

CONTRACT OF EMPLOYMENT

Superintendent

This Contract is entered into by and between the Board of Education of the Byron Center Public Schools (the “Board”) and Kevin Macina (the “Administrator”). The Board in accordance with its action found in the minutes of its meeting held on the 30th day of October, 2019, hereby employs Administrator for a 30 month period commencing on January 1, 2020 and ending on June 30, 2022, according to the following terms and conditions.

1. Administrator shall perform the duties of Superintendent as prescribed by the Board and as may be established, modified and/or amended from time to time by the Board. Administrator acknowledges the ultimate authority of the Board with respect to his responsibilities and directions related thereto. Administrator is subject to assignment and transfer to another administrative position of employment in the School District at the discretion of the Board.

2. Administrator represents that he possesses, holds, and will 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 Michigan Department of Education, and those required by the Board to serve in the position assigned. Administrator agrees, as a condition of his continued employment, to meet and maintain all certification and continuing education requirements for the position assigned, as are and may be required by law and/or by the State Board of Education. If at any time Administrator fails to maintain all certificates, credentials, continuing education requirements and/or qualifications for the position assigned as required herein, this Contract shall automatically terminate and the Board shall have no further obligation hereunder.

3. Administrator agrees to devote his talents, skills, efforts and abilities toward competently and proficiently fulfilling all duties and responsibilities of the position assigned. Administrator agrees to faithfully perform those duties assigned by the Board and to comply with the directives of the Board with respect thereto. Further, Administrator agrees to comply with and fulfill all responsibilities and tasks required by state and federal law and regulations and by the Board to carry out the educational programs and policies of the School District during the entire term of this Contract. Administrator agrees that he will diligently and competently discharge his duties on behalf of the School District to enhance the operation of the School District and will use his best efforts to maintain and improve the quality of the programs and services of the School District.

4. Administrator shall be paid at an annual (twelve month) salary rate of not less than One Hundred Seventy-Five Thousand Dollars (\$175,000) in consideration of his performance of the duties and responsibilities of the position assigned in conformance with the requirements and expectations of the Board. From January 1, 2020 to June 30, 2020, Administrator will be paid Eighty-Seven Thousand Five Hundred dollars (\$87,500) in thirteen (13) equal bi-weekly installments. For the 2020-21 and 2021-22 school years (July 1 to June 30), Administrator’s annual salary will be \$175,000 paid in twenty-six (26) equal bi-weekly installments.

Subject to the terms contained in this Section 4, the District shall contribute the following amounts towards a tax deferred annuity for Administrator from an Annuity Company on the District's approved Annuity Company Listing, which contract qualifies for income tax treatment under Section 403(b) of the Internal Revenue Code of 1986, as amended:

- From January 1, 2020 to June 30, 2020 - \$2500 (over 12 pays)
- From July 1, 2020 to June 30, 2021 - \$5000 (over 24 pays)
- From July 1, 2021 to June 30, 2022 - \$5000 (over 24 pays)

Payment towards the annuity shall be paid on a bi-monthly basis beginning on the first pay in January 2020 and ending on or before June 30, 2022. If Administrator's employment is terminated or if Administrator resigns before June 30, 2022, Administrator is not entitled to the balance of the annuity contribution. Administrator agrees to release all rights, present and future, to receive payment of the above sums in any other form. The Superintendent may also elect to defer a portion of Superintendent's salary up to the maximum amount excludable from Superintendent's federal gross income under Section 402(g) of the Internal Revenue Code of 1954, as amended, to purchase a tax sheltered annuity contract for Superintendent from an Annuity Company on the District's approved Annuity Company Listing, which qualifies for income tax treatment under Section 403(b) of the Internal Revenue Code of 1986, as amended.

Should Administrator be assigned or transferred to another administrative position, the salary paid shall be as established by the Board for that position.

The Board hereby retains the right to increase the annual salary and amount contributed towards a tax deferred annuity of Administrator during the term of this Contract. Any such increase shall be reflected in a written amendment to this Contract.

Consistent with the provisions of Section 1250 of the Revised School Code, Administrator's job performance and job accomplishments will be significant factors in determining any adjustment to Administrator's compensation. Administrator shall receive merit increases to Administrator's base wage and annuity in the following amounts:

- As determined by Administrator's evaluation from January 1, 2020 to June 30, 2020:
 - Administrator will receive a 1% increase in base salary and annuity if Administrator receives an "effective" evaluation rating as determined by the Board.
 - Administrator will receive a 1.5% increase in base salary and annuity if Administrator receives a "highly effective" evaluation rating as determined by the Board.
 - If Administrator's evaluation during this timeframe is effective or highly effective, the term of this contract shall extend through the 2022-23 school year. Merit increases as set forth for the 2020-21 and 2021-22 school years shall apply to the 2022-23 school year if Administrator's contract is extended.

- As determined by Administrator's evaluation during the 2020-21 and 2021-22 school years:
 - Administrator will receive a 2% increase in base salary and annuity if Administrator receives an "effective" evaluation rating as determined by the Board.
 - Administrator will receive a 3% increase in base salary and annuity if Administrator receives a "highly effective" evaluation rating as determined by the Board.

If the District's audited unallocated fund balance is less than 10%, the Administrator's salary for the next school year shall not increase. This salary freeze applies both to increases at the Board's discretion and merit increases outlined above.

5. Administrator is employed on the basis of twenty-six (26) weeks of work from January 1, 2020 to June 30, 2020 and fifty-two (52) weeks of work, July 1 through June 30, of the 2020-21 and 2021-22 school years. Administrator shall be granted vacation time of thirty (30) days per school year. The Administrator shall receive a pro rata share of vacation days (15 days) from January 1, 2020 to June 30, 2020. Vacation days must be used within the school year in which they are first made available. Administrator may receive a cash payout for five (5) unused vacation days at his per diem rate. Administrator shall schedule use of vacation days in a manner to minimize interference with the orderly operation and conduct of business of the School District. All scheduling of vacation is subject to the approval of the Board.

6. Administrator shall be granted two personal days per school year. From January 1, 2020 to June 30, 2020, Administrator shall receive a pro rata share of personal days (1 day). Personal days must be used within the school year in which they are made available. Administrator may not receive a cash payout for unused personal days.

7. Administrator's performance shall be evaluated by the Board not less than annually.

8. The Board shall be entitled to terminate the Administrator's employment at any time during the term of this Contract when it determines that Administrator has engaged in acts of moral turpitude, misconduct, dishonesty, fraud, insubordination, incompetency, inefficiency, if Administrator materially breaches the terms and conditions of this Contract, or for other causes that are not arbitrary or capricious, as determined by the Board.

The foregoing standards for termination of this Contract during its term shall not be applicable to non-renewal of this Contract at the expiration of its term, which decision is discretionary with the Board.

In the event that the Board undertakes to dismiss Administrator during the term of this Contract, he shall be entitled to written notice of charges and an opportunity for a hearing before the Board. In the event of termination of employment during the term of this Contract, this Contract shall automatically terminate and the Board shall have no further obligation under this Contract.

9. In the event of Administrator's mental and/or physical incapacity to perform the duties of his office, he shall be granted an initial leave of ninety (90) work days for purpose of

recovery. The Administrator shall first exhaust any accumulated sick leave and accrued vacation time, with the balance of the ninety (90) work day period to be unpaid. Upon utilizing leave under this provision, Administrator shall furnish medical certification to the Board (or its designee) respecting the necessity for the leave.

If the Board (or designee) has reason to doubt the validity of the medical certification supplied by Administrator, it may require a second opinion, at Board expense.

Administrator may request a ninety (90) work day unpaid leave extension in the event of his physical and/or mental inability to return to work at the expiration of the initial leave interval, as described above, provided that there is a verified prognosis that Administrator will be able to resume his duties at the conclusion of the extended leave interval. Medical certification shall be supplied by Administrator as a condition to any leave extension. Any extensions of leave for this purpose shall be at the discretion of the Board.

If Administrator is unable to or does not resume work at the conclusion of a leave taken under this paragraph (or any extension thereof), his employment and this Contract may be terminated at the option of the Board. However, no such termination shall occur where restoration after leave is required by the Family and Medical Leave Act.

Prior to resumption of duty after an unpaid leave of absence for a serious health condition, Administrator shall provide to the Board a fitness for duty certification from Administrator'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.

10. Administrator agrees that he shall not be deemed to be granted continuing tenure in the position initially assigned or to which he may be assigned or transferred or in any capacity other than that of a classroom teacher, should the probationary period required for tenure as a teacher be fulfilled, by virtue of this Contract or any employment assignment (requiring certification) with the School District. Nor shall the decision of the Board not to continue or renew the employment of Administrator for any subsequent period in any capacity, other than as a classroom teacher, as may be required by the Teachers' Tenure Act, be deemed a breach of this Agreement or a discharge or demotion within the provisions of the Michigan Teachers' Tenure Act.

11. Administrator 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. Additionally, upon request of the Board, Administrator shall authorize the release of medical information necessary to determine if Administrator is capable of performing the essential job functions required by his assignment, with or without reasonable job accommodation(s). Any physical or mental examination or disclosure of such information required of administrator by the Board shall be job related and consistent with business necessity. Any medical or psychological examination under this section shall be at Board expense. Any information obtained from medical or psychological examinations or inquiries shall be considered and treated as confidential.

Upon proper application and acceptance for enrollment by the appropriate insurance underwriter, policyholder and/or third party administrator, the Board shall make benefit cost payments on behalf of Administrator and his eligible dependents for enrollment in the insurance programs set forth on the District's website:

<https://www.bcpsk12.net/district/finance-operations/transparency-report/>

The insurance programs cited on the District's website are subject to change at the Board's discretion.

The District will also pay the premium for a term life insurance policy on the Superintendent's life with a death benefit of \$300,000.00. The Superintendent is responsible for completion of all forms and requirements needed to receive the above-described insurance coverage. The District, by payment of the premiums required to provide this benefit described in this sub-paragraph, will be relieved from all liabilities with respect to the benefits provided. The failure of an insurance company to provide a benefit or benefits, for any reason, will not result in any liability to the District and will not be considered a breach by the District of this or any other agreement. Administrator agrees that the Board has the right to allocate to Administrator responsibility for a portion of the medical benefit plan costs and premiums for the plans and products specified above, as may be determined by the Board. The contributions required of Administrator shall not be less than the amount determined by the Board to be necessary to comply with the Publicly Funded Health Insurance Contribution Act, 2011 PA 152. The Board will notify Administrator of the amounts for which he is responsible in excess of the Board contributed medical benefit plan costs and premiums. To the extent that the medical benefit plan costs and premiums associated with the above plans and products exceed the level of the Board's contributions, Administrator hereby authorizes payroll deduction for all excess medical benefit plan costs and premium amounts required to maintain enrollment.

If Administrator makes a voluntary written election not to avail himself of the health /medical coverage offered by the Board, he will instead receive \$6000, on an annual basis, under a qualified Section 125 plan, on the further condition that Administrator furnishes written evidence that he is enrolled in another health/medical benefits plan that meets the minimum value and coverage requirements of the Affordable Care Act.

The Board reserves the right to change the identity of the insurance carrier, policyholder or third-party administrator for any of the above coverages, provided that comparable coverage, as determined by the Board, is maintained during the term of this Contract. The Board shall not be required to remit medical benefit plan costs or premiums for any insurance coverages for Administrator 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. Administrator is responsible for assuring completion of all forms and documents needed to receive the above-described insurance coverage. The Board, by remitting the medical benefit costs and premium contributions required under this Contract to provide the above-described plans and products, shall be relieved from all liability with respect to insurance benefits.

12. Administrator is entitled to the following holidays for which no service to the School District is required:

- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Eve Day
- Christmas Day
- New Year's Eve Day
- New Year's Day

13. If Administrator is absent from duty on account of personal illness or disability, he shall be allowed full pay for a total of 20 days per school year. From January 1, 2020 to June 30, 2020, Administrator shall receive 10 personal illness days. For the 2020-21 and 2021-22 school year, Administrator shall receive 20 personal illness days per school year. Unused paid leave days hereunder shall be cumulative to a maximum of 260 days for absence due to personal illness or disability of Administrator. Upon retirement from Byron Center Public Schools, Administrator may receive cash in lieu of his unused sick days at \$100 per day for a maximum of Ten Thousand Dollars (\$10,000).

14. Administrator shall be eligible to be reimbursed for travel, meals and lodging in accordance with per diem expense and reimbursement standards and procedures established by the Board. Any expense to be incurred by Administrator for out-of-district travel shall be submitted in advance to the Board President. Administrator shall be required to present an itemized account of his reasonable and necessary expenses in accordance with direction of the Board or its designee.

15. Subject to express approval by the Board, the fees or dues for membership in appropriate professional organizations shall be paid by the Board. Subject to prior approval by the Board, the Administrator may attend appropriate professional meetings at the local, state and national levels and shall be reimbursed for any registration fees, tuition, travel, lodging and/or reasonable meal expenses for himself/herself in relation thereto not prepaid by the Board.

16. The Board agrees to pay the premium amount for errors and omissions insurance coverage that applies to Administrator while engaged in the performance of a governmental function and while the Administrator is acting within the scope of his authority. The policy limits for this coverage shall be not less than \$5,000,000. The terms of the errors and omissions insurance policy shall be controlling respecting defense and indemnity of Administrator. The sole obligation undertaken by the Board shall be limited to the payment of premium amounts for the above errors and omissions coverage. In the event that such insurance coverage cannot be purchased in the above amounts and/or at a reasonable premium rate, the Board shall have the right to discontinue said coverage and shall so notify Administrator. In that event, the Board agrees on a case-by-case basis to consider providing legal defense and/or indemnification to Administrator as is authorized under MCL 691.1408 and MCL 380.11a (3)(d).

17. This Contract contains the entire agreement and understanding by and between the Board and Administrator with respect to the employment of Administrator 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 cancelled 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, approved by official action of the Board reflected in its minutes, and signed by Administrator and the President and Secretary of the Board. 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.

18. In the event of any dispute between the parties relating to discharge of Administrator during the term of this Contract, the parties hereby 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 Uniform Arbitration Act, MCL 691.1681 *et seq.*

The parties intend that this process of dispute resolution shall be inclusive of all contract and statutory claims advanced by Administrator arising from Administrator's discharge 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 Administrator 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 Administrator. Instead, this agreement to arbitrate claims applies to those matters which would otherwise be subject to state or federal court proceedings.

This agreement to arbitrate means that Administrator 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, Administrator 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, Administrator, through this agreement to arbitrate such claims, does not waive any statutory rights or remedies in the context of such arbitration proceedings.

The arbitrator's fees and the costs imposed by the American Arbitration Association shall be shared equally by the Board and Administrator, subject to the right of Administrator to seek to tax such fees as costs against the Board.

Any claim for arbitration under this provision must be filed with the American Arbitration Association, in writing, and served on the Board within one hundred eighty (180) days of the effective date of Administrator's discharge during the term of this Contract. The Decision and Award of the arbitrator shall be final and binding and judgment thereon may be entered in the Circuit Court for the 17th Judicial Circuit of Michigan (Kent County), pursuant to applicable provisions of the Michigan Uniform Arbitration Act.

19. If any provision of this Agreement 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 provision(s).

20. Administrator agrees that any claim or suit arising out of Administrator's 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. Administrator 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 the six (6) month 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 law suit, it is the intent of the parties that the court enforce this provision to the extent possible and declare the law suit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced.

21. This Contract is executed on behalf of the Byron Center School District pursuant to the authority granted as contained in the resolution of the Board adopted on October 30, 2019, the same being incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

Date: 12-16-19


ADMINISTRATOR

BYRON CENTER PUBLIC SCHOOLS
BOARD OF EDUCATION

Date: 12/16/19

By 
President

Date: 12/16/19

By 
Secretary