



## **SAUSALITO MARIN CITY SCHOOL DISTRICT**

Board of Trustees: Ida Green - President, Debra Turner - Vice President, Bonnie Hough - Clerk, Joshua Barrow, Caroline Van Alst  
Interim Superintendent: Terena Mares

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**Sausalito Marin City School District  
Agenda for the Special Meeting of the Board of Trustees  
Bayside Martin Luther King Jr. Academy  
200 Phillips Drive, Marin City, CA 94965**

**Monday, March 25, 2019**

6:00 p.m. Open Session – Bayside Martin Luther King Jr. Academy Library

**1. OPEN SESSION – Call to Order**

**2. PLEDGE OF ALLEGIANCE**

**3. ORAL COMMUNICATIONS**

Because the Board has a responsibility to conduct district business in an orderly and efficient way, the following procedures shall regulate public presentations to the Board. The Board is asking that members of the public wishing to speak, fill out a form located on the counter/table, stating their name and address; the agenda item; and the topic to be discussed. BB 9323.

The Governing Board is prohibited from taking any action on any item raised in this section unless the item is specifically agenzied. members of the Governing Board may ask a question for clarification, provide a reference to staff or other resources for factual information, request staff to report back at a subsequent meeting on any matter or take action directing staff to place a matter of business on a future agenda. Governing Board members may make brief announcements or briefly report on his/her own activities as they related to school business.

State open meeting laws allow members of the public to lodge public criticism of District policies, procedures, programs, or services. However, those same laws include specific provisions designed to protect the liberty and reputational interests of public employees by providing for the non-public hearing of complaints or charges against employees of the District. Under these laws, it is the employee subject to complaints or charges who is provided the right to choose whether those complaints or charges will be heard in open or closed session. It is therefore the desire of the Sausalito Marin City School District that complaints against an employee be put in writing, and that when the Board hears complaints or charges against an employee it do so in closed session unless the employee requests an open session. Consistent with the law and the opinion of the State Attorney General's Office, please submit any complaints against an employee in writing, to the administration, in accordance with the district's complaint procedure. This procedure is designed to allow the District to address complaints against employees while at the same time respecting their legitimate privacy rights and expectations.

**4. ACTION ITEM**

**4.01** Consider Approval of the Contract with Dannis, Woliver & Kelley

**4.02** Consider Approval of the Proposed Ratification of the Waiver of Actual or Perceived Conflict of Interest by the Lozano Smith Law Firm Regarding the Willow Creek Academy Litigation Matter

**5. CLOSED SESSION – AGENDA**

**5.01 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - (Government Code 54956.9)**  
Case # OAH2018101191

**5.02 COLLECTIVE BARGAINING SESSION – California School Employees Association - (Government Code 3549.1[a])**

**5.03 CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION - (Government Code 54956.9(b))**  
Significant exposure to litigation – One Case

**5.04 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code 54956.9)**  
Willow Creek Academy v. Sausalito Marin City School District; Mary Jane Burke (Case No. CIV 1900855)

**6. RECONVENE TO OPEN SESSION**

**7. REPORT OUT OF CLOSED SESSION**

**8. ADJOURNMENT**

Entire board packet on [www.smcsd.org/School Board/Meeting Agendas and Minutes](http://www.smcsd.org/School Board/Meeting Agendas and Minutes)

Sausalito Marin City School District

Agenda Item: 4.01

Date: March 25, 2019

- |  |   |
|--|---|
| <input type="checkbox"/> Correspondence                  | <input type="checkbox"/> Consent Agenda |
| <input type="checkbox"/> Reports                         |   |
| <input checked="" type="checkbox"/> General Functions    |   |
| <input type="checkbox"/> Pupil Services                  |   |
| <input type="checkbox"/> Facilities                      |   |
| <input type="checkbox"/> Personnel Services              |   |
| <input type="checkbox"/> Financial & Business Procedures |   |
| <input type="checkbox"/> Curriculum and Instruction      |   |
| <input type="checkbox"/> Policy Development              |   |
| <input type="checkbox"/> Public Hearings                 |   |

Item Requires Board Action: ☒ Item is for Information Only: ☐

**Item:** Contract with Legal Counsel Dannis, Woliver & Kelley

**Background:** On February 5, 2019, Willow Creek Academy filed suit against the District. As an Injunctive Relief claim against the District, the legal defense for the claim is covered by the District's excess insurance carrier, Northern California Regional Liability Excess Fund (NCR).

As such, the District has requested and received coverage for special counsel, with specific expertise in charter school law. Sue Ann Salmon Evans of Dannis Woliver & Kelley (DWK) has over two decades of experience in representing districts on charter school issues. On March 18, 2019, NCR approved Ms. Evans to represent the district as special defense counsel in the Willow Creek Academy complaint against the district.

NCR's approval is subject to NCR's approved legal defense panel rates, which are capped at \$225 per hour for a partner level attorney, which Ms. Evans is. Ms. Evan's rates through DWK are \$335. This means the district will be responsible for the difference of \$110 per hour.

**Fiscal Impact:** Depending upon the length of the litigation of the claim against the District. Estimated at approximately \$10,000 through the end of the fiscal year.

**Recommendation:** Approval



Northern  
California ReLiEF

## Northern California Regional Liability Excess Fund

2355 Crenshaw Blvd, Suite 200, Torrance, CA 90501  
(310) 212-3344, Fax (310) 212-0300

March 18, 2019

Terena Mares, Interim Superintendent  
Sausalito Marin City School District  
200 Phillips Drive  
Marin City, CA 94965

**President:**  
Kimberly Dennis  
Alameda County  
Schools Insurance  
Group

**Vice President:**  
Brent Swanson  
Tulare County  
Schools Self  
Insurance Authority

**Secretary:**  
Larry Teixeira  
Organization of Self-  
Insured Schools

**Treasurer:**  
Annette Heldman  
New Haven Unified  
School District

RE: Willow Creek Academy v. Marin County Office of Education  
Keenan File No.: 567548

Dear Ms. Mares:

This letter is to confirm that your request to have Sue Ann Salmon-Evans from Dannis, Wolliver & Kelly act as special defense counsel in the above captioned matter was approved by the Northern California ReLiEF (NCR) Claims & Coverage Committee. This approval is subject to NCR's approved panel rates which are as follows:

Partners \$225  
Sr. Associates: \$215  
Associates: \$200  
Paralegals: \$110yho-piamonte@keenan.com

Please be advised that this case is subject to NCR's Injunctive Relief legal defense only sub-limit of \$100,000 with no deductible. If, for some reason, the defense costs of this matter exceed the Injunctive Relief legal defense sub-limit, the Sausalito Marin City School District would be responsible for those defense costs.

We have assigned this matter to Yvonne Ho-Piamonte, Senior Claims Examiner. She can be reached at 510-986-6761 x8133 or email at [yho-piamonte@keenan.com](mailto:yho-piamonte@keenan.com). Please forward this information over to Ms. Salmon-Evans and we ask that she contact Ms. Ho-Piamonte to exchange contact information and discuss legal strategy.

I greatly appreciate your patience through this process and hope that this matter comes to a successful resolution. In the meantime, please do not hesitate to contact me with any further questions.

Sincerely,

Ron Martin  
JPA Manager

Cc: Bryan Boyle, Keenan  
Casey Kimball, Keenan  
Kyle McKibbin, Keenan



## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into on March 13, 2019, by and between the Sausalito Marin City School District, hereinafter referred to as District, and Dannis Woliver Kelley, a professional corporation, hereinafter referred to as Attorney.

In consideration of the promises and the mutual agreements hereinafter contained, District and Attorney agree as follows:

**SCOPE OF SERVICES.** District appoints Attorney to represent, advise, and counsel it from March 13, 2019, through and including June 30, 2020, and continuing thereafter as approved. Any services performed during the period between the above commencement date and the date of Board action approving this Agreement are hereby ratified by said Board approval. Attorney agrees to prepare periodic reviews of relevant court decisions, legislation, and other legal issues. Attorney agrees to keep current and in force at all times a policy covering incidents of legal malpractice.

**CLIENT DUTIES.** District shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, perform the obligations it has agreed to perform under this Agreement and pay Attorney bills in a timely manner.

**FEES AND BILLING PRACTICES.** Except as hereinafter provided, District agrees to pay Attorney two hundred twenty-five dollars (\$225) to three hundred thirty-five dollars (\$335) per hour for shareholders, special counsel and of counsel; one hundred eighty-five dollars (\$185) to two hundred thirty-five dollars (\$235) per hour for associates; and one hundred thirty dollars (\$130) to one hundred fifty dollars (\$150) per hour for paralegals and law clerks. The rate for Gregory J. Dannis will be three hundred sixty-five dollars (\$365) per hour. Rates for individual attorneys may vary within the above ranges depending on the level of experience and qualifications and the nature of the legal services provided. Substantive communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of one-tenth (.1) of an hour, except for the first such advice in any business day, which is charged in a minimum of three-tenths (.3) of an hour. In the course of travel it may be necessary for Attorney to work for and bill other clients while in transit. If, during the course of representation of District, an insurance or other entity assumes responsibility for payment of all or partial fees of Attorney on a particular case or matter, District shall remain responsible for the difference between fees paid by the other entity and Attorney's hourly rates as specified in this Agreement unless otherwise agreed by the parties.

Agreements for legal fees at other than the hourly rate set forth above may be made by mutual agreement for special projects or particular scopes of work.

**OTHER CHARGES.** District further agrees to reimburse Attorney for actual and necessary expenses and costs with respect to providing the above services, including support services such as copying costs, express postage, and facsimile transmittals. District agrees that such actual and necessary expenses may vary according to special circumstances necessitated by request of District or emergency conditions which occasionally arise.

District further agrees to pay third parties, directly or indirectly through Attorney, for major costs and expenses including, but not limited to, costs of serving pleadings, filing fees and other charges assessed by courts and other public agencies, arbitrators' fees, court reporters' fees, jury fees, witness fees, investigation expenses, consultants' fees, and expert witness fees. Upon mutual consent of District and Attorney, District may either advance or reimburse Attorney for such costs and expenses.

Occasionally Attorney may provide District officials and/or employees with food or meals at Attorney-sponsored trainings or when working with District officials and/or employees. Attorney may provide such food or meals without additional charge in exchange for the consideration provided by the District under this Agreement.

**BILLING STATEMENT.** Attorney shall send District a statement for fees and costs incurred every calendar month. Attorney's statements shall clearly state the basis thereof, including the amount, rate and basis for calculations or other methods of determination of Attorney's fees. District shall pay Attorney's statements within thirty (30) days after each statement's date. Upon District office's request for additional statement information, Attorney shall provide a bill to District no later than ten (10) days following the request. District is entitled to make subsequent requests for bills at intervals of no less than thirty (30) days following the initial request.

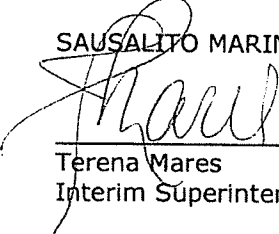
**INDEPENDENT CONTRACTOR.** It is expressly understood and agreed to by both parties that Attorney, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the District.

**CONFLICT OF INTEREST.** Because Attorney represents many school and community college districts, county offices of education, joint powers authorities, SELPAs and other educational entities, conflicts of interest may arise in the course of Attorney's representation. If Attorney becomes aware of any potential or actual conflicts of interest, Attorney will inform the District of the conflict and comply with the legal and ethical requirements to fulfill its duties of loyalty and confidentiality to District. If District has any question about whether Attorney has a conflict of interest in its representation of District in any matter, it may contact Attorney or other legal counsel for clarification.

**TERMINATION OF CONTRACT.** District or Attorney may terminate this Agreement by giving thirty (30) days written notice of termination to the other party.


IN WITNESS WHEREOF, the parties hereto have signed this Agreement for Professional Services.

SAUSALITO MARIN CITY SCHOOL DISTRICT

  
\_\_\_\_\_  
Terena Mares  
Interim Superintendent

3/14/19  
\_\_\_\_\_  
Date

DANNIS WOLIVER KELLEY

  
\_\_\_\_\_  
Sue Ann Salmon Evans  
Attorney at Law

3/14/2019  
\_\_\_\_\_  
Date

At its public meeting of \_\_\_\_\_, 2019, the Board approved this Agreement and authorized the Board President, Superintendent or Designee to execute this Agreement.



Edward J. Sklar  
*Attorney at Law*

E-mail: [esklar@lozanosmith.com](mailto:esklar@lozanosmith.com)

March 22, 2019

By Email and U.S. Mail: [tmares@smcsd.org](mailto:tmares@smcsd.org)

Terena Mares, Interim Superintendent  
Sausalito Marin City School District  
200 Phillips Drive  
Sausalito Marin City, CA 94965

Re: Potential Conflict of Interest and Informed Consent Waiver

Dear Ms. Mares:

As you know, the Sausalito Marin City School District (District) is a client of Lozano Smith. The District used our services in the past with respect to a variety of legal matters, including for counsel regarding charter schools matters from 2011 through 2013. In that time, I provided counsel to the District regarding its relationship with Willow Creek Academy and a proposed supplemental funding agreement between the District and the charter school.

Our firm also serves as legal counsel to the Marin County Office of Education (COE) and the Marin County Superintendent of Schools (County Superintendent). This letter discloses to the District that the Marin County Superintendent of Schools has asked this firm to represent her in the litigation initiated in Marin County Superior Court by the Willow Creek Academy (Willow Creek Litigation). As you are aware, the District is a co-defendant in that litigation.

Under the California State Bar's Rules of Professional Conduct regarding conflicts of interest, where two clients are directly adverse to each other, my firm will need to obtain informed written consent before we continue to represent the COE and County Superintendent in the Willow Creek Litigation. (Rule 1.7.) While the District and County Superintendent are not directly adverse to each other at this time, there is at least a potential that the two parties become directly adverse to each other during the course of litigation. Therefore, Lozano Smith is taking a conservative approach and seeks informed consent to continue to represent the Marin County Superintendent in the Willow Creek Litigation.

In disclosing the potential for conflicting interests between the District and the County Superintendent, we seek your written consent to our continued representation of:

- 1) The County Superintendent in the aforementioned litigation; and,
- 2) The District in other, unrelated matters.

*Limited Liability Partnership*

2001 North Main Street, Suite 500 Walnut Creek, California 94596 Tel 925-953-1620 Fax 925-953-1625

Terena Mares, Interim Superintendent  
Sausalito Marin City School District  
March 22, 2019  
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By signing the informed consent waiver, below, the District's informed consent is provided if an actual conflict arose between the District and the COE / County Superintendent.

As attorneys, we are governed by specific rules relating to our representation of clients when actual or potential conflicts of interest exist. An attorney has an undivided duty of loyalty to each client, and without a client's informed consent, the attorney may violate that duty by assuming a position adverse or antagonistic to the client. This is governed by 1.7 of the Rules of Professional Conduct in regard to the representation of current clients. A copy of Rule 1.7 is enclosed for your information.

If our continued representation of the District in unrelated matters, and the County Superintendent in the Willow Creek litigation, is acceptable, we request your informed consent by signing and returning this letter to us. (Please keep a signed copy of the letter for your records.) We encourage you to seek independent counsel regarding this consent, if you so desire, and we emphasize that you remain completely free to seek independent counsel at any time, even if you decide to sign the consent set forth below.

Should you have any questions concerning this letter or the consent, please do not hesitate to contact us.

Sincerely,

LOZANO SMITH



Edward J. Sklar

EJS/mag

Enclosures: Agreement and Consent  
Rule of Professional Conduct 1.7



### AGREEMENT AND CONSENT

The undersigned hereby acknowledges having carefully reviewed the above letter from Lozano Smith, dated March 19, 2019, and further acknowledges that the Sausalito Marin City School District has been given the opportunity to obtain the advice of independent counsel in this matter. Consequently, with full knowledge of Rule 1.7 of the Rules of Professional Conduct of the State Bar of California, the undersigned, on behalf of the Sausalito Marin City School District hereby agrees to Lozano Smith's representation of the Sausalito Marin City School District in matters unrelated to the Willow Creek Litigation described above, and the County Superintendent and COE in the Willow Creek Litigation, notwithstanding the above-described potential conflict of interest.

SAUSALITO MARIN CITY SCHOOL DISTRICT

By: \_\_\_\_\_  
Terena Mares, Interim Superintendent

Dated: \_\_\_\_\_



## Rule 1.7 Conflict of Interest: Current Clients

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyer knows or reasonably should know that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm, or has an intimate personal relationship with the lawyer.

(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal. (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*