

## EMPLOYMENT CONTRACT

between

The Cleveland Heights-University Heights City School District Board of Education and

Ms. Elizabeth Kirby

This Employment Contract is made and entered into on the last date signed below by and between the Board of Education of the Cleveland Heights - University Heights City School District, Cuyahoga County, Ohio, hereinafter referred to as "Board", and Ms. Elizabeth Kirby, hereinafter referred to as "Superintendent" or "Ms. Kirby" (Resolution No. \_\_\_\_\_).

WHEREAS, the Board has determined to employ Ms. Kirby in the position of Superintendent in accordance with Ohio Revised Code Section 3319.01 and has authorized this Employment Contract:

NOW, THEREFORE, it is mutually agreed by the parties to this Employment Contract, as follows:

1. *Term of Employment Contract and Professional Certification*

The Board, pursuant to action taken in accordance with the provisions of law, hereby employs Ms. Kirby as Superintendent of the Cleveland Heights-University Heights City School District for a three-year term beginning August 1, 2019 and ending July 31, 2022, provided Ms. Kirby maintains an appropriate certificate/license issued by the State of Ohio to act as Superintendent.

2. *Days to be Worked and Duties*

- a. Ms. Kirby shall work two hundred and sixty (260) days per year under this Employment Contract as directed by the Board or its designee. Ms. Kirby shall devote such time and energies as are necessary to perform the duties specified during normal business hours, but it is expressly understood and agreed that the duties of this position will require the Superintendent to work during times other than normal business hours. The duties of the Superintendent shall consist of those duties prescribed by the laws of the State of Ohio and by the rules, regulations, policies and job description adopted by the Board.
- b. Ms. Kirby shall not, during the term of this Agreement, be employed with any other entity whether or not such employment is pursued for gain, profit, or pecuniary

advantage; provided, however, that Ms. Kirby may engage in other activities involving community service and teaching provided no conflict or potential conflict of interest exists, to the extent that such activities are permitted by law, are consistent with the Board's and the Ohio Ethics Commission's policies on conflict of interest and conflict of commitment, do not interfere with her performance of her obligations hereunder or interfere with the time, attention or effort necessary to carry out her duties and responsibilities hereunder; and provided further, that Ms. Kirby shall keep the Board President fully and timely informed.

### *3. Compensation and Benefits*

- a. The Board will pay Ms. Kirby an annual Base Salary of one hundred and seventy-five thousand dollars (\$175,000.00) commencing August 1, 2019, in twenty-six equal installments during the year. The Superintendent's "Annual Salary" as used in this Employment Contract shall include the Base Salary and all other compensation subject to the STRS pick-up and pickup on the pick-up in paragraph 3(e), and her "daily rate" is her "Base Salary" divided by 260 days.
- b. In addition, the Superintendent shall receive an annual Base Salary adjustment in each year of this Employment Contract that shall not be less than the percentage increase given to the administrators in the Educational Administrative Professional Staff Council (hereinafter referred to as "EAPSC") not later than when the adjustment is given to the EAPSC (excluding grandfathered members of the EAPSC). The Board may elect to provide a higher percentage during the term of this Employment Contract. This Base Salary may not be decreased unless the decrease is part of a uniform plan affecting salaries of all employees of the District and is mutually agreed to by the parties. Any salary adjustment beyond that set forth in this paragraph and made during the life of this Employment Contract shall be in the form of an amendment and shall become part of this Employment Contract. If any adjustment in Base Salary or other compensation is made during the term of the Employment Contract, it is understood and agreed that all other provisions shall remain in effect as originally set forth herein.
- c. If the EAPSC elects pickup of retirement, Medicare tax, or any other form of compensation in lieu of a salary adjustment, the Superintendent shall receive no less than the same increase in the form of Board contribution to a tax-sheltered annuity, which shall be treated as additional compensation.
- d. Ms. Kirby shall receive all fringe benefits now or hereafter granted to administrators in the School District under the EAPSC Master Agreement (which the parties acknowledge may be revised during the life of this Employment Contract), including,

but not limited to, nor reduced from, health care coverage as provided in the EAPSC agreement with payment of premium for medical, dental, prescription drug, skilled nursing and vision insurance, term life insurance and income continuity policy (short-term and long-term disability).

- e. The Board shall "pick-up" and pay superintendent's required contribution to the State Teachers Retirement System ("STRS"). Superintendent's share of retirement contributions paid by the Board on his/her behalf shall be treated as employee contributions for purposes of STRS and Ms. Kirby shall have no right to receive such amounts in cash. The Board will also pay the employer and employee STRS contributions of the STRS contribution on this "picked-up" amount. The amount of the fringe benefit pick-up shall be considered as additional compensation for superintendent. As such, if at any time following the date of Board action authorizing this Contract and/or execution of this agreement, should the Board's authority to provide compensation in the form of either pick-up or pick-up on the pick-up be prohibited or otherwise reduced by state law, the Board agrees to convert the corresponding value of such lost or reduced retirement contribution amounts to salary, which amounts shall be increased to defray any additional tax liability incurred by superintendent resulting there from.
- f. In addition to the salary set forth above, during the term of this Employment Contract, Ms. Kirby shall be provided an allowance of five hundred dollars (\$500) per month as additional compensation, which is attributable to business travel and the corresponding use of her personal automobile for business purposes. The Superintendent will not be eligible for mileage reimbursement.
- g. During each month of this Contract, the Board shall make a contribution on behalf of the Superintendent to an annuity contract or custodial account which is tax qualified under IRC Section 403(b) ("a TSA"). The amount of the contribution for each such month shall be one-twelfth (1/12) of ten percent of the Superintendent's Base Salary that is in effect for such Contract Year. The Superintendent shall select the TSA provider from those generally made available to employees of the District pursuant to the District's Section 403(b) Plan. The Board shall not have any responsibility with respect to its investment performance of or any other matter relating thereto the TSA, including the insolvency of the TSA provider. The Superintendent acknowledges that payments to a TSA will be treated as salary reduction contributions of the Superintendent for federal income tax purposes and shall be subject to the maximum annual limitations on salary reduction contributions to a TSA that are described in the federal tax law (e.g. Internal Revenue Code Sections 402(g) and 415(c)) for the calendar year in which the contribution is made; and if the monthly contribution cannot

be paid because of such limits, it shall be paid in cash to the Superintendent. Upon the request of the Superintendent, and subject to the terms of the Section 403(b) plan of the School District, the Board shall withhold and transfer additional portions of the Superintendent's salary to a TSA. The payment shall be treated as additional compensation and considered part of the Annual Salary subject to the STRS pick-up in paragraph 3(f).

- h. Ms. Kirby shall be entitled to earn a one-time performance incentive if and only if the following target is met: beginning with the 2019-2020 school year and ending with the 2021-2022 school year, each school in the Cleveland Heights-University Heights City School District is no longer designated/listed on the state's EdChoice Scholarship Program's List of Designated Schools, by virtue of increased building performance as designated on the State Report Card.

If the aforementioned target is met, Ms. Kirby shall receive a bonus of fifteen thousand dollars (\$15,000). Such performance bonus shall be paid by to Ms. Kirby within thirty days of the information on the determination of the meeting of the target being received by the Board of Education. Should the Ohio Department of Education and/or state legislature modify the EdChoice Scholarship Program in such a way that impacts the performance incentive as written herein, such language may be revised and/or modified in order to maintain the same effect as mutually agreed upon by the parties.

The parties may further discuss performance incentives and the criteria for same, and in the event the parties agree to any additional performance incentives during the life of this Employment Contract, they shall be by an amendment to this Employment Contract. If any adjustment/addition in performance incentive is made during the term of the Employment Contract, it is understood and agreed that all other provisions shall remain in effect as originally set forth herein.

#### 4. *Vacations and Holidays*

- a. During the term of this Employment Contract, Ms. Kirby shall be entitled to a vacation of thirty (30) days in each twelve (12) month period commencing August 1, 2019 and ending on July 31st of each succeeding year of this Employment Contract, exclusive of legal holidays. She may carry forward a maximum of ten (10) days into a subsequent calendar year and any days carried over shall be used by July 31st of the next year. Upon separation of service to the District for any reason, the Superintendent shall be paid for all accrued but unused vacation days at the daily rate then in effect under this Employment Contract. Such vacation accumulation payments shall, at Ms. Kirby's election, be paid to her in a lump sum or to a qualified tax deferred plan.

- b. Should Ms. Kirby have more than ten (10) days available for carryover at the end of a calendar year, she shall receive a payment equal to her daily rate on July 31st for each day in excess of ten (10) days that she is unable to carry forward into the next calendar year. In case of death of the Superintendent, such unused vacation leave shall be paid to her surviving spouse or the estate of the Superintendent, as the case may be. Said payment shall be made within thirty (30) days after July 31.

5. *Sick Leave*

Ms. Kirby shall be entitled to the use and accumulation of sick leave in accordance with Ohio law and Board policy. Ms. Kirby shall be allowed to use all accrued sick while employed by the District, subject to the same eligibility limits for use as regularly-appointed full-time administrators of the District. Ms. Kirby shall be eligible for payment for accrued unused sick leave, if any, at the daily rate of compensation upon retirement with STRS, subject to any limits established by State law, or Board policy.

6. *Expenses*

Except as provided for in paragraph 3 above, the Board shall reimburse the Superintendent for actual and necessary expenses approved by the Board and incurred by the Superintendent in the continuing performance of his/her duties under this Employment Contract as permitted by State law and are included in the District's annual appropriations measure.

7. *Relocation Assistance*

The Board agrees to pay Ms. Kirby, only if she establishes residency within reasonable driving distance of the District, a relocation allowance of up to five thousand dollars (\$5,000) for actual reasonable and necessary costs, including movement of household goods, to relocate Ms. Kirby from Chicago, Illinois. Ms. Kirby agrees to obtain three written estimates for the movement of her household goods, and the District agrees to pay the cost of the lowest qualified vendor upon request from Ms. Kirby.

Ms. Kirby agrees that she is responsible for all taxes related to payment of such expenses for relocation. Ms. Kirby further agrees, if she terminates her employment (excluding termination for disability or death) prior to July 31, 2021, to pay back to the District all monies paid by the District to relocate Ms. Kirby, unless the Board agrees to forgive any and all monies paid. Ms. Kirby further agrees that full payment to the District will be made within thirty (30) calendar days of her last day of employment.

8. *Evaluation*

- a. The Board shall evaluate and review in writing the performance of the Superintendent at least once during each contract year (August-July) of this Employment Contract. This evaluation and review shall be in accordance with the procedures adopted by the Board. The evaluation shall be reasonably related to the position of Superintendent and the goals and objectives for the Superintendent, as established mutually by the Superintendent and the Board. The establishment of such an evaluation procedure shall not create an expectancy of continued employment.
- b. The Board may consider the evaluation(s) in deciding whether to reappoint the Superintendent. Renewal or nonrenewal of this Employment Contract shall be governed by the terms of the Ohio Revised Code Section 3319.01. The Board may consider the evaluation(s) in determining what, if any, changes should be made in Ms. Kirby's compensation; provided, however, no such compensation may be decreased unless the decrease is part of a uniform plan affecting all employees of the District. Nothing in this paragraph or in this Employment Contract shall prevent the Board from making the final determination regarding reappointing or failing to reappoint the Superintendent.

9. *Medical Examination*

Ms. Kirby shall annually undergo a complete medical examination by a physician of his/her choice. The Board shall pay the cost of such medical examination not covered by the Board provided insurance. A statement certifying the physical and mental competency or incompetence of the Superintendent shall be filed with the President of the Board of Education with the Superintendent executing those waivers necessary for the receipt of such results by the Board President. The results of the medical examination shall be treated as confidential information.

10. *Professional Growth*

- a. The Board shall pay professional dues on behalf of the Superintendent for membership in BASA and AASA, and any other associations, as approved by the Board President, that are relevant and further the professional development of Ms. Kirby.
- b. The Superintendent may regularly attend and be reimbursed, according to Board policy, for professional meetings and conferences that will enhance his/her capacity to deal effectively with the business of the Board and the District to the extent such meetings and conferences are included in the annual appropriation.

#### *11. Consultancy Prior to Term*

For no more than fifteen (15) days during the period May 21, 2019 through and including July 31, 2019, the Board hereby employs Ms. Elizabeth Kirby as a consultant. The Superintendent shall coordinate with the Board President to develop a mutually agreeable schedule ("Consultant Schedule"). During the Consultant Schedule, Ms. Kirby shall devote her time and attention to becoming familiar with the Cleveland Heights-University Heights City School District, consulting with the Board and the District's leadership team, and taking such other steps as will prepare Ms. Kirby to assume the Superintendent position effective August 1, 2019. In consideration for such services, the Board shall pay Ms. Kirby at her daily rate for all days worked pursuant to the Consultant Schedule.

#### *12. Defense and Indemnification*

The Board agrees to provide Ms. Kirby with professional liability insurance as permitted by Ohio Revised Code Sections 3313.202, 2744.07 and 2744.08. The Board agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against her in her individual or official capacity as agent and Employee of the Board, provided that the incident which gives rise to any litigation occurred while Ms. Kirby was acting within the scope of her employment and provided that such liability coverage is within the authority of the Board to provide under the laws of the State of Ohio.

In no case will individual Board members be considered personally liable for defending or indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings. If, in the good faith opinion of the Superintendent, a conflict exists in regard to the defense of such claim between the legal position of the Superintendent and the legal position of the Board, she may request that alternative legal counsel be appointed or that she be able to engage legal counsel, in which event the Board shall indemnify her for the cost of a legal defense in a manner consistent with and as permitted by the laws of the State of Ohio. In any event, the Board shall not be required to pay any costs of any legal proceedings of the Superintendent where the Board and the Superintendent have adverse interests in such proceedings.

#### *13. Termination*

This Employment Contract may be terminated by mutual agreement of the parties, resignation, retirement, disability, or death of the Superintendent, or termination for cause by the Board in accordance with Ohio Revised Code Section 3319.16. The Superintendent

expressly agrees and acknowledges resignation during the term of this Employment Contract is governed by Ohio Revised Code 3319.15, wherein absent Board consent, resignation cannot occur during the school year or after the tenth day of July of any school year; failure to comply with this provision shall, in the Board's discretion, be reported to the Ohio Department of Education.

14. *Savings Clause*

This Employment Contract shall be subject to and construed according to the laws of the State of Ohio. Except as otherwise provided herein, any provision hereof declared invalid or unenforceable by a court of competent jurisdiction shall be severed and the remaining terms continued in full force and effect.

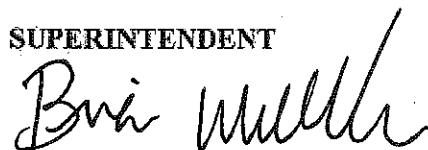
15. *Entire Agreement*

This Employment Contract contains the entire agreement between the parties and any purported agreement not herein contained, expressly or by implication, shall not be recognized.

FOR AND IN CONSIDERATION OF the salary and fringe benefits herein provided, Ms. Elizabeth Kirby represents that all information supplied to and by the Board in connection with her employment is accurate to the best of her knowledge and that she has been notified as required by Ohio Revised Code Section 3307.58 of her duties and obligations under Ohio Revised Code Chapter 3307, pertaining to the State Teachers Retirement System, as a condition of this employment.

The President and CFO/Treasurer of the Board of Education of the Cleveland Heights-University Heights City School District, having been duly authorized by Board resolution and Elizabeth Kirby have set their signatures on the dates below.

**SUPERINTENDENT**



Signature of Superintendent

6/5/2019

Date

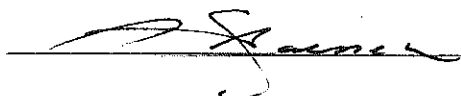
**BOARD OF EDUCATION**



Signature of President

6/5/2019

Date



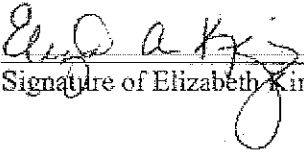
6/5/19



Signature of Chief Financial Officer

Date

ELIZABETH KIRBY

  
Signature of Elizabeth Kirby

5/22/19  
Date