

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (“Agreement” or “Contract”) is effective July 1, 2021, and ends on June 30, 2024, by and between **The Board of Education of the EAU CLAIRE PUBLIC SCHOOLS** (“Employer”) and **ANN MARIE CLUFF** (“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 body may direct Superintendent to perform from time-to-time (collectively, “Services”), on the terms and conditions set forth in this Agreement.
- B. The Superintendent desires to accept employment with the Employer and to perform the Services for and on behalf of the Board on the terms and conditions set forth in this Agreement.
- C. 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.* The Employer employs the Superintendent to perform the Services. The Superintendent 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) **Evergreen.* Unless the Board gives written notice of non-renewal of the Agreement to the Superintendent at least 120 days before the end of the current contract year, this Agreement will, without further action, automatically renew for an additional contract year.
- (d) *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).
- (e) *Standard of Performance.* The 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 the Employer may establish from time to time. The Superintendent shall devote her professional energy and skills toward the performance of her duties and obligations under this Agreement.

(f) *Status.* Superintendent acknowledges that she shall perform the Services as an Employee of the Eau Claire Public School District and not as an independent contractor.

2. Compensation; Business Related Expenses.

- (a) *Compensation.* For all Services to be rendered by Superintendent under this Agreement, the Board shall compensate Superintendent at the annual (twelve-month) salary rate of not less than one hundred twenty-five thousand and eighty dollars (\$125,080).
- (b) Following the annual contract and performance review, the Board may authorize an additional percentage (%) increase of the base salary as established in section 2a to be paid to the Superintendent under this section in recognition of performance, which is determined by the Board in its sole discretion.
- (c) *Bi-Weekly Payment.* The Superintendent's annual salary shall be paid in twenty-six (26) substantially equal bi-weekly installments beginning with the commencement of the fiscal/contract year (July 1 - June 30). Payroll deductions may be made as required by law or as authorized by the Superintendent.
- (d) *Business Related Expenses.* The 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 policies and procedures. Superintendent must submit an itemized account of such expenses, together with such documentation of such expenses.

3. Benefits.

(a) Fringe Benefits: The Superintendent shall be eligible for and receive or participate in the benefit plans or programs listed below:

- (1) *Participation in Benefit Plans; Health Insurance.* The Superintendent shall be entitled to participate in, and to receive the benefits afforded by, such employee welfare benefit plans (collectively, "Employee Benefit Plans") as the Employer makes available to its full-time employees, or as the Employer otherwise makes available to the Superintendent in its sole discretion. The Employer shall pay the premiums for Superintendent's medical, dental, and vision insurance coverage.

The Employer's contribution for the medical benefits plan shall not be less than the statutory amount necessary to comply with the Publicly Funded Health Insurance Contribution Act, MCL 15.561 et seq. The Board will notify the Superintendent of the amount for which she is responsible in excess of the Board-paid benefit plan costs contributions. The amount of benefit plan cost contributions designated by the Board as the Superintendent's responsibility shall be payroll-deducted from the Superintendent's wages.

Alternatively, on an annual basis, the Superintendent may elect to take a cash-in-lieu of medical insurance benefits in an amount equal to one-fourth the cost of the Employee's Benefit Plan, payable on a bi-weekly basis on the conditions that the Superintendent: (1)

voluntarily and in writing opts out of the available medical health care benefit plan; and (2) provides documentation to the District's Business Office that the Superintendent has other medical health care coverage that meets the minimum value and coverage requirements of the Affordable Care Act.

- (2) *Life/Accidental Insurance*: The Employer shall provide term life insurance and accidental death and dismemberment insurance in an amount equal to three (3) times the Superintendent's annual Salary.
- (3) *Modification*. Notwithstanding the foregoing, the Employer shall be entitled, from time to time, to modify or eliminate, in whole or in part, any Employee Benefit Plan, or to change the identity of the insurance carrier, policyholder, or third-party administrator for any of the coverage for these insurance plans and programs, provided that comparable coverage (as determined by the Board) is maintained during the term of this Contract.
 - A) The Employer is not required to remit premiums for any insurance coverage for the Superintendent and her eligible dependents if enrollment or coverage is denied by the insurance underwriter, policyholder, or third-party administrator.
 - B) The terms of any contract or policy issued by any insurance company or third party administrator shall be controlling as to all matters concerning benefits, eligibility, coverage, termination of coverage, and other related matters.
 - C) The Superintendent is responsible for ensuring the completion of all forms and documents needed to receive the above-described insurance coverage.
 - D) The Employer, by remitting the premium payments required to provide the above described insurance coverage(s), shall be relieved from all liability as to insurance benefits.

4. *Holidays, Paid Leave, Vacation Disability Leave.*

- (a) *Holidays*. The Superintendent is entitled to the following paid 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 Day.
- (b) *Personal Leave Days*. The Superintendent shall be granted personal leave to twelve (12) days of personal leave per Contract year. Unpaid 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. The Superintendent shall use her best efforts to use personal leave days in a manner to minimize interference with the Employer's business and orderly operation.

- (c) *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.
- (1) The Superintendent shall schedule the 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.
 - (2) Vacation days should be used within the Contract year for which they are made available and shall not accumulate without mutual agreement. No compensation will be paid by the Superintendent for any unused vacation days upon her separation from employment with the District.
- (e) *Bereavement Leave.* The Superintendent may use up to five (5) days per Contract year, without loss of pay, related to the death of the Superintendent's spouse, child, parent, grandparent, grandchild, or sibling, as well as for the same relatives for the Superintendent's spouse. If needed, the Superintendent may use vacation days or personal leave days for additional bereavement-related leave.
- (f) *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 the Superintendent furnishes medical certification to Employer setting forth the necessity for the disability leave. The 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, the Superintendent may be granted an additional ninety (90) days of disability leave provided that the Superintendent furnishes a medical certification that the Superintendent will be able to perform the Services at the end of such ninety (90) day period.

5. *Equipment; Professional Dues; Professional Development/Tuition.*

- (a) *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 unless specified in writing by the Board.
- (b) *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.
- (c) *Professional Development and Continuing Education.* Consistent with Board policy and procedures, the Employer shall reimburse the Superintendent for reasonable fees, tuition, travel

expenses, and other expenses related to professional development and continuing education. The Employer may reimburse the Superintendent for attendance at other approved state or national development activities or continuing education. The Superintendent's time away from the Employer's principal place of business shall be reasonable, as determined by the Employer.

6. 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.

7. 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 a mutually agreed upon Arbitrator, 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 her 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 the 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.

- 8. ***Errors and Omissions Insurance.*** The Board shall pay the premiums for errors and omissions insurance coverage for the Superintendent's performance of the Services. Such insurance shall be within limits customary for school administrators and with a nationally recognized underwriter.
- 9. ***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 shall review with the Administrator her performance as Superintendent as required by MCL 380.1249b, using an evaluation instrument with multiple rating categories, one that takes into account data on student growth as a significant factor (if applicable) and established performance goals, and one that is mutually agreeable and in compliance with the Revised School Code.

10. 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 the Superintendent's ability to perform the Services. Prior to the Effective Date, the Superintendent shall provide the Board with a physician's verification of her ability to perform the essential job duties. Any medical examination 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 the 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 the Superintendent except with the prior written consent of the Superintendent or as may be required by law or as ordered by a court of competent jurisdiction.

11. No Tenure in Position. 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.

12. 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 the Superintendent fails to maintain such certificates and credentials, this status shall be deemed a material breach, and the Employer may terminate this Agreement in accordance with Section 3 above.

13. 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 Cluff
6349 Lakewood Pointe Drive
Coloma, MI 49038
Email: jac122120@gmail.com

14. Entire Agreement; Amendment; Waiver. This Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior agreements, arrangements, and communications, whether oral or written, including any written offers for employment, as 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.

- 15. *No Third-Party Beneficiaries.*** Except to the extent contemplated in Section 8 above, the obligations undertaken by the Employer and the Superintendent in this Agreement are for the benefit of the Employer and the Superintendent only, and neither any creditor of the Employer or the Superintendent nor any other party (other than a successor in interest to Employer), shall have the right to rely on or enforce this Agreement as a third-party beneficiary or otherwise.
- 16. *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 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.
- 17. *Parties Bound.*** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 18. *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.
- 19. *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.
- 20. *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.
- 21. *Execution.*** Each party represents and warrants that it has received, if desired, independent legal advice from its attorneys as to its rights and asserted rights arising out of the matters in controversy and as to the advisability of executing this Agreement.
- 22. *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, electronic, 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.

23. 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.

24. *Authorization. *This Contract is executed on behalf of the District pursuant to the authority contained in the Board motion adopted on June 21, 2021, the same being incorporated herein by reference.*

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

SUPERINTENDENT

Date: _____

Ann Marie Cluff, Superintendent of Eau Claire Public Schools

EAU CLAIRE PUBLIC SCHOOLS

Board of Education

Date: _____ By: _____

President of Eau Claire Public School Board of Education

Date: _____ By: _____

Secretary of Eau Claire Public School Board of Education