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**OAKLAND UNIFIED  
SCHOOL DISTRICT***Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Jacqueline P. Minor, Co-General Counsel

**Board Meeting Date** March 23, 2016

**Subject** **Adoption of Resolution No. 1516-0108 - Rescinding the Purchase Order dated June 11, 2014 with Houghton Mifflin Harcourt for the Purchase of Math Expressions Textbook K-5**

**Action Requested** Adoption of Resolution No. 1516-0108 - Rescinding the Purchase Order dated June 11, 2014 with Houghton Mifflin Harcourt for the Purchase of Math Expressions Textbook K-5

**Background and Discussion** California school districts under State law (California Education Code Section 41020) are required to undergo annual audits. As part of the annual audit, the Houghton Mifflin Harcourt ("HMH") purchase order dated June 11, 2014, was reviewed to determine compliance with State contracting laws and the laws requiring approval of expenditures by the District Board of Education. As a result of the review, the District determined that the HMH purchase order dated June 11, 2014: 1) exceeds the permissible contract term under State law and 2) was not ratified by the District Board of Education. Therefore, the Resolution terminates and rescinds any obligation the District may have under the purchase order with HMH dated June 14, 2016, with said termination effective July 1, 2016.

**Recommendation** **Adoption Of Resolution No. 1516-0108-- Rescinding the Purchase Order dated June 11, 2014 with Houghton Mifflin Harcourt for the Purchase of Math Expressions Textbook K-5**

**Fiscal Impact** Annual savings of \$549,839.60 for four years

**Attachment** **Resolution No. 1516-0108**

**RESOLUTION OF THE BOARD OF EDUCATION OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT  
RESOLUTION NO. 1516-0108**

**Rescinding the Purchase Order dated June 11, 2014 with Houghton Mifflin Harcourt for  
the Purchase of Math Expressions Textbook K-5**

**WHEREAS**, California school districts under State law (California Education Code Section 41020) are required to undergo annual audits;

**WHEREAS**, as a part of the Oakland Unified School District (the "District") annual audit, the Houghton Mifflin Harcourt ("HMH") purchase order dated June 11, 2014, was reviewed to determine compliance with State contracting laws and the laws requiring approval of expenditures by the District Board of Education;

**WHEREAS**, as a result of the review, the District determined that the HMH purchase order dated June 11, 2014: 1) exceeds the permissible contract term under State law and 2) was not ratified by the District Board of Education;

**WHEREAS**, the purchase order is void as against public policy because a school district cannot enter into a supplies contract for a term in excess of three (3) years. (California Education Code, Section 17596 provides that "[c]ontinuing contracts for work to be done...supplies to be furnished or sold to the district may be made with an accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to *exceed three years*. [Emphasis added]

**WHEREAS**, the person who 'executed' the purchase order on behalf of the District did not have actual or apparent authority to do so;

**WHEREAS**, as reflected in the minutes of the District Board of Education's June 11, 2014 meeting, the Board never authorized District staff to execute the purchase order until, the purchase order was approved as to form by the General Counsel and subsequently approved by the Board at its meeting on August 20, 2014;

**WHEREAS**, the purchase order not approved as to form by the District's General Counsel at the time of execution or otherwise, and the Board meeting occurred two months after the purchase order was executed;

**WHEREAS**, the purchase order describes a six year subscription, with an initial annual installment payment of \$450,000, and annual installments thereafter of \$549,839.60;

**WHEREAS**, where a contract is of indefinite duration, and a term is of indefinite duration because a six year term is void as noted above, it is terminable at will upon reasonable notice. *Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*(1968) 69 Cal. 2d 713.

**WHEREAS**, accordingly, the six year purchase order is a nullity. (*See, Dillingham v. Dahlgren* (1921) 52 Cal.App. 322, 330 [“[a]n agreement that parties will, in the future, make such contract as they may then agree upon amounts to nothing.”]; *See also, Paramount Petroleum Corporation v. Superior Court* (2014) 227 Cal.App.4th 226, 244 [“A contract may ... be rescinded if the consent of the rescinding party was given by mistake”]).

**NOW THEREFORE, BE IT RESOLVED THAT** the Board of Education of the District, without affirming, ratifying, or otherwise agreeing to the terms and conditions expressed in the purchase order hereby terminates and rescinds any obligation the District may have under the purchase order with HMH dated June 14, 2016, with said termination effective July 1, 2016.

**PASSED AND ADOPTED** by the Board of Education of the Oakland Unified School District this 23<sup>rd</sup> day of March, 2016, by the following vote, to wit:

AYES: Jumoke Hinton Hodge, Roseann Torres, Aimee Eng, Jody London, Vice President Nina Senn, President James Harris

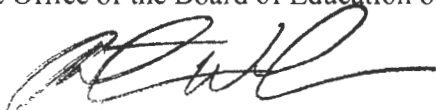
NOES: None

ABSTAINED: Shanthi Gonzales

ABSENT: None

#### **CERTIFICATION**

I hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 23<sup>rd</sup> day of March, 2016 with a copy of such Resolution being on file in the Office of the Board of Education of said district.



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Antwan Wilson, Superintendent and Board Secretary