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Memo

To Board of Education

From Kyla Johnson Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Rebecca Littlejohn, Risk Management Officer

Date July 2, 2019

Subject Business Associate Agreement - Segal Consulting for Health
& Welfare Benefits Consulting – Risk Management

Action Requested and Recommendation

Approval by the Board of Education of the Business Associate Agreement between Oakland Unified School District and Segal Consulting Agreement. Services to be primarily provided to the Health Benefits Governance Board and Risk Management as describe in the Agreement, for the period 7/1/19 through 6/30/20, in an amount not to exceed \$201,000.

Summary

The District provides more than \$60 million per year worth of health and welfare benefits to its employees. Those benefits are provided through insurance contracts and self-insured programs that are administered by the Employee Benefits function of Human Resources and Risk Management.

As of October 28, 2015, with the approval of tentative agreement between the District and Signatory Unions creating the Health Benefits Governance Board (HBGB) (Enactment No. 15-1740), health and welfare benefit plans design and cost are agreed upon by the HBGB. The HBGB relies on information provided by the benefit consultant to make sound decisions on current programs, placement and annual renewal coverages. The current benefit consultant, Segal, was chosen through an RFP process and approved by District labor unions and District staff. It is the responsibility of the HBGB to oversee the Benefit Consultant and review Request for Proposals. As a result of Leadership changes, the Health Benefits Governance Board was unable to fully execute an RFP this fiscal year and plans on issuing the RFP in fiscal year 2019-20.



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Fiscal Impact

Fund 67 Not to exceed \$201,000

Attachments

Business Associate Agreement

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the date set forth below by and between The Segal Group, Inc., for itself and on behalf of its operating subsidiaries and affiliates, including Segal Consulting, ("Segal") and Oakland Unified School District ("Client").

WHEREAS Client is a group health plan or a plan sponsor of one or more group health plans, which group health plan(s) is a Covered Entity as such term is defined in 45 CFR §160.103. For purposes of this Agreement, the term Client refers to the group health plan(s) that is the Covered Entity;

WHEREAS Segal provides consulting services to Client in accordance with the underlying 2019-2020 Custom Professional Services Contract (the "Services Agreement"), and is a Business Associate, as such term is defined in 45 CFR §160.103, of the Client when it conducts such services (the "Services");

WHEREAS, to perform the Services, Segal needs to access, use, disclose and maintain Protected Health Information ("PHI"), as such term is defined below; and

WHEREAS access to, and use, disclosure and maintenance of, PHI, electronic transmission and storage of PHI, and security of PHI are regulated by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Segal and Client desire to exchange and treat PHI in compliance with HIPAA and HITECH under the Privacy, Security and Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (the "HIPAA Rules").

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Client and Segal hereby agree as follows:

I. Definitions

- A. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean The Segal Group, Inc.
- B. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Oakland Unified School District.
- C. All terms used and not otherwise defined herein shall have the same meaning as in the HIPAA Rules.

II. Permitted Uses and Disclosures by Segal

- A. Segal shall not use or disclose PHI other than as permitted or required by this Agreement and agrees to use and disclose the minimum necessary PHI required.
- B. In particular:

- i. Segal may use or disclose PHI as necessary to provide the Services set forth in the Services Agreement.
- ii. Segal may use or disclose PHI as Required by Law.
- iii. Segal may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Client, except for the specific uses and disclosures set forth herein at subsections iv, v and vi.
- iv. Segal may use PHI for its proper management and administration or to carry out its legal responsibilities.
- v. Segal may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required by Law, or Segal obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Segal of any instances of which it is aware in which the confidentiality of the information has been violated;
- vi. Segal may use and disclose PHI for purposes of data aggregation services relating to the health care operations of Client.
- vii. Segal may de-identify PHI in accordance with the requirements of 45 CFR §164.514(a)-(c), and may use or disclose the information that has been de-identified.

III. Obligations and Activities of Segal

- A. Segal shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Agreement
- B. Segal will report to Client any use or disclosure of PHI not provided for by the Agreement of which it becomes aware.
- C. Segal shall comply with the Security Rule with respect to electronic Protected Health Information ("ePHI") and shall report to Client any Security Incident of which it becomes aware. For purposes of reporting under this Section, the definition of Security Incident shall be limited to the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- D. Segal shall report to Client, as soon as practicable, but no later than 30 days after discovery, any Breach of Unsecured PHI as required at 45 CFR §164.410. Such notice shall include all available information required, including:
 - i. The identity of each Individual whose Unsecured PHI has been or is reasonably believed by Segal to have been accessed, acquired, used or disclosed during the Breach;

- ii. A brief description of what happened, including the date of the Breach and the date of discovery if known;
 - iii. A description of the type of Unsecured PHI involved in the Breach;
 - iv. The steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - v. A brief description of the steps Segal is taking to investigate, mitigate harm, and protect against further breaches; and
 - vi. Contact information for follow-up questions.
- E. If Segal uses subcontractors in the provision of the Services, Segal shall ensure that subcontractors who create, receive, maintain, or transmit PHI on its behalf agree to equivalent restrictions, conditions, and requirements as contained herein with respect to such information.
- F. Segal shall make available to Client PHI in a Designated Record Set as necessary to satisfy Client's obligations under 45 CFR §164.524.
- G. Segal shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Client pursuant to 45 CFR §164.526, or take other reasonable measures as necessary to satisfy Client's obligations under 45 CFR §164.526.
- H. Segal shall maintain and make available to Client the information required to provide an accounting of disclosures, as necessary to satisfy Client's obligations under 45 CFR §164.528.
- I. Segal shall only carry out Client's obligations under the Privacy Rule as mutually agreed to by the parties. In such instances, Segal shall comply with the Privacy Rule requirements that apply to Client in the performance of such obligations.
- J. Subject to any applicable legal privileges or confidentiality agreements, Segal shall, upon reasonable notice and during normal business hours, make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules by Segal and/or Client.

IV. Obligations and Activities of Client

- A. Client shall notify Segal of any limitation(s) in its notice of privacy practices under 45 CFR §164.520, to the extent that such limitation may affect Segal's use or disclosure of PHI.
- B. Client shall notify Segal of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Segal's use or disclosure of PHI.

- C. Client shall notify Segal of any restriction on the use or disclosure of PHI that it has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Segal's use or disclosure of PHI.
- D. Client shall not request Segal to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client, except to the extent that such use or disclosure is for the purposes set forth above in Section II.B. iv, v and vi.

V. Term and Termination

- A. The Term of this Agreement shall be effective as of July 1, 2019 to June 30, 2020 the date set forth below and shall run concurrently with the Services Agreement, unless this Agreement is terminated earlier due to the violation of a material term as provided for in Section B below.
- B. Either party may terminate this Agreement if the other violates a material term of the Agreement, provided that the non-breaching party provides the breaching party with no less than 30 days in which to cure such violation prior to termination becoming effective. However, if the non-breaching party reasonably and in good faith determines that the violation is not curable, it may terminate this Agreement immediately upon written notice to the breaching party.
- C. Upon termination of this Agreement, the Services Agreement also shall terminate to the extent that it requires Segal to access, use, disclose and/or maintain PHI in order to provide the Services.
- D. Upon termination of this Agreement for any reason, Segal, with respect to any PHI either received from Client, or created, maintained, or received by Segal on Client's behalf, shall:
 - i. Where feasible, return or destroy the PHI, which Segal still maintains in any form. Client understands that Segal's need to maintain portions of the PHI in records of actuarial determinations and for other archival purposes related to memorializing advice provided will render return or destruction infeasible.
 - ii. Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Segal retains the PHI; and
 - iii. Not use or disclose the PHI retained other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section II.B.iv and v of this Agreement which applied prior to termination.
- E. The parties' respective obligations under this Section V shall survive the termination of this Agreement.

VI. Miscellaneous

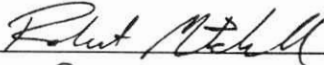
- A. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Any amendment shall be in a writing duly executed by both parties.
- C. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. In the event of any inconsistency or conflict between this Agreement, and the Services Agreement or any other written agreement between the parties, the terms, provisions and conditions of this Agreement shall control and govern.
- D. Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person, including any participant or beneficiary of Client.
- E. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or Portable Document Format (PDF) copies thereof shall be deemed to be originals.
- F. Informal Resolution. If any controversy, dispute, or claim arises between the parties with respect to this Agreement, the parties shall make good faith efforts to resolve such matters informally.
- G. Notices. All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be sent certified mail, return receipt requested, postage prepaid or by courier service. If to Client, the notice shall be sent to the address set forth below Client's signature or such other address as Client notifies Segal of in writing. If to Segal, the notice shall be sent to the Privacy Official, c/o General Counsel, The Segal Group, 333 West 34th Street, New York, New York 10001.



[Execution Page Follows]

INTENDING TO BE LEGALLY BOUND, the parties have duly executed this Agreement.

THE SEGAL GROUP, INC.

OAKLAND UNIFIED SCHOOL
DISTRICT

By: 
Name: Robert Mitchell
Title: Vice President
Date: 5/13/2019

By: 
Name: Aimee Eng, President, Board of Education
Title: 
Date: Kyla Johnson Trammell, Secretary, Board of Education

Address: 1000 Broadway, Suite 680
Oakland, CA 94607

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Segal Standard BAA
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OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM AND SUBSTANCE

By: 
Michael L. Smith, Attorney at Law

6/21/19