

SUPERINTENDENT'S EMPLOYMENT AGREEMENT

This Agreement ("Agreement") made and entered into by and between LAKE ORION COMMUNITY SCHOOLS (hereinafter referred to as the "School District" or "District") and Benjamin R. Kirby (hereinafter referred to as the "Superintendent").

The School District and the Superintendent hereby agree as follows:

1. **Term:** The District will employ the Superintendent for the period from July 20, 2020 to June 30, 2023 (the "Term"). Should the Board of Education of the School District desire not to renew this Agreement at the end of the Term, the Board will give the Superintendent notice of its decision at least ninety (90) days before the expiration date; otherwise, this Agreement will automatically renew for one (1) more year.

2. **Tenure:** The Superintendent will not have or acquire tenure as Superintendent of Schools or in any other administrative or assigned capacity. The District's failure to continue the Superintendent's employment after the Term of this Agreement, or re-employ [him/her] in any other capacity, will not be considered a breach of this Agreement.

3. **Qualifications:** The Superintendent represents and warrants that [he/she] meets, and will continue to meet, at least the minimum qualifications and certifications required by the State of Michigan to serve as the District's Superintendent of Schools.

4. **Duties:** The Superintendent represents and warrants that [he/she] is able, and will continue to be able, to serve as the District's Superintendent of Schools in a competent and professional manner in compliance with applicable laws, policies and regulations adopted by the Board, and as otherwise directed by the Board. The Superintendent shall perform [his/her] duties over the full fifty-two (52) weeks of the School District's fiscal year (July 1 to June 30), less applicable vacation, leave, and holidays. The Superintendent shall be expected to attend meetings of the Board and its committees and to attend and participate in School District functions or, on occasion, other civic activities having relation to the School District's interests within the Lake Orion community. Among [his/her] other duties, the Superintendent shall prepare the agendas for each Board of Education meeting in consultation with the President of the Board or [his/her] delegate, and forward same to each member of the Board, along with [his/her] recommendations and supporting documentation on each agenda item, sufficiently in advance of the meeting so that each member can assimilate such information prior to the meeting. The Superintendent will report to the Board information, which would, or might, affect or be relevant to the business of the School District. The Board collectively and individually shall refer promptly all criticism, complaints and suggestions called to their attention to the Superintendent for study and recommendation.

5. **Compensation:** The Superintendent's base annual salary will be \$175,000 and 00/100 Dollars), pro-rated for the number of weeks actually worked, payable in equal installments over the course of the school year. For years two and three, the base salary shall increase equal to that of other Central Office Administrators.

Consistent with the requirements of applicable legislation, the Superintendent shall be eligible for a merit lump-sum payment based upon [his/her] performance of up to \$5,000 (Five Thousand Dollars), which shall be paid in June. The Superintendent shall receive the full amount of such payment if [he/she] is rated Highly Effective on [his/her] final year-end evaluation; one half of this amount if he is rated Effective on [his/her] final year end evaluation, and [he/she] shall not receive any payment if [he/she] is rated Minimally Effective or Ineffective on [his/her] final year-end evaluation.

6. **Fringe Benefits:**

- A. Insurance: The District will provide the Superintendent the same insurance benefits (including long term disability (LTD) and life insurance) provided to other certified administrators employed by the District during the Term of this Agreement, provided that the Superintendent shall contribute toward the cost of insurance premiums in accordance with applicable law and Board Policy.
- B. Tax Sheltered Annuity: The District shall make a non-elective tax-sheltered annuity contribution in the amount of eight percent of the base annual salary year one, nine percent of the base salary year two, and ten percent of the base annual salary year three during each , payable at the conclusion of each school year, prorated for less than a full year, to the tax-sheltered annuity account designated by the Superintendent. The annuity must meet the requirements of Internal Revenue Code Section 403(b). The Superintendent's rights under the annuity contract shall be non-forfeitable except as provided in the annuity contract. The contributions made pursuant to this Agreement, together with any other contributions required to be aggregated for such purposes, may not cause the Superintendent to exceed the Internal Revenue Code Section 403(b) or 415 limitations for each tax year.
- C. Vacation: The Superintendent may take up to (30) vacation days per school year, exclusive of legal holidays, subject to prior notice to the Board's President. Notwithstanding the non-cumulative nature of such vacation days, the Superintendent may be compensated for up to (10), at a per diem rate, or elect to use up to ten (10) vacation days not taken in the preceding school year up until September 30 in a subsequent year only.
- D. Holidays: The following days shall be considered holidays: Independence Day, Labor Day, Thanksgiving, the Friday following Thanksgiving, Christmas Eve, Christmas Day, New Year's Eve, New Year's Day, Good Friday (provided it is not a school day), Easter Monday (provided it is not a school day), and Memorial Day, and any other designated school holidays.
- E. Leave: The Superintendent shall be subject to the same leave provisions as the District's other central office administrators.

- F. Technology: The District will provide the Superintendent with a cell phone, laptop computer and/or the technology devices deemed appropriate to successfully perform [his/her] assigned duties.
- G. Car Allowance: The Superintendent shall be provided an annual car allowance in the amount of \$7,250.00.
- H. Other Fringe Benefits: In all other respects, Superintendent shall receive fringe benefits not otherwise specified above in accordance with those provided to other certified and/or central office administrators including but not limited to longevity pay.

7. **Disability:** The Superintendent shall be granted up to ninety (90) days of income protection for personal illness or disability which exceed five (5) consecutive work days in duration. The rate of pay for purposes of income protection shall be the Superintendent's rate of pay on the first day of illness or disability. Such income protection benefit shall not apply at such time that the Superintendent qualifies for long-term disability insurance benefits provided under this Agreement. The Superintendent shall furnish medical certification to the Board regarding the necessity for disability leave. If the Board has reason to doubt the validity of the medical certification supplied by the Superintendent, it may require a second opinion, at Board expense. After taking such disability leave, the Superintendent shall provide the Board a certification that [he/she] is fit for duty from the Superintendent's health care provider. A second opinion may be required by the Board, at its expense, unless such a second opinion in this context is precluded by the Family and Medical Leave Act. Should the Superintendent be unable to perform any or all of [his/her] duties by reason of illness, accident or other cause beyond [his/her] control, and if the disability continues for more than ninety (90) days during any school year, or if it is permanent, irreparable or of such a nature as to make the performance of the Superintendent's duties impossible, the Board may, in its discretion, terminate this Agreement, and all the duties, rights and obligations of both parties shall end.

8. **Professional Development:** The District will support the Superintendent's professional development by reimbursing [him/her] for membership charges for professional, and civic, health or welfare organizations and for attendance at professional conferences proposed by the Superintendent and approved by the Board.

9. **Expenses:** 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. **Other Work:** The Superintendent may undertake other work during the term of this Agreement, provided the other work does not interfere with the time and effort necessary to perform [his/her] duties under this Agreement, and upon advance approval of the President of the Board of Education.

11. **Conflicts of Interest:** The Superintendent will not possess or acquire, directly or indirectly, any interest adverse to the District. If a question arises whether the Superintendent possesses or has acquired an impermissible conflict of interest, the Superintendent will, as soon as practicable, fully disclose the questioned interest to the Board for its review and disposition, which disposition will be controlling.

12. **Evaluation:** Annually, but no later than March 25th of each year unless otherwise determined by the Board, the Board of Education of the School District shall during the term of this Agreement review with the Superintendent the Superintendent's performance, which may include progress toward mutually established goals and [his/her] working relationships with the Board, staff and community. In absence of agreement on mutually established goals, the Board will establish the goals.

13. **Indemnification/Hold Harmless:** For any action or non-action taken by the Superintendent, 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/her] individual capacity as agent and employee of the District, provided the incident arose while the Superintendent was acting within the scope of [his/her] employment, such liability coverage is within the authority of the District to provide under state law, and excluding criminal litigation; it is further understood that in no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings. The Superintendent shall immediately notify the Board of any request for indemnification for any claim or action against [him/her]. The Board and the District have the right to conduct the defense of any such claim or action and the Superintendent shall fully cooperate with the Board and the District in the defense. The District may purchase liability insurance to cover its responsibilities set forth above. It is understood that the provisions above shall remain applicable and in effect even after the Superintendent terminates [his/her] employment with the District.

14. **Termination:** This Agreement will terminate on June 30, 2023. The Superintendent may terminate this Agreement during its term by providing the Board with at least sixty (60) days advance notice. The Board or the District may terminate this Agreement without further obligation or liability to the Superintendent for salary, remuneration or fringe benefits, if the Superintendent commits acts of moral turpitude, misconduct, dishonesty, fraud, insubordination, and/or incompetence; if the Superintendent materially breaches the terms and conditions of the Agreement; and/or if the Superintendent commits acts otherwise constituting a reason or reasons for discharge that are not arbitrary or capricious. Such reason or reasons shall specifically include, but not be limited to, conviction for offenses involving impairment or illegal possession related to drugs or alcohol. The arbitrary and capricious cause standard for termination of this Agreement during its term shall not apply to non-renewal of this Agreement at any interval at which the Board is required to take action to renew or not renew it, which decision is discretionary with the Board of Education, or upon final expiration of the term of the Agreement. This Agreement can also be terminated by an emergency manager appointed under applicable law.

15. **Limitations of Actions:** The Superintendent and the District agree that any civil action or administrative complaint arising from or relating to the Superintendent's employment with the District, the termination of the Superintendent's employment with the District or this Agreement, must be filed not later than one hundred eighty (180) calendar days from the date on which the civil action or administrative complaint accrued, or no later than one hundred eighty (180) calendar days from the termination of the Superintendent's employment, whichever is sooner. The District and the Superintendent waive any longer limitations period. This paragraph

is not intended to, and should not be construed, to extend any statutory limitations period shorter than one hundred eighty (180) calendar days.

16. **Binding Arbitration:** The Superintendent and the Board agree that, except as set forth in the final sentence of this paragraph, and to the extent permitted by law, any and all claims, demands, actions and causes of action whatsoever, arising from or relating to the Superintendent's employment by the Board and the District and the negotiation, execution and interpretation of this Agreement, will be submitted to final and binding arbitration before a single arbitrator according to the American Arbitration Association's National Rules for the Resolution of Employment disputes. The Superintendent, the Board or the District may move for entry of judgment on such an arbitration award in any court of competent jurisdiction. This paragraph does not apply to a decision by the Board or the District not to renew this Agreement, which decision may not be submitted to final and binding arbitration.

17. **Waiver of Breach:** The Board and the District will not waive any breach of any provision of this Agreement except in writing. Such a waiver will not waive future breaches.

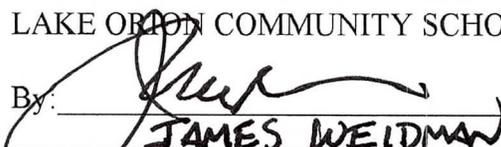
18. **Severability:** If any provision of this Agreement is prohibited by the laws of the United States or the State of Michigan, that provision will be unenforceable without invalidating the remaining provisions of this Agreement.

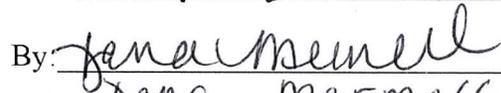
19. **Entire Agreement:** This Agreement is the parties' entire agreement and supersedes any other prior or contemporaneous agreement, written or verbal. The Agreement may not be modified or rescinded except by another written agreement, approved by the Board in a public meeting, and signed by both the parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

SUPERINTENDENT

By: 
Date: 7/7/20

BOARD OF EDUCATION OF THE
LAKE ORION COMMUNITY SCHOOLS

By: 
Its: JAMES WEIDMAN
Date: PRESIDENT
7-7-2020

By: 
Its: Dana Mermell
Date: Secretary
7-7-2020