

Board Office Use: Legislative File Info.	
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Introduction Date	10/17/11
Enactment Number	11-2325
Enactment Date	10-26-11 <i>SL</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

AGREEMENT

Between

Oakland Unified School District

And

Maria Fellows for Professional Services

This Agreement, effective as of September 15, 2011, is by and between the Oakland Unified School District ("OUSD"), and **Maria Fellows**, a retired certificated employee of OUSD ("**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 credential 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 September 15, 2011 to June 30, 2012 and may be extended for an additional fiscal year (2012-13) by written agreement of both parties.
- 2.2 **Fees.** Consultant fees are payable as follows:
A per case fee of \$100.00. Consultant may hear up to three cases per day. (For example, in the event Consultant hears 3 cases on one day, Consultant's fee shall be \$300.00). 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:

OUSD Representative:

Name: Theresa Clincy
 Site /Dept.: Oakland Unified School District
 Address: 2111 International Blvd
Oakland, CA 94606
 Phone: (510) 434-7923
 Email: Theresa.Clincy@ousd.k12.ca.us

CONSULTANT:

Name: Maria Fellows
 Title: _____
 Address: 491 Stowe Ave, Apt. C
Oakland, CA 94606
 Phone: _____
 Email: Maria.Fellows@ousd.k12.ca.us

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
 2111 International Blvd.
 Oakland, CA 94606
 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

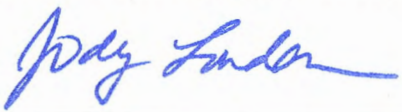
If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

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]

 10/22/11

President, Board of Education
Oakland Unified School District

 10/22/11

Secretary, Board of Education
Oakland Unified School District

Approved As to Form



Jacqueline Minor, General Counsel

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By: 