



LEGAL SERVICES AGREEMENT
(Business & Professions Code § 6148)

"Contract Term": July 1, 2018 – June 30, 2020

This Legal Services Agreement ("**Agreement**") is entered into between the following parties (separately referred to as "**Party**" and collectively as "**Parties**"):

Central Unified School District ("**District**")
Attn: Kelly Porterfield, Interim Superintendent
5652 W. Gettysburg
Fresno, CA 93722
Phone: 559-274-4700
Email: kporterfield@centralusd.k12.ca.us

Fresno County Superintendent of Schools ("**FCSS**")
Attn: Maiya Yang, General Counsel
1111 Van Ness Avenue
Fresno, CA 93721
Phone: (559) 265-3003
Email: myang@FCSS.org

ARTICLE 1 SCOPE OF LEGAL SERVICES.

- 1.1 LEGAL SERVICES AND MATTERS INCLUDED IN LEGAL SERVICES TO DISTRICT. FCSS hereby agrees that the Legal Services Department within the Fresno County Office of Education ("**FCSS Legal Services**") will render, during the Contract Term and when requested by District and accepted by FCSS Legal Services, legal services to District that may include the following:
- 1.1.1 Governance, including but not limited to, Brown Act, conflicts of interest, incompatible offices, board roles and functions, conduct of meetings; responding to uniform complaints, preparation and updating of board policies and regulations.
 - 1.1.2 Labor negotiations involving District's certificated and classified employees.
 - 1.1.3 Employment, including but not limited to, hiring and background check and clearance; certificated and classified discipline and dismissals; superintendent and other employment contracts; layoffs; harassment, discrimination and/or retaliation investigations and complaints; disability interactive process and accommodation; retirement and hiring of retirees under state public retirement systems; leaves; and employee use of social media.
 - 1.1.4 Real property transactions, including but not limited to: requirements and processes for declaring surplus property; contract negotiation and preparation for the purchase, sale, lease, or joint use of real property and facilities; developer fees; and compliance with California Environmental Quality Act.
 - 1.1.5 Public works and construction, including but not limited to: bidding requirements and processes; award of construction contracts, bid protests, handling of stop payment notice claims; prevailing wage violations complaints and assessments; and selection and contracting with architects, inspectors, and consultants.
 - 1.1.6 Procurement of goods and services, including but not limited to: competitive bidding and selection requirements and processes; bid protests; and contract preparation and review, except as to transactions and contracts between District and any FCSS Entities.
 - 1.2.7 Students, only in the areas of civil and constitutional rights, technology and social media use, bullying and cyberbullying. FCSS Legal Services will not represent District in appeals of student expulsions and inter-district transfer permit denials that are submitted to the Fresno County Board of Education.
 - 1.1.8 Elections, vacancies, and appointments of trustees to District's governing board; and taking office and oath.
 - 1.1.9 Auxiliary organizations, including but not limited to, formation of foundations, joint powers authorities, and dependent charter schools.
 - 1.1.10 Government Code claims, including but not limit to, advising and assisting with handling and response to Government Code claims, tendering of claims and litigation to self-insurance or insurance, corresponding and coordinating with self-insurance or insurance regarding defense and claims.

- 1.1.11 Records, including but not limited to, requirements and process for records classification and retention; student records; personnel records; and requesting and responding to requests under the Public Records Act, subpoena, or court orders.

FCSS Legal Services reserves the right to decline to provide legal services and representation to District where, in FCSS Legal Services' sole opinion, a matter requires resources that are beyond its capacity, involve any subject matter that is not within its competency, and/or will likely result in or proceed to litigation. Except for the Excluded Areas stated below, FCSS Legal Services will render legal services and representation to District only through the administrative hearing level and will not render legal services and represent District in litigation. Only attorneys within FCSS Legal Services are able to provide legal services and representation to District under this Agreement, and the attorney-client privileged relationship formed by this Agreement is only between District and FCSS Legal Services employees.

- 1.2 **MATTERS EXCLUDED FROM LEGAL SERVICES TO DISTRICT.** FCSS Legal Services hereby informs District that the attorneys and staff of FCSS Legal Services are employees of FCSS. FCSS Legal Services also hereby informs District that FCSS Legal Services renders, from time to time legal services to and representation, of the following entities: FCSS, Fresno County Board of Education, Foundation@FCSS, Fresno County Committee on School District Organization (collectively referred to as "**FCOE Entities**") in the preparation and handling of contracts and contract-related transactions and/or matters, including contracts between District and FCSS for goods and services; and handling of proceedings and matters that are within their respective jurisdiction and authority ("**Excluded Areas**"). As to the Excluded Areas, FCSS Legal Services will not render legal services or represent District except with the written consent of District in a matter where no actual conflict exists between one or more FCSS Entities and District. District agrees and hereby provides its informed consent that FCSS Legal Services may render legal services to and representation of the FCSS Entities in the Excluded Areas where District is a party and/or has or may have any interest therein, and District agrees not to assert or seek to disqualify FCSS Legal Services from representing the FCSS Entities in the Excluded Areas.
- 1.3 **FCSS NON-ACCESS TO LEGAL SERVICES RECORDS.** Except as required by applicable laws or a valid court order, FCSS agrees that he shall have no right to inspect or have access to any information or records relating to legal services that FCSS Legal Services provides to District under this Agreement and that all privileges, protections, and laws that apply to the attorney-client relationship shall apply as between FCSS Legal Services and District, and the attorney work-product doctrine shall apply with respect to any attorney work-product prepared by FCSS Legal Services in connection with legal work performed on behalf of District.
- 1.4 **DISTRICT CLIENT FILES.** If District does not request return of District's file upon the conclusion of District's matter, FCSS Legal Services shall retain the file for five years, after which FCSS Legal Services may have District's file destroyed. If District desires to have its file maintained beyond the five years, District must make separate arrangements with FCSS Legal Services.

ARTICLE 2 HOURLY RATE, COSTS, AND PAYMENT. District will be billed for the actual time that legal services are rendered by FCSS Legal Services' attorneys and for reasonable travel time at \$150.00 per hour, to be billed in one-tenth of an hour increments, plus mileage at the rate allowed by applicable IRS rates, reasonable costs of lodging and meals incurred for any overnight stay necessary for FCSS Legal Services to render legal services to District, and exceptional costs, such as private investigator fees, process service fees, forensic data retrieval fees. FCSS Legal Services shall notify District of the need and anticipated cost of such exceptional costs and District shall agree to such costs before FCSS Legal Services incurs such costs on behalf of District, unless legal services are rendered or costs are incurred in an emergency to avoid prejudice to District. Time charged will include the time FCSS Legal Services' attorneys spend on telephone calls relating to the District's legal matters, including calls with District's staff. District agrees to pay FCSS Legal Services for legal services provided during the previous quarter (3-month period) within 30 days of the date on which District receives FCSS Legal Services' invoice.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT. This Agreement is effective for the Contract Term stated on page 1, must be affirmatively renewed for any additional terms, each of which shall be no more than two years in duration, unless the Parties enter into an additional agreement for legal services or a Party provides written notice to the other Party to terminate this Agreement, such notice to be provided at least 10 days before the effective termination date. During the Contract Term, District may terminate this Agreement by giving FCSS Legal Services written notice at least 10 days before the date on which termination of this Agreement is effective. Upon termination of this Agreement, District shall pay FCSS Legal Services for legal services, including costs and expenses that FCSS Legal Services rendered or incurred before the effective date of termination. Unless specifically agreed by FCSS Legal Services and District, FCSS Legal Services will provide no further services and will advance no further costs on District's behalf after receipt of District's notice of termination, unless FCSS Legal Services is required by ethical or legal reasons to continue representing District. FCSS Legal Services may withdraw at any time from representing

District as permitted under the Rules of Professional Conduct of the State Bar of California ("**Rules**"). The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: (a) District consents to withdrawal; (b) District's conduct renders it unreasonably difficult for FCSS Legal Services to carry out the employment effectively; or (c) District fails to pay attorneys' fees or costs as required by this Agreement.

ARTICLE 4 INDEPENDENT CONTRACTOR; NON-EXCLUSIVE-RELATIONSHIP, SEVERABILITY. FCSS Legal Services is an independent contractor and is not an employee, partner or agent of District, and therefore, FCSS Legal Services shall not be subject to District's conflict of interest code. This Agreement does not create an exclusive relationship between the Parties for legal services, and District retains the right to engage other legal counsel of its choosing at any time and FCSS Legal Services retains the right to provide legal services to other clients. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement.

ARTICLE 5 DISPUTE RESOLUTION. The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement. Disputes regarding legal fees arising under this Agreement shall be submitted initially to mediation pursuant to California Business & Professions Code §6200 et seq., and if the dispute is not resolved thereby, then to non-binding arbitration, pursuant to California Business & Professions Code §6200 et seq. Disputes submitted to such non-binding arbitration will follow such rules regarding motions, discovery, admissibility of evidence and appeals as have been promulgated by the board of trustees of the State Bar of California for such purposes.

ARTICLE 6 WARRANTIES AND REPRESENTATIONS.

- 6.1 This Agreement contains the entire and exclusive agreement of the Parties under Code of Civil Procedure section 1856. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the Parties. If there is uncertainty regarding language in this Agreement, Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws. The Parties may execute this Agreement and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.
- 6.2 District agrees that it has had a reasonable opportunity to consult with an independent lawyer regarding this Agreement, whether or not it has actually chosen to do so. District acknowledges it has duties of veracity, candor, cooperation and timely payment of its legal bills to FCSS Legal Services. District acknowledges it has received no guarantees of result or estimates of costs from FCSS Legal Services as inducements to enter into this Agreement.
- 6.3 Each Party shall give any notices, demands and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on page 1, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail *and* transmitted by email. A Party may change its contact person and/or contact information stated on page 1 by notifying the other Party of the particular change and the effective date thereof in accordance with this Section 6.3. The provisions of this Section 6.3 shall survive the termination of this Agreement.

Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement.

DISTRICT

FCSS

By: _____
Print Name: Kelly Porterfield
Title: Interim Superintendent

By: _____
Jim A. Yovino, Superintendent
or Authorized Designee

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LEGAL SERVICES

Office of Fresno County Superintendent of Schools

FCSS Legal Services provides quality and cost-effective legal services to the Fresno County Superintendent of Schools and school districts in Fresno County. We proactively address and handle legal matters so that FCSS and school districts may focus their attention and resources on the important task of educating students. We pride ourselves in providing legal services that meet the needs of our clients and support the K-12 public educational system in Fresno County. The legal team consists of five seasoned attorneys and two dedicated support staff. Together, we provide legal services in a diversity of areas.

BUSINESS AND FACILITIES

Public works projects, real estate and facilities, bidding and procurement of goods and services, and contracts

GOVERNANCE

Brown Act, Public Records Act, conflict of interest, and board policies and other governance documents

LABOR AND EMPLOYMENT

Employee discipline and dismissal, leave rights, staff reductions, unlawful discrimination, harassment, retaliation, collective bargaining, grievances, unfair practice charges, and matters affecting public school employment

STUDENT

Student matters, including maintenance and confidentiality of student records and information, student search and seizure issues, residency issues, safety issues, First Amendment issues, and student discipline



MAIYA YANG is General Counsel and leads the Legal Services Department. She joined FCSS Legal Services in 2010. Maiya has over 19 years of experience representing and advising school districts and other public and private agencies. Her practice and expertise include general education laws; transactions and litigations involving public works projects, real estate and facilities, bidding and procurement of goods and services, and contracts; charter schools; and school district reorganization. Maiya has presented at state, regional, and local conferences on a variety of topics. Prior to joining FCSS Legal Services, she was in private practice focused on insurance coverage and bad faith law, and represented school districts and other public agencies in transactions and litigation. She received her J.D. and M.A. from the University of California, Berkeley, and holds a B.A. from the University of California, Davis. She joined the State Bar in 1998.



Christopher Lozano joined FCSS Legal Services in 2013. Chris represents and advises school districts on a variety of matters, including certificated dismissals, third party lawsuits, Public Records Act, contract negotiation and preparation, and board policies. Chris has provided training on Section 504 of the Rehabilitation Act of 1973. Prior to joining FCSS Legal Services, Chris was in private practice for over 15 years with the law firm of McCormick Barstow as a member of its Insurance Coverage and Bad Faith Practice Group and served from 1994 to 1998 as a lieutenant in the U.S. Navy's Judge Advocate General's Corps. Chris received his J.D. from California Western School of Law and holds a B.A. from The Johns Hopkins University. He joined the State Bar in 1995.

Jason C. Parkin joined FCSS Legal Services in 2009. Jason advises and assists school districts in all aspects of school labor and employment matters, including classified and certificated disciplinary actions, leave issues, claims of harassment, discrimination, and retaliation, workplace investigations, classified and certificated layoffs, PERB cases, and collective bargaining. Jason has conducted many workshops for school districts on education law topics, including school personnel and student issues. Prior to joining FCSS Legal Services, Jason's practice focused on employment litigation, and labor and employment law. Jason received his J.D. from the University of the Pacific, McGeorge School of Law in 2000 and holds a B.A. degree from Brigham Young University. He joined the State Bar in 2000.



Robert V. Piacente joined FCSS Legal Services in 2006. He has over 27 years of education law experience. His practice and expertise includes general education law with a focus on personnel issues. Rob has worked extensively with school districts regarding all employment matters, including PERB cases, grievance proceedings, harassment investigations, discrimination claims, classified and certificated disciplinary actions, and staff reductions. He has thorough, in-depth knowledge regarding California Education Code and all other legal requirements affecting public school employment. Rob received his J.D. from San Joaquin College of Law in 1992 and holds a B.A. degree from California State University, Fresno. He joined the State Bar in 1992.

Benjamin C. Rosenbaum joined FCSS Legal Services in 2016, and he has represented and advised school districts and county superintendents regarding education law matters since 2012. His practice and expertise include student issues, business and facilities matters, labor and employment, general governance, and school district organization. Benjamin has a particular focus on both technology and civil rights issues related to education, including 1:1 computing initiatives, and discipline for cyber misconduct. He received his J.D. from the University of California, Davis, in 2008, and holds a B.A. from Fresno Pacific University. He joined the State Bar in 2009.

