senior management. Any such request for reimbursement shall comply fully with all District rules and requirements relating to expense reimbursements; and shall be presented to the Board President for review and approval.

6. **PROFESSIONAL ACTIVITIES.** The Acting Superintendent may engage in outside activities such as consulting and speaking, provided that such activities do not interfere and are compatible with the Acting Superintendent's performance of his duties and responsibilities. Such outside activities are subject to the following approval and notification requirements: (1) if the activity requires no more than two (2) days of the Acting Superintendent's time, he shall provide reasonable advance notice to the Board of his participation in such activity; (2) if the activity requires more than two (2) days of the Acting Superintendent's time, he shall first receive prior approval from the Board President to participate in such activity and, if such approval is given, he must provide reasonable advance notice to the Board. The Acting Superintendent further understands and agrees that any outside employment which may be allowed by this Agreement must be at all times subservient to his duties as Acting Superintendent, and must be performed on vacation or leave days which have been authorized or approved by the Board.

7. **EVALUATION.**

7.1. The Board shall evaluate and assess in writing the performance of the Acting Superintendent initially no later than December 15, 2013 using mutually agreeable performance criteria. The Board considers the Acting Superintendent performance to be identical to the District's performance. The District's accomplishment of the Board's balanced scorecard goals and continued implementation of the strategic plan will be considered successful performance by the Acting Superintendent. The evaluation and assessment shall take into account, but shall

not be limited to, the Acting Superintendent's leadership of the District based on the direction of the Board, effective communication with the Board and the District stakeholders, successful development and implementation of a District-wide Academic Plan to improve instruction and student performance, and successful implementation of the District's fiscal sustainability plan.

7.2. No later than August 1, 2013, the Board and the Acting Superintendent shall mutually develop short-term and long-term goals for the Acting Superintendent's service under this Agreement and a format for a written evaluation and assessment of the Acting Superintendent's performance. In the event that the Board and the Acting Superintendent fail to agree on the development and adoption of short-term and long-term goals for services under this Agreement and/or a format for a written evaluation and assessment of the Acting Superintendent's performance, no later than September 1, 2013, the Board shall establish the goals and/or evaluation form for the Acting Superintendent.

7.3. The Board shall complete the Acting Superintendent's annual evaluation no later than June 1, 2014.

8. **TERMINATION.** This Agreement may be terminated by the following:

8.1. Death of the Acting Superintendent.

8.2. Disability. The Board may terminate this Agreement due to the disability of the Acting Superintendent, as defined below, after expiration of sick leave entitlement as provided by this Agreement, statute, and policies.

8.2.1 Disability shall mean that the Acting Superintendent is unable to further serve in his position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a physician selected by the Board and who is licensed to serve in the State of California.

8.2.2 In the event the Acting Superintendent is disabled and said disability would prevent him from reassuming his duties for a period of thirty (30) days or more, the Board may appoint an alternative Administrator to fulfill the duties and responsibilities of the Acting Superintendent under this Agreement.

8.2.3 In the event the Acting Superintendent is disabled and unable to perform his duties under this Agreement, and such disability continues for more than ninety (90) days, the Board may terminate this Agreement. In the event of termination due to disability, the Acting Superintendent shall continue to receive the salary and benefits provided for in the Agreement for a period of three (3) months from the date of termination pursuant to the terms of this paragraph. The Board's decision and termination as to the disability of the Acting Superintendent shall be final and shall be based on the written opinion of a licensed medical doctor as set forth above.

8.3. By the Board without cause.

8.3.1 The Board may elect to terminate this Agreement, without cause, upon thirty (30) days written notice to the Acting Superintendent. Prior to exercising this option, the Board shall provide the Acting Superintendent with an opportunity to meet with the Board to discuss its intentions. However, no cause need be alleged or demonstrated by the Board.

8.4. By the Board for cause.

8.4.1 The Board may elect to terminate this Agreement for cause upon thirty (30) days written notice to the Acting Superintendent. Cause shall constitute

conduct, which the Board decides is seriously prejudicial to the District, including, but not limited to, the grounds enumerated in Section 44932 of the California Education Code and specifically including the following: (a) the Acting Superintendent's conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in the sole opinion of the Board cause embarrassment to the District; (b) the Acting Superintendent engages in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Acting Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Acting Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (d) the Acting Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Acting Superintendent's material breach of any material term of this Agreement or his willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within 30 days after written notice of such noncompliance has been given to the Acting Superintendent by the Board; and (f) the Acting Superintendent's persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, or any other cause listed in the California Education Code.

8.4.2 Cause shall also constitute unsatisfactory performance provided the Board complies with all of the following conditions: (a) the Board shall be responsible for specifically identifying the material deficiencies as part of the formal evaluation process and advising the Acting Superintendent with specificity of what he would need to do to remediate said material deficiencies; (b) a majority of the Board determines that the performance of the Acting Superintendent continues to be materially unsatisfactory even after receiving a formal evaluation and the aforementioned notice of material deficiencies; and (c) the Board provides the Acting Superintendent with written notice of the termination at least ninety (90) days prior to the effective day of termination.

8.4.3 Dismissal for cause shall be effective upon action taken by the Board, and all salary and benefits provided for in this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to said action shall be paid to the Acting Superintendent within thirty (30) days of said action.

8.4.4 Timely notice of discharge for cause shall be given in writing and the Acting Superintendent shall be entitled to appear before the Board to discuss such charges. If the Acting Superintendent chooses to be accompanied by legal counsel at such meeting, he shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Acting Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Acting Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

8.5. By the Acting Superintendent at any time during this Agreement by providing the Board with thirty (30) days written notice.

8.6. By mutual agreement between the Board and the Acting Superintendent at any time.

9. **APPLICABLE LAWS.** This Agreement is subject to all applicable laws and regulations of the State of California, to the rules and regulations of the State Board of Education, and to the rules, regulations and policies of the District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein.

10. **MEDIATION.** Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

11. **ENTIRE AGREEMENT.** It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

12. **SAVINGS CLAUSE.** If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in full force and effect.

13. **NOTICES.** Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite his or her name below, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

If at any time during the term of this Agreement the Acting Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow himself to be considered, for such a position, the Acting Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate. If the Acting Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement, and the Board may then terminate this Agreement for cause and in accordance with section 8.4 herein.

14. **INDEMNIFICATION OF ACTING SUPERINTENDENT.** In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Acting Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Acting Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Acting Superintendent was acting within the scope and course of his employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after his employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Acting Superintendent against such demands, claims, suits, actions and legal proceedings.

If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Acting Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and

assign separate counsel to represent Acting Superintendent, then Acting Superintendent may engage separate legal counsel for which the District shall indemnify Acting Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Acting Superintendent under any other insurance or professional association membership.

15. **WAIVERS.** No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

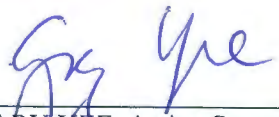
IN WITNESS WHEREOF, the parties hereto, affix their signatures to this Agreement in Oakland, California.

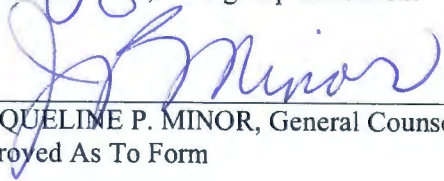
**GOVERNING BOARD OF THE OAKLAND  
UNIFIED SCHOOL DISTRICT:**


By   
DAVID KAKISHIBA, President

By   
EDGAR RAKESTRAW, Secretary

**DR. GARY YEE**

  
DR. GARY YEE, Acting Superintendent

  
JACQUELINE P. MINOR, General Counsel  
Approved As To Form

File ID Number: 13-0957  
Introduction Date: 5-8-13  
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By: 



GOVERNMENT CODE

SECTION 53260-53264

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b) (1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Acting Superintendent, terminates its contract of employment with its district Acting Superintendent of schools that local agency employer may not provide a cash or noncash settlement to its Acting Superintendent in an amount greater than the Acting Superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the Acting Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by an administrative law judge after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the Effective Date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

53261. The cash settlement specified in Section 53260 shall not include any other noncash items except health benefits, which may be continued for the same duration of time as covered in the settlement, pursuant to the same time limitations as provided in Section 53260, or until the employee finds other employment, whichever occurs first.

53262. (a) All contracts of employment with a Acting Superintendent, deputy Acting Superintendent, assistant Acting Superintendent, associate Acting Superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.

(b) Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.

53263. For purposes of this article, "local agency" means any general law county, general law city, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies.

53264. This article shall apply prospectively and shall affect any contract originally approved by the governing body, or any existing contract that is extended by the governing body, after the effective date of this article.