

Board Office Use: Legislative File Info.	
File ID Number	14-0851
Introduction Date	5-14-14
Enactment Number	14-0778
Enactment Date	5/14/14



OAKLAND UNIFIED
SCHOOL DISTRICT

1000 Lakeside Drive, Oakland, CA 94612
415.774.2000

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date May 14, 2014
Subject Memorandum of Understanding with the Alternative Dispute Resolution and the Law Offices of Nina Senn

Action Requested Ratification of Memorandum of Understanding with the Alternative Dispute Resolution and the Law Offices of Nina Senn

Background Legal and PEC are exploring whether the District should look at options that may result in a reduction in Special Education legal fees but also provide more expeditious resolution of issues raised by school sites and families. We have retained Nina Senn, a lawyer/consultant on a short term basis to determine the feasibility of establishing an ombudsman and alternative dispute resolution process within PEC to support neutral and independent advocacy for District families and PEC stakeholders. The assessment will include looking at problem solving techniques, restorative justice practices and dispute resolution skills to get to expeditious resolution of disputes, serve as a liaison between PEC, parents and school sites, and serve as a communication conduit for stakeholders.

Discussion Ratification by the Board of Education of the Memorandum of Understanding between the Oakland Unified School District and the Alternative Dispute Resolution and the Law Offices of Nina Senn for the latter to determine the feasibility of establishing an ombudsman and alternative dispute resolution process within the Programs for Exceptional Children to support neutral and independent advocacy for District families and PEC stakeholders for the term April 1, 2014 through June 30, 2014 at a cost not to exceed \$25,000 for the contract term.

Recommendation Ratification of Memorandum of Understanding with the Alternative Dispute Resolution and the Law Offices of Nina Senn for a term from April 1, 2014 through June 30, 2014, in an amount not to exceed \$25,000.00 per year.

Fiscal Impact Funding resource name: (GP) not to exceed \$25,000.00

Attachments

- Memorandum of Understanding

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**MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
ALTERNATIVE DISPUTE RESOLUTION AND LAW OFFICES OF NINA SENN**

1. INTENT

Intent of this Memorandum of Understanding. This Memorandum of Understanding (hereinafter "MOU" or "Agreement") authorizes the Oakland Unified School District Office of the General Counsel (hereinafter "General Counsel") to establish professional services agreements in the form of Letters of Engagement with the Alternative Dispute Resolution and Law Offices of Nina Senn ("Counsel") for consultancy services provided to the Oakland Unified School District ("OUSD" or "District"). The hourly billing rate shall not exceed \$200 per hour and the contract shall not exceed \$25,000 for the contract term.

2. TERMS AND CONDITIONS

2.1 Term of Agreement. The term of this agreement shall be April 1, 2014 to June 30, 2014 and may be extended by written agreement of both parties.

2.2 Scope of Assignment. Counsel is being retained to determine the feasibility of establishing an ombudsman and alternative dispute resolution process within Programs for Exceptional Children to support neutral and independent advocacy for District families and PEC stakeholders. More specifically, no later than June 1, 2014, Counsel shall assess and make a recommendation to the Associate Superintendent for Programs for Exceptions Children and the General Counsel as whether an ombudsperson, using problem solving, restorative justice and dispute resolution skills and techniques could facilitate fair, expeditious resolution of disputes, serve as a liaison between PEC, parents and school sites, and serve as a communication conduit for the parties, as appropriate.

2.2 Notice of Termination. OUSD may at any time terminate this Agreement upon not less than thirty (30) days written notice to Counsel. OUSD shall compensate Counsel for services satisfactorily provided through the date of termination. Upon termination of this Agreement, Counsel shall immediately provide OUSD with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to OUSD. Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.

2.3 Choice of Laws; Dispute Resolution. This Agreement is governed by the laws of the State of California. The Parties agree that, should any dispute arise related to this Agreement, they will use good faith efforts to attempt to amicably resolve the dispute between themselves and, if requested by either party, through non-binding mediation offered by a non-profit mediation organization in the San Francisco Bay Area. All costs of mediation, if any, shall be borne equally between the Parties.

2.4 Licenses and Permits. Counsel shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

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. Counsel shall not hire any officer or employee of OUSD to perform any service by this Agreement. Counsel affirms to the best of his/her/its knowledge, there exists no

actual or potential conflict of interest between Counsel'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. Counsel has undertaken a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to OUSD or has obtained a written conflicts waiver from the General Counsel.

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, CONTRACTORS, 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 MOU, Counsel 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. Counsel 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. In addition, Counsel agrees to require like compliance by all its subcontractor(s).

3. AREAS OF AUTHORITY

3.1 Independent Contractor. This is not an employment contract. Counsel is an independent contractor or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. Counsel understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are 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. Counsel 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 with respect to Counsel's employees. In the performance of the work herein contemplated, Counsel 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. 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. Except as agreed to by the Parties, all documents created by Counsel 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 Counsel, 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. Except as agreed to by the Parties, OUSD shall be entitled access to and copies of these materials during the progress of the work. Except as agreed to by the Parties, any such materials in the hands of Counsel or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. Counsel may retain a copy of all materials produced under this Agreement for its use in its general business activities.

3.4 Copyright/Trademark/Patent/Ownership. Except as agreed to by the Parties, Counsel understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. Except as agreed to by the

Parties, OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD.

3.5 Confidentiality. The Counsel shall maintain the confidentiality of all information and documents received in accordance with the Confidentiality Agreement attached in Exhibit A. Counsel understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records, including, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060 et seq. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

4. INDEMNIFICATION

Counsel shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Counsel or loss of or damage to property, arising directly or indirectly from Counsel's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Counsel, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

The District shall indemnify and save harmless the Counsel and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the District or loss of or damage to property, arising directly or indirectly from the District's acts or omissions under this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the Counsel and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on the District, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the Counsel's costs of investigating any claims against the Counsel.

In addition to each Party's obligation to indemnify the other Party, each Party specifically acknowledges and agrees that the indemnifying party ("Indemnitor") has an immediate and independent obligation to defend the indemnified party ("Indemnitee") from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Indemnitor by the Indemnitee and continues at all times thereafter.

5. Billing and Invoices

All Counsel representing the District are to provide the following information on bills or invoices submitted to the District for payment of legal services provided:

- a. Name of the project or matter;
- b. The matter or number or other designation contained in the engagement letter;

- c. Description of the services sufficient for the District to understand what case-related task was performed by each attorney or paralegal on a daily basis;
- d. The name of each attorney or paralegal working on the matter;
- e. The hours worked by each billing person for each task described (task billing) daily to the nearest .1 of an hour;
- f. The hourly rate for each billing person;
- g. An itemization of any cash or cost disbursements;
- h. The name of the General Counsel attorney authorizing the work or to whom Counsel reports;
- i. Total fees and costs billed to date; and
- j. Total fees and costs paid by the District to date.

A one-page summary with each statement or invoice indicating (a) the firm name submitting the invoice/statement; (b) the OUSD assigned matter number and firm reference number; (c) total hours billed and corresponding fees and costs for the current billing period; (d) payments credited during the current billing period; (e) any past-due amount; and (f) total amount due. Do not include any description of services performed on this one-page summary.

All invoices shall be accompanied by the following verification statement signed by the lead attorney assigned to the matter:

I personally reviewed this invoice dated _____ . All entries are in accordance with the Letter of Engagement or other agreements and instructions pursuant to which this invoice is submitted. I have ensured that the statement of services and the fees, costs and any other items on the invoice are correct and that the services and costs were incurred in compliance with all agreements between me and/or my firm and the General Counsel of the Oakland Unified School District.

Invoices or bills not containing all the information required above shall be returned unpaid with a request for resubmission in the proper form.

6. Important Billing and Payment Notes

- a. Bills for counsel fees and expenses must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or legal invoices should be emailed to:

Jacqueline.minor@ousd.k12.ca.us
Cindee.lajoure@ousd.k12.ca.us

- b. The District will not pay for amounts not reflected on bills or invoices.
- c. The District shall not reimburse for time spent for filing, file indexing, proofreading, typing, court filing and the like, unless approved in advance by the General Counsel. Unless approved in advance by the General Counsel, the District shall not pay for secretarial overtime or associated expenses, office supplies, local telephone calls and/or invoice preparation.
- d. The District will pay only the actual costs for reasonable expenses without any premiums or markups.
- e. The District shall reimburse Counsel for necessary photocopying and other expenses at cost, subject to the following limitation:
 - i. Copying expense - 10¢ per page

ii. Facsimile expense - 25¢ per page

f. The District shall be billed and shall pay for services computed by tenths of an hour. The District will not pay "flat rate" charges such as ".X" for all telephone calls under a set duration or "Y" for a review of documents (correspondence/emails/etc.).

g. General administrative matters, such as budget preparation and discussion of invoices from the firm to the District for services are not billable.

h. Counsel's hourly rates shall be approved by General Counsel. Rate issues or request for adjustments should be raised directly with the General Counsel.

i. Pursuant to Government Code section 6103, as a public entity, the District is exempt from paying court fees, including filing fees, and court reporter fees (except for the actual transcription fee of court testimony) ("court fees"). As a result, the District shall not reimburse any court fees since they do not need to be paid on the District's behalf.

j. If, at any time during the engagement, Counsel has any question regarding the meaning or implementation of the provisions of this policy, Counsel should immediately bring that issue to the attention of the General Counsel for resolution.

k. The General Counsel retains the right to audit all bills or files that are or have been the subject matter of any billing in the past. Such an audit will require Counsel to produce any and all documentation that would support the billing submitted by Counsel. Counsel will produce any individual who has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. Counsel acknowledges that the General Counsel may utilize its own personnel, an outside auditing service, or such other company or service as the General Counsel designates, to perform such audits.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

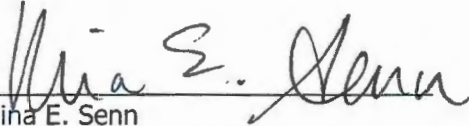
The District certifies to the best of its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation 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>)

[Signature Section on Next Page]

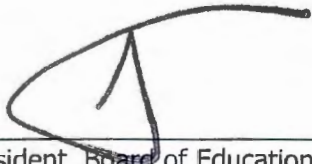
IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.



Jacqueline P. Minor
General Counsel, Oakland Unified School District

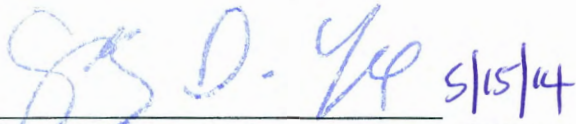


Nina E. Senn
Alternative Dispute Resolution and Law Offices of Nina Senn



President, Board of Education
Oakland Unified School District

5/15/14



Superintendent and Secretary, Board of Education
Oakland Unified School District

EXHIBIT A – CONFIDENTIALITY AGREEMENT

AGREEMENT REGARDING CONFIDENTIALITY OF STUDENT RECORDS

The Oakland Unified School District (the "District") is exploring with the Alternative Dispute Resolution Offices of Nina Senn ("Senn") the feasibility of establishing an ombudsman and alternative dispute resolution process within Programs for Exceptional Children to support neutral and independent advocacy for District families and PEC stakeholders. Prior to entering into an Agreement with Senn, the District desires to provide certain confidential student records to Senn to assist her in evaluating the proposal.

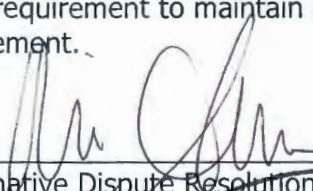
The purpose of this Agreement and is to ensure the confidentiality of student records provided to Senn.


Student record is defined as any item of information other than directory information, gathered within or outside the District that is directly related to an identifiable student and maintained by the District or required to be maintained by an employee in the performance of his/her duties.

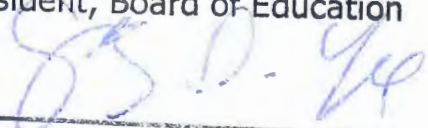
Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed, including name, address, telephone number, electronic mail address, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of athletic team members, dates of attendance, degrees and awards received, and most recent previous school attended.

Senn understands and agrees that student records are confidential and agrees to comply with all relevant state and federal laws, including but not limited to the Family Educational Rights and Privacy Act (FERPA), Article 1, Section 1 of the California Constitution, and California Education Code Section 49062 et seq., Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules, 45 C.F.R. Parts 160, 162 and 164; California Civil Code §§ 56 et seq.; California Welfare & Institutions Code §§ 5328 et seq. To the extent that FERPA applies, CONTRACTOR will comply with FERPA. To the extent that HIPAA applies, CONTRACTOR will comply with HIPAA.

This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

By: 
Alternative Dispute Resolution Offices of Nina Senn


David Kakishiba
President, Board of Education


Gary Yee, Ed.D.
Secretary, Board of Education

April 1, 2014