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Board Cover Memorandum

To Board of Education

From Gary Yee, Board President
Kyla Johnson-Trammell, Superintendent
Tara Gard, Chief of Talent

Meeting Date June 22, 2022

Subject Employment Agreement - Joshua R. Daniels - Chief Governance Officer

Action Requested Approval by the Board of Education of a Employment Agreement with Joshua R. Daniels to serve as Chief Governance Officer for the term July 1, 2022 through June 30, 2025, with a base salary of \$207,723.72 per year plus additional pay of \$10,800, District paid benefits of \$45,728.04 and other fringe benefits of \$35,734.47 for 2022-23, some of which increase annually.

Background On August 14, 2019, the District entered into an Employment Agreement with Mr. Daniels to serve as General Counsel of the District. That Agreement commenced on August 15, 2019.

On September 22, 2022, the Board approved the amendment of the employment agreement creating a title change to Chief Governance Officer. This amendment encompassed both the work of a General Counsel and the Chief Governance Officer. This Agreement, as amended, ends on June 30, 2022.

Discussion Reporting to both the Board of Education and the Superintendent and as the primary legal advisor and legal representative of the District. Mr. Daniels has met the performance requirements under his current contract with positive evaluations and feedback. The Board and Superintendent thereby seek to renew the Employment Agreement with Mr. Daniels. The Employment Agreement will extend Mr. Daniels' term as Chief Governance Officer from July 1, 2022 through June 30, 2025.

Fiscal Impact Funding Resource: General Purpose – base salary of \$207,723.72, plus total district paid benefit costs of \$81,462.51.

State law requires the Board to report a summary of the salaries or compensation paid in the form of fringe benefits of a local agency executive. For 2022-23, Joshua Daniels would receive \$10,800 in additional pay (eligible stipends), \$45,728.04 in District-Paid Benefits (including health, vision, and dental insurance; long term disability insurance; life insurance; membership in professional associations), and \$35,734.47 in fringe benefits (annual longevity payment and Supplemental Retirement Plan payment). Most of these costs increase each year.

Recommendation Approval by the Board of Education of a Employment Agreement with Joshua R. Daniels to serve as Chief Governance Officer for the term July 1, 2022 through June 30, 2025, with a base salary of \$207,723.72 per year plus additional pay of \$10,800, District paid benefits of \$45,728.04 and other fringe benefits of \$35,734.47 for 2022-23, some of which increase annually.

Attachments Employment Agreement.

EMPLOYMENT AGREEMENT
Joshua R. Daniels, Chief Governance Officer

In consideration of the mutual promises made herein, the Oakland Unified School District, (“OUSD”) a local public entity pursuant to Government Code § 811.2 and by the California Education and Government Codes (hereinafter “District”), and Joshua Daniels, an individual (hereinafter “Employee”), enter into this Employment Agreement (“Agreement”) and agree as follows:

Article 1 Acceptance of Employment and Term

1.1 District hereby employs Employee as Chief Governance Officer and Employee hereby accepts employment with the District as Chief Governance Officer on the terms and conditions stated herein. In approving and adopting this Agreement, the Governing Board (“Board”) hereby resolves and designates the position of Chief Governance Officer as senior management of the classified service pursuant to Education Code § 45100.5. In entering into this Agreement, Employee hereby acknowledges and agrees that, as the Chief Governance Officer, Employee is a member of the senior management of the classified service and that no other employment classification is applicable to Employee’s employment with the District. The Board and Superintendent may explore a revision to the position title following one year of satisfactory performance. A possible revision to the position title would not impact the salary terms of the agreement.

1.2 The term of this employment agreement is July 1, 2022 through June 30, 2025 (“Term”), unless extended in writing by mutual agreement of District and Employee or terminated sooner at the discretion of District. The Parties will determine prior to July 1, 2024, whether to mutually agree to extend this agreement through June 30, 2026.

1.3 District and Employee agree that Employee shall act as the chief legal advisor (hereinafter “Chief Governance Officer”) for District and agree that all information exchanged is attorney-client privileged or confidential business information and that all services provided hereunder are legal services to the maximum extent permitted by law.

Article 2 Duties and Obligations of Employee

2.1 As the Chief Governance Officer, Employee shall plan, organize, manage, budget for, direct, staff and control the legal work of the District; report to the Board and the Superintendent, on the legal matters of the District; oversee and supervise District offices and departments, as assigned; and shall serve as a member of the Superintendent’s senior leadership team and cabinet.

2.2 The Chief Governance Officer reports to the Board of Education and the Superintendent. The primary responsibilities of the Chief Governance Officer include: serving as the strategic liaison between the Board and senior leadership of the District; leading the District’s efforts regarding strategic governance, legal and regulatory compliance, record management, and public/government relations; serving as both the primary advisor to the Board and Superintendent on governance matters; serving as the primary legal advisor/representative (i.e., General Counsel) of the District; protecting and preserving the legal, ethical, and financial stability of the District.

Specific Duties include:

Governance

- Manages and maintains the governance framework.
- Manages and leads policies and positions on issues related to Board accountability and anticipates response from regulators, the media, and general public.
- Assists in the formulation and development of Board policies and procedures.
- Advises the Board and the Superintendent of unusual trends or problems and recommends appropriate corrective action.
- Support the District's five year strategic plan to ensure that every student graduates from high school as a caring, competent, critical thinker, ready for college and career and advises on major policy initiatives.
- Interacts with the Board, executive leaders, and risk management functions as well as external stakeholders, regulators, and government officials.
- Applies strategic thinking to provide input and critical analysis of new and changing policies
- Collaborates with other leaders to conduct business impact analyses for both new and updated regulations
- Assures the integrity of the Board's process by ensuring that the behaves consistently with its own rules and those legitimately imposed upon it from outside the district
- Advising decisions that fall within topics covered by Board policies, with the exception of performance or employment related to the Superintendent
- Represents, as directed, the Board or Superintendent to outside parties related to Board-stated positions and in stating decisions and/or interpretations within delegated areas

Legal/General Counsel

- Advises the Board of Education and the Superintendent in open and closed session, regular and special meetings on all legal matters.
- Advises the Board of Education, the Superintendent, school sites and departments on legal requirements, and the development of and compliance with Board policies and administrative regulations.
- Ensure all District employees and partners comply with laws, regulations, policies and the District's strategic plan.
- Advises the District on public records laws, open government laws, election laws, including parcel taxes and bonds, and conflict of interest laws and requirements.
- Drafting of legislative proposals presented by the District to the California legislature.
- Draft and review legal documents including rules, regulations, and resolutions.

Management and Leadership

- Plan, organize and implement long and short-term programs and activities of the Legal Division.
- Select, train and evaluate the performance of assigned staff.
- Provide for continuing departmental staff training regarding legal issues, process and procedures.
- Direct the preparation and maintenance of a variety of narrative and statistical reports, records and files related to assigned activities and personnel.
- Develop and prepare the annual preliminary budget for the legal division; analyze and review budgetary and financial data; control and authorize expenditures in accordance with established limitations.

Labor and Employment

- Advises the District on public employees' legal rights and duties.
- Oversees Labor Relations and other departments around issues relating to collective bargaining rights.
- Advises on employee discipline and misconduct.
- Represents the District in employee discipline and termination proceedings.
- Represents the District in Labor and Employment law matters before state and federal courts.
- Investigates and responds to complaints filed with the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment and Housing (DFEH) and other agencies.

Litigation/Claims

- Investigates and resolves Government Tort Claims.
- Defends the District in litigation against the District.

Business Operations

- Drafts, negotiates, and/or reviews contracts and memoranda of understanding (MOU's).
- Advises staff on matters related to procurement, contracts, and legal agreements.
- Prepares and coordinates Request for Proposals, Request for Qualifications, and other contract outreach.
- Supports fiscal services audits, waivers and compliance.
- Supports the District's Facilities and Buildings and Grounds programs and services, including the Bond program modernization programs, local business program and Project Labor Agreement.

Special Education

- Handles state and federal special education and Section 504 compliance issues.
- Represents the District at special education mediations and due process hearings.
- Represents the District in special education litigation.

General Student Matters

- Investigates and responds to regulatory inquiries from the Office of Civil Rights (OCR) and the California Department of Education (CDE).
- Facilitates child custody conflicts and abuse reporting responsibilities at school sites.
- Responds to student records requests.
- Advises school sites and student discipline office in suspension, expulsion, and transfer of students.
- Advises on constitutional issues related to student's civil rights, including free speech, searches, non-discrimination and other related issues.

Charter Schools

- Supports compliance with Proposition 39 and charter schools facilities requests.
- Reviews charters for legal compliance.

2.3 Employee shall adhere to and comply with all laws, statutes, regulations, policies and administrative bulletins that presently or prospectively govern District and the conduct of its employees.

2.4 Throughout the term of this Agreement and any extensions thereof, Employee shall remain in good standing with the State Bar of California and maintain as current Employee's license to practice law in the State of California.

2.5 District and Employee agree that any intellectual property created by Employee related to or concerning the legal work of the District is owned jointly. Employee shall grant to District the right to share equally in any royalties received by Employee arising out of any intellectual property created by Employee related to or concerning the legal work of the District.

2.6 District may use Employee's name during the term of employment as necessary or convenient without additional compensation to Employee.

2.7 Employee warrants and represents that Employee has the ability and authority to enter into this Agreement, that there are no restrictions or limitations on entering into this Agreement, and that entering into this Agreement will not violate any agreement(s) Employee has with any third parties.

Article 3 Obligations of District

3.1 District agrees to defend, indemnify and hold Employee harmless against any claims, demands, actions, lawsuits, losses or damages of any kind or nature arising out of or related to the course and scope of Employee's discharge of Employee's duties as the Chief Governance Officer. District shall continuously maintain throughout the term of employment adequate insurance for such purpose.

3.2 District agrees Employee shall have final authority over the selection of personnel and allocation of resources within the Office of the General Counsel, provided that authority is exercised in accordance with the laws, statutes, regulations, policies, and administrative bulletins that presently or prospectively govern District and the conduct of its employees.

3.3 Except for matters related to the Chief Governance Officer's employment contract or employment status, the District agrees Employee shall have the sole authority to retain, supervise, and discharge outside legal counsel for the District, and to implement such policies and procedures for the retention of outside counsel that are in the best interests of the District. The Board and Superintendent reserve the right to retain outside counsel as necessary or appropriate on matters related to the Chief Governance Officer's employment contract or employment status.

3.4 District agrees to provide to the Office of the General Counsel sufficient resources to adequately represent and defend the District in legal proceedings.

3.5 District shall provide Employee with the office, equipment, material and resources reasonably necessary to fulfill the duties, responsibilities and obligations of Chief Governance Officer.

3.6 District shall pay Employee's annual dues to the State Bar of California as well as membership in the Alameda County Bar Association and the California Council of School Attorneys.

Article 4 Compensation

4.1 The salary of Employee shall be fixed at \$207,723.72 per year, payable on the same schedule as other non-represented senior management employees, or at such other times as the District may provide for the payment of employee salaries. Employee's salary shall be moved to the next step on the salary schedule upon two years of satisfactory (or better) evaluations. Employee shall also be entitled to salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible.

4.2 District shall have the right and obligation to deduct or withhold from compensation due Employee those sums required for applicable federal, state and local income taxes and Social Security taxes.

4.3 District shall fund its (the employer's) portion of CalPERS retirement based upon the salary herein.

4.4 District shall provide a longevity payment to Employee of \$10,000.00 in the third year of this agreement. This one-time payment shall be made no later than August 15, 2024.

4.5 District shall provide an additional stipend to Employee for assuming additional responsibilities that arise with interactions with the public and staff. The District shall provide a stipend of \$3,330.00 per year, by August 15 in the first two years of the employment agreement. The District shall provide a stipend of \$3,340.00 by August 15, 2024.

Article 5 Vacation, Sick and Personal Leave

5.1 Employee shall be entitled to twenty (20) annual vacation days with pay. Employee is encouraged to take all vacation days during the year in which such days are earned. At District's option, Employee may be reimbursed annually at Employee's daily rate of pay for any unused days, not to exceed twenty (20) days per year. Employee shall not accrue more than twenty (20) vacation days annually. Any cap or limit on total accrued vacation days found in any collective bargaining agreement between the District and one of its collective bargaining units that applies to all members of the collective bargaining unit shall apply to Employee.

5.2 Employee shall be entitled to accrue paid sick leave at the rate of 1.0 days per month, up to a maximum of 12 days per year. If Employee does not utilize the total amount of accrued sick leave authorized during any year, Employee may carry over the unused sick leave to sick leave in the subsequent year.

5.3 Employee is entitled to accrue annual paid personal leave at the rate of five (5) days per year. If Employee does not utilize the total amount of accrued personal leave authorized during any year, such leave may be carried over to unused sick leave in the subsequent year.

5.4 Employee shall be entitled to a recess of no more than ten (10) work days in July of each year of this contract during the Governing Board's recess. Employee will schedule this recess each year based upon the needs of the District and with the approval of the Superintendent. Employee agrees that the annual recess is not vacation, does not accrue beyond July of any given year, and cannot be cashed out. Employee also agrees that the length of recess might be limited based upon exigent circumstances and District needs.

Article 6 Employee Health Benefits and Expense Reimbursement

6.1 District agrees to pay directly to Employee's existing or future health, dental and vision providers the insurance premiums associated with Employee, and Employee's qualified dependents under Internal Revenue Code § 152. The cost of any increase in insurance premiums in 2020-21 or 2021-22 as compared with 2019-20 shall be borne by Employee. The Employee's responsibility for the cost of any increase in insurance premiums shall not necessarily continue as part of any future employment contract between District and Employee. District further agrees to maintain during the term of employment long-term disability insurance for Employee.

6.2 District shall pay the reasonable expenses of Employee to attend appropriate professional and official meetings at the local, state and national level, subject to constraints of the budget of the Office of the General Counsel.

6.3 District shall reimburse Employee, pursuant to the policies and practices of District, the necessary costs and expenses incurred by Employee in performing the duties of, including but not limited to gas, travel, materials, supplies and related expenditures, all of which is properly documented by receipts.

Article 7 Termination of Employment

7.1 District and Employee agree Employee shall serve at the pleasure and will of the Superintendent and the Governing Board. This means that any employment decision (e.g., termination) must be made jointly by the Superintendent and the Governing Board.

7.2 This employment contract may be terminated by:

- (a) Termination Without Cause. Either party may terminate this agreement for no reason upon thirty (30) days written notice given as provided below. In the event the Agreement is terminated by the District for without cause under this paragraph, the District shall pay the Employee a severance amount equal to the monthly salary of Employee multiplied by the number of months left of the unexpired term of the Agreement. However, if the unexpired term of the Agreement is greater than three (3) months, the maximum severance amount shall be an amount equal to the monthly salary of the employee multiplied by three (3). Subject to Government Code section 53260, regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that the Employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, not to exceed three (3) months.

In consideration for said payment, if the severance is accepted by the Employee, the Employee shall have waived all past and present claims against the District, District employees and District Board Members that arise in whole or in part during the Employee's employment or severance from employment, including a waiver of all rights and protections under California Civil Code section 1542. Employee as a condition of said payment shall sign an acknowledgement via a Waiver and Release that Employee has agreed to receive the severance amount in exchange for the aforementioned waivers and release of claims. Any payment made under this section shall be made no later than thirty (30) days after the day Employee executes the aforementioned acknowledgement. These waivers and releases include, but are not limited to, the following:

1. *I expressly waive the provisions of Section 1542 of the Civil Code of the State of*

California, and I understand that said Section provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

2. *I agree not to institute or cause to be instituted any action in state or federal court, or before any local, state, or federal governmental entity, relating to or arising out of my employment with the District or separation from District employment, including claims based on the Age Discrimination in Employment Act of 1967.*
3. *I agree not to institute or cause to be instituted any action in state or federal court, or before any local, state, or federal governmental entity, that arises out of or reasonably relates in any manner to my employment with the District or separation of employment with the District including, without limitation, contract or tort claims, claims based on the Fair Employment and Housing Act, Government Code § 12940 et seq., California Labor Code § 132a, 42 U.S.C. § 2000(e) et seq., 29 U.S.C. § 621 et seq., the California Civil Code, the California Government Code, 42 USC Section 1983, Title IX, the Unruh Act, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (except as excluded by law), the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., the False Claims Act, 31 U.S.C. § 3729 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., COBRA, the California Family Rights Act, the Educational Employment Relations Act of 1976, Cal. Govt Code § 3540 et. seq., the Genetic Information Act.*
4. *I understand the following information, which is required by the Older Workers Benefit Protection Act (“OWBPA”), if legally applicable to me:*
 - (a) *I have been advised to consult an attorney regarding this Waiver and Release of Claims (“Waiver and Release”) and the terms contained in this Waiver and Release before deciding whether or not to sign it;*
 - (b) *I have 21 days from the date this Waiver and Release is presented to me to consider this Waiver and Release and to decide whether to sign it, although I may, in the exercise of my own discretion, sign or reject it at any time before the 21-day period expires, thus waiving the remainder of the 21-day consideration period;*
 - (c) *At any time within 7 days after signing this Waiver and Release, I may revoke the waiver and release of Age Discrimination in Employment Act (“ADEA”) claims.*
 - (d) *The waiver and release of ADEA claims is not effective or enforceable until the 7-day revocation period has passed. If during the 7-day revocation period I choose to revoke the waiver and release of claims under this*

Section 4 of this release, the revocation must be in writing and delivered prior to the expiration of the 7-day period to: Oakland Unified School District, Office of the General Counsel, 1000 Broadway, Suite 300, Oakland, CA 94607.

5. *I understand that a revocation of the waiver and release of ADEA claims, if legally applicable to me, will release the District from any obligation to provide me with the severance consideration described herein.*
6. *This acknowledgement of waiver and release may be signed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Faxed, electronic and/or email signatures shall be acceptable signatures for purposes of binding the parties to the terms of the Waiver and Release.*
7. *I understand the contents of this release and sign the same voluntarily and without duress.*

- (b) Retirement of Employee.
- (c) Death or Disability of Employee. For purposes of this Agreement, “disability” means Employee’s inability, by reason of physical or mental infirmity or both, to perform the duties contemplated under this Agreement with or without reasonable accommodation for a period of 120 consecutive days or 150 workdays in the aggregate in a consecutive twelve (12) month period. “Disability” shall be determined by a licensed physician acceptable to District and Employee. The physician’s fee shall be paid by District. Any termination for disability shall not prejudice any rights under any disability policies benefiting Employee.
- (d) Failure to Maintain License. The failure to maintain the license to practice law in the State of California for more than 30 days, or suspension or termination by the State Bar of California or the California Supreme Court of the ability to practice law in the State of California shall result in immediate termination of this Agreement.
- (e) Discharge for Cause. For purposes of this Agreement, “cause” shall mean Employee’s (a) conviction (or a *nolo contendere* plea) to any felony or misdemeanor; (b) dishonesty in performing Employee’s duties under this Agreement; (c) repeated and willful misconduct under this Agreement; or (d) willful neglect of Employee’s duties under this Agreement.

Prior to final determination by the Board of Education of cause for termination, Employee must have been given thirty (30) calendar days written notice of such possible action, and of the grounds therefore, and a reasonable opportunity to be heard by the Board of Education in the way of explanation or defense.

In the event that such termination is determined by the Superintendent (or later adjudicated) to be “without cause,” the sole remedy shall be to make Employee whole in salary and benefits pursuant to 7.2.a above.

7.3 Pursuant to Education Code § 35031, Employee shall be provided written notice at least forty-five

(45) days in advance of the expiration of Employee’s term if Employee is not to be reemployed.

Employee Initials acknowledging termination clauses:____

Article 8 Evaluation

8.1 The Board and the Superintendent shall evaluate Employee not less than annually upon a schedule to be determined. The evaluation and assessment shall be reasonably related to the position description and to the goals and objectives of the District for the year in question.

8.2 In the event that the Superintendent and Board of Education determine that the performance of the Employee is unsatisfactory in any respect, the District shall describe in writing and in reasonable detail specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board of Education deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the Employee. Employee shall have the right to make a written response to the evaluation, to be placed in the personnel file along with the evaluation.

Article 9 General Provisions

9.1 All notices required to be given under this Agreement shall be delivered via hand delivery, by first class mail or via email as follows:

To District:	To Employee:
Kyla Johnson-Trammell Superintendent Oakland Unified School District 1000 Broadway, Suite 440 Oakland, CA 94607 Kyla.Johnson@ousd.org	Joshua R. Daniels Oakland Unified School District 1000 Broadway, Suite 440 Oakland, CA 94607 Josh.Daniels@ousd.org
Gary Yee Board President Board of Education Oakland Unified School District 1000 Broadway, Suite 440 Oakland, CA 94607 Gary.Yee@ousd.org	

9.2 Additional written amendments may be added to the Agreement by mutual consent of the Employee and the Board of Education and the Superintendent at any time during the period of this Agreement.

9.3 Any controversy between the District and Employee involving the construction or application of any of the terms, provisions, or conditions of this Agreement shall, on the written request of either party served on the other, be submitted to binding arbitration. Arbitration shall comply with and be governed by the provisions of the California Arbitration Act. District and Employee shall agree on the selection of one person to hear and determine the dispute. If the parties are unable to agree on a single arbitrator to hear the dispute, they shall obtain a list of arbitrators from the American

Arbitration Association and select the arbitrator by alternative strike method. The arbitration shall be governed by the California Arbitration Act, Code of Civil Procedure § 1280 *et seq.*

- 9.4 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th. "Day" or "days" as used in this Agreement means calendar days unless stated otherwise.
- 9.5 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 9.6 This Agreement constitutes the entire agreement between District and Employee concerning the subject matter of this Agreement. Any prior agreements or understandings between District and Employee concerning the same subject matter not contained within this Agreement are null and void.
- 9.7 This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education, and to the lawful rules and regulations of the Board.
- 9.8 If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under Federal or State law, the remainder of the Agreement not affected by such a ruling shall remain in force.
- 9.9 This Agreement may be modified or extended only in writing and must be signed by District and Employee.
- 9.10 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

EMPLOYEE

Name: Joshua R. Daniels Signature: 
Position: Chief Governance Officer Date: 6/16/2022

OUSD

Name: _____ Signature: _____
Position: _____ Date: _____
 Board President
 Superintendent
 Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: _____
Position: Secretary, Board of Education Date: _____

Approved as to form by _____