

CONTRACT OF EMPLOYMENT
Superintendent

This Employment Contract ("Contract") is hereby entered into by and between the Board of Education ("Board") of Forest Hills Public Schools ("District") and Benjamin Kirby ("Superintendent") under the laws of the State of Michigan, according to the following:

1. Term of Employment and Schedule

- A. Term. The District hereby employs the Superintendent pursuant to Section 1229 of the Revised School Code and by Board action at a meeting held on March 19, 2024 for a term of four (4) years commencing on July 1, 2024, and expiring on June 30, 2028. Pursuant to Section 1229(1) of the Revised School Code, if the Board of Education intends to not renew this Contract, it must provide the Superintendent with written notification of the Board's decision not to renew the Contract at least ninety (90) days before the Contract's expiration date.
- B. Workdays/Hours. The Superintendent is employed on the basis of fifty-two (52) weeks per fiscal year (July 1 through June 30), as scheduled by the Board, and generally works forty (40) hours per week but is expected to work additional hours as required for his position. If the Superintendent fails to work a full contract/fiscal year, his compensation will be subject to proration.

2. Qualifications

Professional Licensure, Endorsement, and Qualifications. The Superintendent represents that he will obtain and maintain all certificates, credentials, and qualifications required by law, including the provisions of Sections 1246 and 1536 of the Revised School Code, the regulations of the Department of Education, and those required by the Board to serve in the position assigned. Additionally, the Superintendent agrees, as a condition of his continued employment, to meet all continuing education requirements for the position assigned as may be required by the State Board of Education, and to maintain current training on the evaluation tool for administrators if evaluating administrators is an assigned function of the Superintendent's position. If, at any time, the Superintendent fails to maintain all certificates, credentials, requirements, and/or qualifications for the position of Superintendent or fails to satisfy any continuing education and training requirements, as required herein, this Contract shall automatically terminate and the Board shall have no further obligations hereunder. The Superintendent shall supply copies of all current certificates, credentials, and continuing education credits to the Board at least 30 days prior to the first day of employment. The Superintendent shall supply copies of future certificates, credentials, and continuing education credits to the Board within 30 days of completion.

3. Professional Responsibilities of the Superintendent

- A. Duties. The Superintendent agrees to devote his talents, skills, efforts, and abilities toward competently, professionally, and proficiently fulfilling all duties and responsibilities of the position. The Superintendent agrees to faithfully perform duties assigned by the Board as may be established or amended by the Board and to comply with the directives of the Board. The Superintendent's duties shall include, but are not limited to:
- 1) Serve as the chief executive officer of the District;
 - 2) Appoint, direct, and assign teachers and other employees of the schools under his supervision;
 - 3) Organize, appoint, and direct the administrative and supervisory staff as best serves the District;
 - 4) Recommend regulations, rules, and procedures deemed necessary for effective District operations; and

- 5) Perform all duties incident to the office of the Superintendent of Schools, including, but not limited to, duties set forth in Policy 4601, and other such duties as may be prescribed by the Board from time to time.

It is understood that the Board may change or modify the job duties of the Superintendent at any time and will notify the Superintendent of those changes or modifications.

The Superintendent accepts the ultimate authority and direction of the Board with respect to his responsibilities. Further, the Superintendent agrees to comply with and fulfill all responsibilities and tasks required by state and federal law and regulations, Board policies, and by the Board and to carry out the educational programs during the entire term of this Contract. Further, the Superintendent agrees to devote substantially all of his business time, attention, and services to the diligent, faithful, and competent discharge of his duties on behalf of the District to enhance the operation of the District and agrees to use his best efforts to maintain and improve the quality of the programs and services of the District. The Superintendent will not perform professional services outside his administrative duties or perform work for any other employer or entity without the preapproval of the Board.

- B. Medical Examination/Release of Medical Records. The Superintendent shall submit to such medical examinations, supply such information, and execute such documents as may be required by any underwriter, policyholder, or third-party administrator providing insurance programs specified under this Contract.

4. Compensation

- A. Compensation Rate. The Superintendent shall be paid at an annual salary rate as set forth in the following salary schedule in consideration of his performance of the duties and responsibilities of the position.

<u>Year</u>	<u>Base Salary</u>
• July 1, 2024 – June 30, 2025	\$265,000
• July 1, 2025 – June 30, 2026	Amount equal to the 2024-25 salary plus 1.5%
• July 1, 2026 – June 30, 2027	Amount equal to the 2025-26 salary plus 1.5%.
• July 1, 2027 – June 30, 2028	Amount equal to the 2026-27 salary plus 1.5%

The annual salary shall be paid in up to twenty-six (26) biweekly installments beginning with the commencement of the fiscal/contract year (July 1 through June 30). Biweekly payment shall not begin until the Superintendent begins work for the fiscal/contract year. This sum shall be prorated based upon actual time worked if the Superintendent does not work the full fiscal/contract year.

- B. Salary Adjustment. Upon separation or unpaid leave of absence of the Superintendent during any fiscal/contract year, his salary shall be adjusted to reflect payment, on a per diem basis, for the number of days on which services were actually and physically rendered during the contract year. Any amounts due the Superintendent upon separation or commencement of unpaid leave shall be remitted by the Board to the Superintendent as soon as such amounts can diligently be determined. Any salary amounts received by the Superintendent in excess of days actually worked during the fiscal/contract year shall be deducted from the Superintendent's remaining wages and the Superintendent, by executing this Contract, gives his written consent for such deduction. Any wage overpayments not recoverable by the Board through wage deduction shall be remitted to the Board by the Superintendent within three (3) business days of separation from employment. If not paid in this manner, the Superintendent agrees that judgment may be entered against him in any Michigan court of competent jurisdiction for such amount(s). The Board retains the right to adjust the annual salary of the

Superintendent during the term of this Contract. Any such salary adjustment shall not reduce the annual base salary below the minimal base salary and the annuity identified in this Contract. Adjustments may be made to provide for a decrease in salary below the previous year, where such reduction is part of an overall reduction in wages due to economic conditions.

- C. Merit Pay. If the Superintendent earns an "effective" evaluation rating on his year-end evaluation he will receive a merit lump-sum payment in the following amounts:

- 2024-25 school year 2.5% of base pay
- 2025-26 school year 3.0% of base pay
- 2026-27 school year 3.5% of base pay
- 2027-28 school year 4.0% of base pay

The lump sum payment shall be paid in June for each school year of the Contract term that the Superintendent's evaluation rating is "effective". There will be a cap of 4% on merit pay.

Compensation set forth in this Contract shall remain in effect for the Contract term, unless the Contract is terminated pursuant to paragraph 9 or amended pursuant to paragraph 14.

- D. Annuity Contributions. In addition to annual base salary for services performed, the Superintendent will be paid wages/compensation as a non-elective annuity contribution to an IRS 401(a), 403(b), or 457 plan. The annual amount will be as follows:

- 2024-2025 school year 10% of base pay
- 2025-2026 school year 11% of base pay
- 2026-2027 school year 12% of base pay
- 2027-2028 school year 13% of base pay

There will be a cap of 13% on annuity contributions. The annuity will be paid equally with each pay period throughout the school year. This sum shall be prorated based upon actual time worked if the Superintendent does not work the full regularly scheduled work year. This sum shall be reported as wages for Office of Retirement Services (ORS) retirement contributions. The Board has allocated wages/compensation under this Contract between salary and annuity contributions, as requested by the Superintendent. The Board makes no representations as to the advisability or impact of these allocations for purposes of the Superintendent's tax, retirement, or financial planning. The Board provides no assurances for purposes of retirement benefits. The Superintendent has been provided an opportunity to consult with legal counsel, financial advisors, retirement advisors, and others as the Superintendent deemed appropriate in requesting these allocations and has not relied on any representations by the Board.

- E. ORS Reimbursement. If, at any time, ORS reimburses contributions made from wages/compensation in this Contract, reimbursement of the Superintendent's contribution will be credited to the Superintendent's 401(a), 403(b) or 457 plan with no cash option given.

5. Fringe Benefits

- A. Insurance Programs. Upon proper application and acceptance for enrollment by the appropriate insurance underwriter, policyholder, and/or third-party administrator, the Superintendent shall receive such fringe benefits of employment as defined in the Administrative Agreement, as that Agreement may be changed from time to time, including changes made during the term of this Contract. The Superintendent shall be required to contribute to the cost of District-provided health coverage. The required contribution shall be made on a pre-tax, payroll deduction basis through the District's Section 125 flexible benefits plan and shall be the amount necessary so that the contribution paid by Forest Hills Public Schools with respect to health coverage does not exceed the amount allowable under Michigan Public Act 152 of 2011, as amended. On January 1 of each year, the District will adjust the employer contribution amounts by the medical care component of the CPI (Consumer Price

index). The Board will notify the Superintendent of the insurance costs including taxes, assessments, and copayments for which he is responsible in excess of Board paid premium contributions, subject to payroll deduction.

The Board shall also provide the Superintendent with life insurance (term) three (3) times his salary, no cap.

- B. Insurance Carrier. The Board reserves the right to change the identity of the insurance carrier, policyholder or third-party administrator for any of the above coverages, as determined and maintained by the Board during this Contract. The Board reserves the right to self-fund any of the above benefits. Additionally, the Board shall not be required to remit premiums for any insurance coverages for the Superintendent and his eligible dependents if enrollment or coverage is denied by the insurance underwriter, policyholder, or third-party administrator. 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. The Superintendent is responsible for assuring completion of all forms and documents needed to receive the insurance coverage. District, by payment of the premium payments required to provide insurance coverage, shall be relieved from all liability with respect to insurance benefits.
- C. Vacation. Beginning July 1, 2024, the Superintendent shall receive thirty (30) vacation days for each fiscal year of this Contract, which may be taken after July 1, 2024. The Superintendent shall schedule the use of vacation days in a manner that minimizes interference with the orderly operation and conduct of the District's business. The Superintendent will notify the board president prior to the scheduling of vacation days. Notwithstanding the non-cumulative nature of such vacation days, the Superintendent may be compensated for up to ten (10) vacation days at a per diem rate, or elect to use up to 10 vacation days not taken in the preceding school year up to September 1 in a subsequent year. The per diem rate of compensation for unused vacation days shall be the sum of (i) the Superintendent's salary, (ii) annual payment of tax-sheltered annuity and (iii) any merit pay earned divided by 225. These variables and formula shall also be the basis for any other per diem calculations.
- D. Holidays. The Superintendent will not provide services to the District on holidays outlined in the Administrative Agreement for 52-week administrators. The Superintendent will not receive additional compensation on holidays.
- E. Sick Days. The Superintendent shall receive ten (10) sick days per school year (July 1 to June 30). Unused sick days may roll over to subsequent years. There is no limit on the number of sick days that can be accumulated. Upon separation from the District, unused sick days will be paid out at a rate of \$200 per day up to a maximum of 100 days.
- F. Personal Days. The Superintendent shall receive five (5) personal days per school year (July 1 to June 30) which may be used for personal business that cannot be performed outside the regular work day. Unused personal days may be carried over to the Superintendent's accumulated sick leave.
- G. Bereavement. The Superintendent shall be granted up to three (3) days of bereavement days each year to be used for "Immediate Family" to include spouse, son, step-son, son-in-law, daughter, stepdaughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, father, step-father, father-in-law, mother, step-mother, mother-in-law, grandparent, step-grandparent, grandchild, step-grandchild, and spouse's grandparent, step-grandparent, and step-grandchild or for another relative who stands instead of an immediate family member. Bereavement days do not accumulate.
- H. Family and Medical Leave Act. The Superintendent shall be eligible for family medical leave per Board policy and the Family and Medical Leave Act. Applicable paid leave shall be concurrent with the Family and Medical Leave Act.

- I. Fitness for Duty Certification. Before returning to duty after an unpaid leave of absence for a serious health condition, the Superintendent shall provide to the Board a fitness for duty certification from the Superintendent's health care provider. A second opinion may be required by the Board, at its expense, unless the securing of the second opinion in this context is precluded by the Family and Medical Leave Act.

6. Evaluation

- A. Annual Performance Evaluation. The Board shall evaluate the performance of the Superintendent pursuant to Sections 1249 and 1249b of the Revised School Code at least once before June 30 of each year during the term of this Contract. In the event that the Board determines that the performance of the Superintendent is deficient in any respect, the Board shall describe in writing, in reasonable detail, those aspects of the Superintendent's performance which are deficient. A copy of the written evaluation shall be delivered to the Superintendent. Within thirty (30) days of the delivery of the written evaluation to the Superintendent, the Board shall meet with the Superintendent to discuss the evaluation and develop an improvement plan.
- B. Appeal. The Superintendent may request a meeting with the Board and ask the Board to reconsider an overall evaluation rating of "developing". The Superintendent may appeal a "needing support" evaluation rating to the Board consistent with the appeal right provided to school administrators under MCL 380.1249b(1)(p).

7. Extension of Agreement and Nonrenewal

The Board's decision not to renew the Superintendent's Contract for any subsequent period in any capacity is within the Board's sole discretion and is not a breach of this Contract. Nonrenewal of the Superintendent's contract shall comply with MCL 380.1229(1).

8. Termination

- A. Termination Standard. This Contract is terminable at any time during its term for just cause. The term "just cause" shall include, but is not limited to, acts of moral turpitude, misconduct, dishonesty, fraud, insubordination and a material breach of the terms and conditions of this Contract. Compliance with any federal, state, or local law or regulation shall not be considered "just cause."
- B. Termination Notice. If the Board acts to dismiss the Superintendent during this Contract, he shall be entitled to written notice of charges and an opportunity for a hearing before the Board. Superintendent may be represented by legal counsel, at his expense, at the Board hearing. If the Board acts to discharge the Superintendent, this Contract shall automatically terminate and the Board shall have no further obligation.
- C. Mutual Termination. Upon written mutual agreement by the Board and the Superintendent and upon sixty (60) days prior notice, this Contract and the employment of the Superintendent may be terminated without penalty or prejudice against either the Board or the Superintendent unless the Board and Superintendent waive the sixty (60) day notice requirement.
- D. Resignation. The Superintendent shall provide the Board with sixty (60) days advance written notice if he intends to resign unless the Board and Superintendent waive the sixty (60) day notice requirement. Failure to provide sixty (60) days advance written notice will result in forfeiture of any vacation or sick day payout owed to the Superintendent upon resignation.
- E. Death or Disability. This Contract and the employment of the Superintendent may be terminated upon the death of the Superintendent or upon the total and permanent disability of

the Superintendent. "Total and permanent disability" means the Superintendent is disabled as defined in the long-term disability coverage provided to the Superintendent by the District.

9. Expense Reimbursement

Travel and Meals. The Board will reimburse the Superintendent for reasonable and necessary expenses incurred on District business. The Superintendent will submit itemized expense statements, on a monthly basis, to the Board President for review and approval.

10. Miscellaneous

A. Professional Dues. Subject to express pre-approval by the Board, the fees or dues for membership in appropriate professional organizations shall be paid by Board. Subject to prior approval by the Board, the Superintendent may attend appropriate professional meetings at the national level. The Superintendent may attend appropriate professional meetings at the state level provided the Board has been informed of the meetings. The Superintendent may attend local meetings within Kent County without prior approval or notice to the Board. The Superintendent shall be reimbursed for any registration fees, tuition, travel, lodging, and/or reasonable meal expenses for himself in relation thereto not prepaid by Board. The Superintendent shall present a receipt for the business expense as a condition for reimbursement.

B. Professional Liability. The District agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his individual capacity, or in this official capacity as agent and employee of the District, provided the incident arose while the Superintendent was acting within the scope of his employment. In the event the Superintendent, individually, is found guilty as a result of criminal litigation, he shall reimburse the District for costs and expenses, including attorney fees, incurred by the District in his defense. In no case, however, will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

If a claim is brought against both the Superintendent and the District, and if in the good faith opinion of the Superintendent, a conflict exists between the legal position or defenses of the Superintendent and the legal position of the District, the Superintendent may engage his own counsel, in which even the District shall indemnify the Superintendent for the costs of legal defense as permitted by state law.

C. Cell phone. The Superintendent shall possess a cell phone throughout the duration of this Contract and provide the phone number to the Board. The Board shall only distribute the phone number to others in an emergency situation. All costs related to the cell phone shall be at the expense of the Superintendent.

D. Moving Stipend. The Superintendent shall be reimbursed for all moving expenses upon receipt of such expenses, up to a maximum of \$7500, if the Superintendent moves within the physical boundaries of the District within his first year of service under this contract.

11. Period of Limitations

The Superintendent agrees that any claim or suit arising out of the Superintendent's employment with the Board must be filed no more than 180 days 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 180 days, but agrees to be bound by the 180 day period of limitation set forth herein 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 intent of the parties that the court

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

12. Dispute Resolution

- A. Arbitration. If a dispute arises between the parties relating to discharge of the Superintendent during this Contract, the parties agree to submit such 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. Arbitration under this provision shall be conducted pursuant to the terms of the Michigan Arbitration Act, MCL 691.1681 *et seq.* and MCR 3.602. The parties intend that this dispute resolution shall be inclusive of all contract and statutory claims advanced by the Superintendent arising from the Superintendent's discharge during 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 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 Superintendent. This agreement to arbitrate claims applies to those matters which would otherwise be subject to state or federal court proceedings. The Superintendent acknowledges he is waiving his right to adjudicate discrimination claims in a judicial forum and is instead opting to arbitrate those claims. In any such arbitration proceeding, the Superintendent shall have the right to representation by counsel of his choice, 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.
- B. Arbitrator's Fee. Notwithstanding the fact that the AAA National Rules for the Resolution of Employment Disputes may have a different arrangement for payment of the arbitrator's fees and costs, the parties expressly state their intent that the arbitrator's fee and the costs imposed by the American Arbitration Association shall be shared equally by Board and Superintendent. Any claim for arbitration under this provision must be filed with the American Arbitration Association, in writing, and served on Board within one hundred eighty (180) days of the effective date of the Superintendent's discharge during the term of this Contract and to enforce award.

13. Disability or Incapacity

In the event of the Superintendent's mental and/or physical incapacity to perform the duties of his assignment, he shall be granted an initial leave up to twelve (12) workweeks for purpose of recovery. The Superintendent shall first exhaust any accumulated sick leave and accrued vacation time. After exhausting sick leave and accrued vacation time, if the Superintendent requires additional leave, the District will pay the Superintendent's salary and annuity up to the 90 day waiting period for Long Term Disability eligibility. Board contributions towards health plan premium payments shall be made on behalf of the Superintendent during this interval to the extent required by law. In order to utilize leave under this provision, the Superintendent shall first furnish medical certification to the Board (or its designee) respecting the necessity for the leave. This certification, from the Superintendent's health care provider, shall include:

- A. The date the serious health condition commenced and the health care provider's best medical judgment concerning the probable duration of the condition including the probable duration of the Superintendent's present incapacity.
- B. Diagnosis of the serious health condition.
- C. A statement of regimen of treatment.

D. An indication of whether inpatient hospitalization is required.

E. An opinion of whether or not the Superintendent is able to perform the essential functions of his position.

The Board (or designee) may require a second opinion, at Board expense, by a physician selected by the Board.

14. Entire Agreement

This Contract contains the entire agreement and understanding between the Board and Superintendent with respect to the employment of Superintendent and no prior or concurrent representations, promises, contracts or understandings, written or oral, not contained herein shall be of any force or effect. All prior contracts or other agreements (written or oral) pertaining to the terms of this Contract are canceled and are superseded by the terms of this Contract. Provided, that this Contract is voidable pursuant to the provisions of the Revised School Code, pertaining to criminal records and criminal history checks. No amendment to or modification of this Contract shall be valid or binding unless it is in writing and signed by the Superintendent and the Board. An amendment or modification of this contract shall not extend the Contract's termination date unless extension is expressly provided in the written amendment or modification.

No valid waiver of any provision of this Contract, at any time, shall be deemed a waiver of any other provision of this Contract at such time or at any other time.

15. Severability

If any provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Contract shall continue in full force and effect without said provisions; provided, however, that no such severability shall be effective if it materially changes the economic benefit of this Contract to any party.

16. Laws of State of Michigan

This Contract is executed on behalf of the District pursuant to the authority granted under the laws of the State of Michigan.

* * *

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

4/15/24
Date

SUPERINTENDENT:

Benjamin R. Kirby
Benjamin Kirby, Superintendent

BOARD OF EDUCATION OF FOREST HILLS PUBLIC SCHOOLS

4/15/24
Date

4/15/24
Date

Kurtis Finner
Its: President

Maggie Seng
Its: Secretary