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Enactment Date	6-25-14



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Jacqueline Minor, General Counsel 
 Board Meeting Date June 25, 2014
 Subject Agreement with Mediation Law Offices of Claudia Viera

Action Requested Ratification of the Agreement with Mediation Law Offices of Claudia Viera to conduct an investigation related to incidents at Oakland High School at a rate of \$200 per hour, not to exceed \$15,000.

Background Claudia Viera is being retained to conduct an investigation into incidents occurring at Oakland High School.

Discussion Work will be conducted at a rate of \$200 per hour, not to exceed \$15,000.

Recommendation Ratification of the Agreement with Mediation Law Offices of Claudia Viera for the term to conduct an investigation related to incidents at Oakland High School at a rate of \$200 per hour, not to exceed \$15,000.

Fiscal Impact General Purpose not to exceed \$15,000

Attachments

- Agreement

MEDIATION LAW OFFICES OF CLAUDIA VIERA

4200 PARK BLVD. #216
OAKLAND, CA
94602

510.393.7117
CLAUDIAVIERA@EARTHLINK.NET
WWW.CLAUDIAVIERA.COM

June 5, 2014

Jacqueline Minor, General Counsel
Office of the General Counsel
Oakland Unified School District
1000 Broadway, Ste. 398
Oakland, CA 94607

RE: Neutral Fact-Finder Services Engagement Letter

Dear Ms. Minor:

This letter confirms Oakland Unified School District (“your organization”) has retained Mediation Law Offices of Claudia Viera (“firm” or “me”) to conduct an objective investigation into an incident at a high school involving a security guard and a student.

Services Retained

This contract creates a very limited attorney - client relationship between your organization and my firm. In my capacity as an attorney, I will use my employment law and investigation expertise to conduct an objective and neutral investigation of the incidents above and how staff responded to them. I will *not* provide you or your organization with legal advice or legal representation in this matter. Nor will I provide any respective Board of Directors, organizational officers, managers or employees with legal advice or represent you, your organization or them in the event of litigation, should an employee/student decide to file a claim with an administrative agency or a lawsuit related to this incident. In such event, all parties should seek advice and representation from the attorney who typically represents them with respect to such matters.

Scope

The scope of this investigation is limited to making factual findings with respect to the staff responses to the incident and not whether any conduct rises to the level of a violation of policy or the law. After reviewing relevant documents and conducting interviews of witnesses with relevant knowledge of the facts underlying the complaint(s), I will prepare a written summary report of my factual findings. During the course of the investigation, if requested by you or members of your human resources or legal department, I will also provide status updates on the progress of the investigation. I encourage you to communicate closely with me so that I may provide you with the best possible service in the most effective and efficient manner.

Your Organization's Responsibilities

You and your organization agree to be truthful about circumstances related to the investigation and to fully cooperate with my efforts, and to keep Mediation Law Offices of Claudia Viera informed of any information or developments which may come to your attention related to the scope of this investigation that will assist me in performing my services. Nothing in this engagement letter and contract for investigation services should be construed as a promise or guarantee about the outcome of this independent investigation. I will reach my findings based on my impartial and professional evaluation of the evidence and will operate independently in selecting witnesses to be interviewed and documents to be reviewed.

Confidentiality and Indemnification

As an investigator, I will adhere to the standard ethical obligations that attach to services performed by an attorney/fact-finder, including maintaining confidentiality with respect to all information related to the investigation, except as required by court order or by law or by the rules and regulations of any governmental body or administrative agency, in which case, any information disclosed would occur through consultations with you.

It is my understanding that all of the work performed pursuant to this investigation will be considered confidential and not subject to disclosure to any third-party without your consent. In addition, I will obtain the same assurances of confidentiality and nondisclosure from any persons or entities that are retained by me to assist me in providing the services specified under this agreement.

As a condition of this engagement, your organization agrees to defend, indemnify, and hold me, my firm and my agents harmless for and against any and all actions, claims and complaints, formal or informal, arising from or in any way related to the services rendered under this engagement, including, but not limited to, claims of defamation for preparing a written report reflecting statements or comments attributed to any witness or individual being investigated, except to the extent arising from gross negligence or willful misconduct in the performance of the services under this engagement.

Fees

As we discussed, the fee for this engagement will be charged at the rate of **\$200.00 per hour**, including but not limited to, all time spent interviewing witnesses, traveling to the location, reviewing background facts and relevant documents/information, consultations and email with you, your attorney or any organizational representatives, preparing typed summaries of my interview notes (if desired), preparing a written investigation report. If called upon in the future to testify regarding this investigation in the event of further complaints, litigation, deposition, response to subpoenas or any similar proceeding, the fee shall be my then-current hourly rate or an agreed-upon rate (not less than \$200 per hour) for any time spent performing work related to such testimony including preparation time and document production or review, regardless of which party subpoenas me. The above clause applies to all pre- or post-litigation work related to this investigation other than litigation or claims brought by your organization against me or my

firm, or vice versa. As part of this engagement, your organization also agrees to pay Claudia Viera's direct travel, lodging (if approved in advance), mileage, and out-of-pocket expenses (collectively, the "Direct Expenses") related to the investigation.

I require an **initial deposit of \$4000.00** to reserve time for the investigation in my schedule and to cover initial costs. This amount is due immediately, before I begin investigation work, and will be reflected as hours worked in my first invoice to your organization. Any unused portion will be promptly refunded. Your organization is obliged to pay for my services regardless of the findings and results of the investigation.

I will prepare an itemized statement on a monthly basis of any time billed and expenses incurred in the course of providing my services to you. If you have any questions, please let me know as soon as possible. Of course, I will not bill you for the time required to respond to your billing inquiries.

I encourage timely payment of fees and request that payments be made within ~~15~~ ³⁰ days of receipt of the invoice. If invoices are not paid on a timely basis and received by me within ~~20~~ ⁴⁰ days of the invoice date, such payment will be considered delinquent and in such event, it may also be necessary for me to withdraw from this engagement. You may terminate my services at any time, provided that I am entitled to payment of all fees and costs incurred to the date of termination.

Other Terms

This engagement letter and agreement for services contains the entire agreement between Mediation Law Offices of Claudia Viera and your organization with respect to this investigation.

No other agreement, statement or promise made on or before the date above will be binding on either of us. This engagement letter and contract may only be modified by a subsequent agreement in writing signed by both parties (email or fax is acceptable). If any provision is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire engagement letter and contract for investigation services will be severable and shall remain in effect.

We agree that any controversy between us regarding the construction, application or performance of any services under this agreement, and any claim arising out of or relating to this agreement or its breach, shall first be submitted to a local Bay Area mediator with knowledge of employment and contract law, mutually agreed upon by both of us, upon the written request of either of us. If legal action becomes necessary, the venue will be in Alameda County, California. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Closing

Please indicate that you have read this letter and understand the terms of this engagement, by signing, dating and returning this letter to me with the deposit. Again, I appreciate the opportunity to conduct this investigation and am very pleased that you have chosen to engage my services. You may also fax this letter to 510.336.0877.

Very truly yours,

Claudia Viera

Claudia Viera, Esq.

Mediation Law Offices of Claudia Viera

Accepted on 6/6, 2014

Jacqueline P. Minor
Print Name

General Counsel
Title

J. P. Minor
Signature

I represent that I have authority to sign this letter and retain an investigator on behalf of Oakland Unified School District. I acknowledge that I have read and understood this letter and agree to each of its terms. I will sign and return this letter to Claudia Viera, Esq. so that she may promptly commence the investigation as described above.

David Kakishiba 6-26-14
President, Board of Education

Gary Yee 6-26-14
Gary Yee, Ed.D.
Secretary, Board of Education

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