

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into effective as of July 1, 2018 (the "Effective Date"), by and between **EAU CLAIRE PUBLIC SCHOOLS**, a Michigan school district ("Employer"), and **ANN MARIE SHELL** ("Superintendent").

RECITALS:

- A. Employer desires to engage Employee to render such services relating to Employer as this Agreement may impose on Superintendent or as Employer's governing bodies or officers may direct Superintendent to perform from time-to-time (collectively, the "Services"), on the terms and conditions set forth in this Agreement.
- B. Superintendent desires to accept employment with Employer and to perform the Services for and on behalf of The Board on the terms and conditions set forth in this Agreement.
- C. **THEREFORE**, for and in consideration of the foregoing Recitals, the mutual covenants, agreements and undertakings set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Employer and Superintendent agree as follows:

1. Scope of Employment.

- (a) *Engagement.* Employer hereby employs Superintendent to perform the Services. Superintendent hereby accepts such employment and agrees to perform such Services, during the Term (defined in Section 1(b) below), on the terms and conditions set forth in this Agreement.
- (b) *Term.* The term of this Agreement and of The Board's employment of Superintendent under this Agreement (the "Term") shall commence on the Effective Date and shall continue for three (3) years unless earlier terminated in accordance with Section 3 below.
- (c) *Time.* The Superintendent shall perform her duties under this Agreement on a full-time and exclusive basis. The Superintendent shall make herself available to perform the Services at Employer's office location or such other locations as Employer may require, at such times as Employer deems necessary, proper, convenient or desirable (including, without limitation, during the regular business week, on weekends, at nights and on holidays).
- (d) *Standard of Performance.* Superintendent shall perform the Services and shall fulfill her duties and obligations under this Agreement faithfully, diligently, to the best of her ability and in accordance with such rules, regulations and requirements as Employer may establish from time-to-time. Superintendent shall devote her professional energy and skills toward the performance of her duties and obligations under this Agreement.
- (e) *Status.* Superintendent acknowledges that she shall perform the Services as an Employee of Eau Claire Public Schools and not as an independent contractor.

- 2. Compensation; Benefits; Expenses.** During the Term, and provided this Agreement has not been terminated pursuant to Section 3 below:
- (a) **Compensation.** For all Services to be rendered by Superintendent under this Agreement, Employer shall compensate Superintendent as follows:
- (i) **Base Salary.** Employer shall pay Superintendent a base salary (the "Base Salary") at the annual rate of: One Hundred Twelve Thousand Dollars (\$112,000) for the first year of the Term; One Hundred Fifteen Thousand Dollars (\$115,000) for the second year of the Term; and One Hundred Eighteen Thousand Dollars (\$118,000) for the third year of the Term. Superintendent is expected to work not less than forty (40) hours per week, but as long as necessary to accomplish all work required, except for those weeks containing holidays, vacation or sickness. The Base Salary shall be payable in arrears and not less frequently than bi-monthly.
- (b) **Benefits.**
- (i) **Participation in Benefit Plans; Health Insurance.** Superintendent shall be entitled to participate in, and to receive the benefits afforded by, such employee welfare benefit plans (collectively, "Employee Benefit Plans") as Employer makes available to its full-time employees from time-to-time, or as Employer otherwise makes available to Employee in its sole discretion, on the terms and subject to the conditions at any time set forth in such Employee Benefit Plans. Employer shall pay the premiums for Superintendent's medical, dental and vision insurance coverage. Employer shall also provide term life insurance for Superintendent in an amount equal to three (3) times the Superintendent's Base Salary.
- (ii) **Modification.** Notwithstanding the foregoing, Employer shall be entitled, from time to time, to modify or eliminate, in whole or in part, any Employee Benefit Plan.
- (c) **Business Related Expenses.** Superintendent shall be reimbursed for all reasonable expenses incurred and paid by Superintendent in connection with the performance of the Services, including, but not limited to, travel, meals and lodging; provided, however, that such expenses comply with Board's policies and procedures. Superintendent must submit an itemized account of such expenses, together with such documentation of such expenses.
- (d) **Vacation.** The Superintendent is employed on the basis of fifty-two (52) weeks of work per contract year (July 1 - June 30), as scheduled by the Board. The Superintendent shall be granted vacation time of twenty (20) days per contract year, in addition to the holidays recognized by the School District and identified in (e) below.
- (i) The Superintendent shall schedule use of vacation days in a manner to minimize interference with the School District's business and orderly operation. The Superintendent shall not schedule her vacation during a time at which her presence and leadership are critical to the District as determined by the Board President.
- (ii) Vacation days should be used within the Contract year for which they are made available and shall not accumulate. No compensation will be paid to the Superintendent for any unused vacation days upon her separation from employment with the District.

- (e) *Holidays.* Superintendent is entitled to the following ten (10) holidays for which no Services are required: New Year's Eve Day, New Year's Day, Memorial Day, Independence Day, Friday before Labor Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve Day, and Christmas.
- (f) *Personal Leave Days.* The Superintendent shall be granted personal leave to twelve (12) days of personal leave per Contract year. Unused paid leave days shall accumulate to a maximum of ninety (90) days. Such personal leave may be used for absence due to personal/family illness or personal matters. Superintendent shall use her best efforts to use personal leave days in a manner to minimize interference with Employer's business and orderly operation.
- (g) *Disability Leave.* In the event that Superintendent is mentally or physically incapacitated and cannot perform the Services, Superintendent shall be granted ninety (90) days of disability leave to recover from such mental or physical incapacitation provided that Superintendent furnish medical certification to Employer setting forth the necessity for the disability leave. Employer has the option to obtain a second opinion from a medical professional at its sole expense. Upon the expiration of the initial ninety (90) period, Superintendent may be granted an additional ninety (90) days of disability leave provided that Superintendent furnishes a medical certification that Superintendent will be able to perform the Services at the end of such ninety (90) day period.
- (h) *Equipment.* The Board shall provide equipment such as a laptop computer, tablet computer, mobile phone, as well as software, for Superintendent's use in her employment. All such equipment and software shall remain the property of the School District and unless specified in writing by the Board.
- (i) *Professional Dues.* The School District shall pay the Superintendent's association dues for membership in the American Association of School Administrators (AASA), the Michigan Association of School Administrators (MASA), and the MASA region in which the School District is located. Subject to prior approval by the Board President, the School District will pay the Superintendent's costs of memberships in other appropriate professional organizations.
- (j) *Professional Development and Continuing Education.* The School District shall reimburse Superintendent for fees, tuition, travel expenses and other expenses for attendance of meetings at local and state levels. The School District Employer may reimburse Superintendent for attendance at other approved state or national development activities or continuing education. Superintendent's time away from Employer's principal place of business shall be reasonable, as determined by Employer.

3. Termination.

- (a) The Board is entitled to terminate the Superintendent's employment at any time during the term of this Contract when it determines that the Superintendent has engaged in any act of moral turpitude, misconduct, dishonesty, fraud, insubordination, incompetency, inefficiency, or if the Superintendent materially breaches the terms and conditions of this Contract, or for any other reason that is not arbitrary or capricious.

- (b) The foregoing standard for termination of this Contract during its term do not apply to nonrenewal of this Contract at the expiration of its term, which decision is discretionary with the Board and shall be governed by Section 1229 of the Revised School Code, MCL 380.1229.
- (c) If the Board undertakes to dismiss the Superintendent during the term of this Contract, she shall be entitled to written notice of charges and an opportunity for a hearing before the Board. The Superintendent may be accompanied by legal counsel at the hearing, and the cost of such counsel shall be paid by the Superintendent.
- (d) If the Board terminates the Superintendent's employment during the term of this Contract, this Contract shall automatically terminate and the Board shall have no further contractual obligation to the Superintendent.

4. Arbitration.

- (a) If a dispute relating to the Superintendent's termination arises during the term of this Contract, the parties agree to submit such dispute to binding arbitration. Selection of the arbitrator and the arbitration proceedings shall be conducted under the National Rules for the Resolution of Employment Disputes of, and administered by, the American Arbitration Association, and shall comply with the Michigan Uniform Arbitration Act, MCL 691.1681 et seq.
- (b) The parties intend that this process of dispute resolution shall include all contract and statutory claims advanced by the Superintendent arising from his termination during the term of this Contract, including (but not limited to) claims of unlawful discrimination and all claims for damages or other relief. However, this agreement to arbitrate does not restrict the Superintendent from filing a claim or charge with any state or federal agency (such as the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights), and does not apply to any claims for unemployment compensation or workers' compensation which may be brought by the Superintendent. Instead, this agreement to arbitrate claims applies to those matters which would otherwise be subject to state or federal court proceedings.
- (c) This agreement to arbitrate means that the Superintendent is waiving her right to adjudicate discrimination claims in a judicial forum and is instead opting to arbitrate those claims. In any such arbitration proceeding, the Superintendent has the right to representation by counsel of her choice and at her expense, the right to appointment of a neutral arbitrator, the right to reasonable discovery, and the right to a fair hearing. However, the Superintendent, through this agreement to arbitrate such claims, does not waive any statutory rights or remedies in the context of such arbitration proceedings.
- (d) The arbitrator's fee and the costs imposed by, *a mutually agreed upon Arbitrator*, shall be shared equally by the Board and the Superintendent, subject to the Superintendent's right to seek to tax such fees as costs against the Board.
- (e) Any claim for arbitration under this provision must be filed with *a mutually agreed upon Arbitrator* in writing, and served on the Board within one hundred eighty (180) days of the effective date of the Superintendent's termination during the term of this Contract. The arbitrator's decision and award shall be final and binding on the parties. Judgment thereon may be entered in the Berrien County Circuit Court pursuant to MCL 691.1681.

- (f) *Limitations.* The Superintendent agrees that any claim or suit for breach of this Contract or otherwise arising out of her employment with the Board must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or suit. The Superintendent understands that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, but agrees to be bound by this contractual six (6) month limitations period and waives any statute of limitations to the contrary. Should a court of competent jurisdiction determine that this provision allows an unreasonably short period of time to commence a lawsuit, it is the parties' intent that the court will enforce this provision to the extent possible and declare the lawsuit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced.
- (g) *Nonrenewal.* The Board's decision to discontinue or non-renew the Superintendent's employment for any subsequent period in any capacity (other than as a classroom teacher as may be required by the Michigan Teachers' Tenure Act), shall not be deemed a breach of this Contract or a discharge or demotion pursuant to the Michigan Teachers' Tenure Act.
5. *Errors and Omissions Insurance.* The Board shall pay the premiums for errors and omissions insurance coverage for Superintendent's performance of the Services. Such insurance shall be with limits customary for school administrators and with a nationally-recognized underwriter.
6. *Performance Evaluation.* The Superintendent's job performance shall be evaluated by the Board annually, but no later than the last day of December of each year during the term of this contract, the Board of Education shall review with the Administrator her performance as Superintendent as required by MCL 380.1249 and MCL 380.1249b. using an evaluation instrument with multiple rating categories, one that takes into account data on student growth as a significant factor and established performance goals, and one that is mutually agreeable and in compliance with the above mentioned laws. Upon completion of the formal evaluation, the Board of Education shall consider a one-year renewal of the contract and take formal action on that consideration by no later than 30 days following the completion of the evaluation.
7. *Medical Examination.* The Superintendent shall submit to such medical examinations (including drug or alcohol tests, as well as psychological or psychiatric evaluation), supply such information, and execute such documents as may be reasonably required by any underwriter, policyholder, or third-party administrator providing insurance programs under this Agreement, or as may be reasonably directed by The Board to determine Superintendent's ability to perform the Services. Prior to the Effective Date, Superintendent shall provide the Board with a physician's verification of her physical ability to perform the Services. Any medical examinations given under this Section shall be at The Board's sole expense, and any medical personnel conducting such examinations shall be prior approved in writing by Employer. All results of medical examinations shall be strictly confidential. The Board agrees that it shall not use, publish, disseminate, distribute or otherwise disclose any part of any medical examination of Superintendent except with the prior written consent of Superintendent or as may be required by law or as ordered by a court of competent jurisdiction.

8. **Tenure. Pursuant to the Teachers' Tenure Act.** Superintendent agrees that she shall not be deemed to have been granted tenure in the position of Superintendent or in any other administrative position on behalf of the School District. Superintendent may be granted tenure as a classroom teacher, should the probationary period required for such tenure be fulfilled under this Agreement. If the Board terminates this Agreement in accordance with Section 3 above, such termination shall not be deemed a demotion pursuant to the Michigan Teachers' Tenure Act.
9. **Indemnification.** The Board agrees to indemnify, defend and hold harmless Superintendent, and her successors and assigns (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, costs or expenses which any of the Indemnified Parties may suffer or for which any of the Indemnified Parties may become liable and which are based on, result from, arise out of or are otherwise related to (i) Employer's breach of any provision of, or misrepresentation in connection with, this Agreement; (ii) any claim, demand, suit, action or legal, administrative or other proceeding by any person or any federal, state or local department, agency or other governmental body (each, a "Third Party Claim") against any of the Indemnified Parties or against Employer resulting from, arising out of or in any way related to any act or failure to act on the part of Employer which amounts to willful conduct or misconduct or gross negligence; and (iii) any and all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including reasonable attorneys' and consultants' fees, incident to any of the foregoing. Notwithstanding the foregoing, each Indemnified Party shall be entitled to exercise and resort to all rights and remedies for misrepresentation or breach as are afforded to it at law or in equity, including, without limitation, specific performance, action for damages or such other remedies and relief as may be afforded to it under this Agreement or by a court of competent jurisdiction. Neither the existence or exercise of any specific remedy is intended to be exclusive of or impair or otherwise adversely affect in any manner whatsoever any rights, remedies or relief otherwise available to each Indemnified Party, and each and every right and remedy will be cumulative and in addition to every other right and remedy provided in this Agreement or by law. This Section 8 shall survive any termination of this Agreement.
10. **Certifications.** Superintendent represents that she possesses and will maintain all certificates, credentials, and qualifications required by law, including Revised School Code Sections 1246 and 1536, applicable administrative regulations and those reasonably required by Employer. If Superintendent fails to maintain such certificates and credentials, this shall be deemed a material breach and Employer may terminate this Agreement in accordance with Section 3 above.
11. **Notices.** Any notice, election, demand, request, consent, approval, concurrence or other communication (each, a "notice") given or made under any provision of this Agreement shall be deemed given and received when personally delivered, received via telecopy or overnight delivery service, received via electronic mail transmission, or five (5) calendar days after being mailed by certified mail or registered mail, postage prepaid, to the parties at the following addresses (or at any other address designated by a party pursuant to notice in accordance with this Section 10):

If to Employer:

If to Employee:

Ann Marie Shell

3195 Royalton Heights

St. Joseph, MI 49085

Email: annshell7@gmail.com

12. **Entire Agreement; Amendment; Waiver.** This Agreement sets forth the entire agreement and understanding of the parties to it, and supersedes all prior agreements, arrangements and communications, whether oral or written, including any written offers for employment, with respect to its subject matter. This Agreement shall not be modified or amended except pursuant to a written agreement signed by both parties. Any waiver of any party's rights or obligations under this Agreement must be in writing and must be signed by the party against which such waiver is to be enforced. No party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either party of any right or remedy in one situation shall constitute a waiver of such party's rights or remedies in any other subsequent situation, whether similar or not.
13. **No Third Party Beneficiaries.** Except to the extent contemplated in Section 8 above, the obligations undertaken by Employer and Superintendent in this Agreement are for the benefit of Employer and Superintendent only, and neither any creditor of Employer or Superintendent, nor any other party (other than a successor in interest to Employer), shall have the right to rely on or enforce the provisions of this Agreement as a third-party beneficiary or otherwise.
14. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws and principles. Each party irrevocably consents to and submits itself exclusively to a Michigan venue for the purpose of any suit, action or other judicial proceeding arising out of or connected with the performance of this Agreement. Each party hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that (a) the party is not personally subject to the jurisdiction of the above-named courts; (b) the suit, action or proceeding is brought in an inconvenient forum; or (c) the venue of the suit, action or proceeding is improper.
15. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
16. **Captions.** The captions used in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.
17. **Ambiguities.** Employer and Superintendent have fully considered the language, terms and provisions of this Agreement and agree that ambiguities, if any, shall not be construed against the drafter, but shall be resolved in a fair manner without unequal prejudice to any party.
18. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall be severable and enforced to the fullest extent provided by law.
19. **Execution.** Each party represents and warrants that it has received, if desired, independent legal advice from its attorneys with respect to its rights and asserted rights arising out of the matters in controversy and with respect to the advisability of executing this Agreement.
20. **Counterparts; Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Copies (Photostatic, facsimile or otherwise) of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

21. **Confidentiality.** This Agreement and the terms, conditions and information contained herein are confidential and are among the parties only and will not be disclosed by a party to third parties except with the written authority of the other parties hereto, (b) so far as may be necessary for the proper performance of their obligations hereunder, (c) as required by law or as ordered by a court of competent jurisdiction or by the relevant governmental entity responsible for taxation or any other applicable regulatory authority, and (d) to any party's auditors, attorneys or other professional advisers.

22. **Attorney's Fees.** If any suit or proceeding is brought to enforce, construe, interpret, rescind or cancel this Agreement or any of its provisions, the prevailing party shall recover against any other party all of its reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including any appeal.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the date noted.

SUPERINTENDENT

Date: 6/25/2018

Ann Marie Shell
Ann Marie Shell

**EAU CLAIRE PUBLIC SCHOOLS,
Board of Education**

Date: 6/25/18

By: Darrell L. Ferguson
Darrell L. Ferguson
Title: President

Date: 6/25/2018

By: David Krugh
David Krugh
Title: Vice President