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Introduction Date	6-22-2016
Enactment Number	16-1019
Enactment Date	06/22/2016 <i>PA</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students

Memo

To Board of Education

From Vernon Hal, Senior Business Officer

Board Meeting Date June 22, 2016

Subject **Resolution 1516-0229 - Authorizing Purchase Agreement - Houghton Mifflin Harcourt – Senior Business Officer**

Action Requested

Adoption by the Board of Education of Resolution No. 1516-0229 authorizing the Superintendent of Schools to execute on behalf of the District an agreement with Houghton Mifflin Harcourt for the purchase of textbooks for the period from July 1, 2016 to June 30, 2019 in an amount not to exceed \$1,575,000, with the District paying \$525,000 per year, provided said contract is ratified by the Board of Education at the first meeting in August 2016.

Background and Discussion

On March 23, 2016, the District's Board, without affirming, ratifying, or otherwise agreeing to the terms and conditions expressed in the Houghton Mifflin Harcourt ("HMH") purchase order dated June 11, 2014 with HMH, terminated and rescinded any obligation the District may have under that purchase order effective July 1, 2016 (Enactment # 16-0459). The purchase order was void as against public policy because a school district cannot enter into a supplies contract for a term in excess of three (3) years. Also, the person who "executed" the purchase order on behalf of the District did not have actual or apparent authority to do so. Further, the minutes of the District Board's June 11, 2014 meeting demonstrate that the Board never authorized District staff to execute the purchase order until it was approved as to form by the General Counsel and subsequently approved by the Board at its meeting on August 20, 2014, neither of which occurred. The 2014 purchase order describes a six year subscription, with an initial annual installment payment of \$450,000, and annual installments thereafter of \$549,839.60 on July 15 of each year from 2015 to 2019. However, by law if 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.

In order to provide textbooks for District students, the District is negotiating a new contract with HMH for the period from July 1, 2016 to June 30, 2019 in an amount not to exceed \$1,575,000, with the District paying \$525,000 per year. The Parties cannot complete the final contract before the end of

the fiscal year, and the District researched and confirmed that HMH is the best vendor to provide the necessary textbooks and related services that would satisfy the District's adopted Math Expressions curriculum. Finally, the proposed contract will save the District \$25,000 annually for the next three years as compared to the amounts stated under the void and rescinded 2014 purchase order, with an agreement by HMH to waive any claim for the \$549,839.60 due under the sixth year of the void and rescinded 2014 purchase order.

Recommendation

Adoption by the Board of Education of Resolution No. 1516-0229 authorizing the Superintendent of Schools to execute on behalf of the District an agreement with Houghton Mifflin Harcourt for the purchase of textbooks for the period from July 1, 2016 to June 30, 2019 in an amount not to exceed \$1,575,000, with the District paying \$525,000 per year, provided said contract is ratified by the Board of Education at the first meeting in August 2016.

Fiscal Impact

Not to exceed \$525,000 per year (\$1,575,000 total)

Attachments

- Resolution No. 1516-0229

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1516-0229**

**Authorizing the Superintendent of Schools to Purchase Houghton Mifflin Harcourt
Math Expressions Textbook for Grades K-5 Subject to Ratification by the Board of
Education at the August 10, 2016 Board Meeting**

WHEREAS, by Enactment # 16-0459 approved by the Board of Education on March 23, 2016, the Board of Education of the District, without affirming, ratifying, or otherwise agreeing to the terms and conditions expressed in the Houghton Mifflin Harcourt ("HMH") purchase order dated June 11, 2014 with HMH terminated and rescinded any obligation the District may have under said purchase order effective July 1, 2016;

WHEREAS, the purchase order was 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.

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, in order to provide textbooks for District students in line with the District's adopted curriculum, the District is negotiating a new contract with HMH for the period from July 1, 2016 to June 30, 2019 in an amount not to exceed \$1,575,000, with the District paying \$525,000 per year;

WHEREAS, the Parties cannot complete the final contract before the end of the fiscal year;

WHEREAS, the District researched and confirmed that HMH is the best vendor to provide the necessary textbooks and related services that would satisfy the District's adopted Math Expressions curriculum;

WHEREAS, the proposed contract will save the District \$25,000 annually for the next three years as compared to the amounts stated under the void and rescinded 2014 purchase order, with an agreement by HMH to waive any claim for the \$549,839.60 due under the sixth year of the void and rescinded 2014 purchase order;

NOW THEREFORE, BE IT RESOLVED THAT the Board of Education of the District authorizes the Superintendent of Schools to execute on behalf of the District an agreement with HMH for the purchase of textbooks for the period from July 1, 2016 to June 30, 2019 in an amount not to exceed \$1,575,000, with the District paying \$525,000 per year, provided said contract is ratified by the Board of Education at the first meeting in August 2016.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 22nd day of June, 2016, by the following vote, to wit:

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

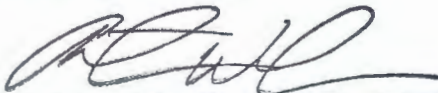
NOES: None

ABSTAINED: None

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 22nd day of June, 2016 with a copy of such Resolution being on file in the Office of the Board of Education of said district.



Antwan Wilson, Superintendent and Board Secretary

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