

BERRYESSA UNION SCHOOL DISTRICT

FIRST AMENDED AGREEMENT FOR SERVICES AS ASSISTANT SUPERINTENDENT OF EDUCATION SERVICES

This Agreement between the Board of Trustees ("Board") of the Berryessa Union School District of Santa Clara County, State of California ("District") and Joseph McCreary ("Assistant Superintendent of Education Services") was originally effective on July 1, 2015. This First Amended Agreement ("Agreement") is effective April 12, 2016, and supersedes all prior agreements between the parties.

1. Employment as Interim Assistant Superintendent of Education Services

The Governing Board employs Joseph McCreary, and Joseph McCreary accepts employment, as Assistant Superintendent of Education Services of the Berryessa Union School District in Santa Clara County, State of California. Pursuant to Education Code Section 44886, the Assistant Superintendent of Education Services is as a certificated employee. The Assistant Superintendent of Education Services works under the Superintendent's direct supervision. During the term of this Agreement, Joseph McCreary may serve in two capacities, Interim Superintendent of Education Services, and Assistant Superintendent of Education Services. (See Section 6.) For ease of reference, the term "Assistant Superintendent of Education Services," as used in this Agreement applies to service in either capacity unless the context of the use of the term demonstrates otherwise.

2. Term of Agreement

The term of this amended Agreement shall become effective on April 12, 2016 unless otherwise specified herein. The Agreement shall end on June 30, 2017, unless otherwise terminated or extended.

If the Board decides not to reelect or reemploy the Interim Assistant Superintendent at the expiration of this Agreement, the Board shall notify the Interim Assistant Superintendent in writing at least 45 days before this Agreement expires.

After the evaluation for the 2015-2016 year required by Section 5 is complete, the Superintendent may recommend that the Board enter into a new two-year agreement to take effect on July 1, 2016, with an ending date of June 30, 2018. At any time, with the recommendation of the Superintendent, the Board may take additional action to extend this Agreement.

3. Duties and Responsibilities

The duties and responsibilities of the Assistant Superintendent of Education Services shall be those described in the Position Description and as

prescribed by law, as well as other duties and responsibilities that may be assigned by the Superintendent.

The Assistant Superintendent of Education Services shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the District, subject at all times to applicable state and federal laws and the policies set by the Board, and subject to the Board's consent when required by the terms of this Agreement or by Board ordinances, policies, rules, or applicable law.

4. Assistant Superintendent of Education Services Performance Objectives

As soon as practicable after the parties execute this agreement, the Interim Assistant Superintendent of Education Services and Superintendent shall meet to establish the Assistant Superintendent of Education Services' goals and performance objectives. These objectives shall be committed to writing and shall be among the criteria by which the Superintendent evaluates the Assistant Superintendent of Education Services' performance. Following completion of the Assistant Superintendent of Education Services' evaluation each year and before September 1 of the succeeding school year, the parties will meet to establish goals and performance objectives for the next succeeding year in the same manner.

5. Evaluation

The Superintendent shall evaluate the Assistant Superintendent of Education Services' performance at least once each year during the term of this Agreement and more frequently at the Superintendent's discretion. The first annual written evaluation should be completed by April 30, 2016, using the performance evaluation form mutually agreed upon by the Assistant Superintendent of Education Services and the Superintendent. Future annual performance evaluations should be completed by July 1 of each year.

Any evaluation shall be based upon, but not limited to:

- the duties and responsibilities of the Assistant Superintendent of Education Services as described in this Agreement and provided by state law, Board policies, procedures, and direction;
- the Assistant Superintendent of Education Services' goals and performance objectives for the year in question; and
- the working relationship between the Assistant Superintendent of Education Services and the Superintendent.

6. Designation as Assistant Superintendent of Education Services

After completing the first annual evaluation described in paragraph 5, if the Superintendent, at his sole discretion, determines that the Assistant

Superintendent of Education Services' performance during the 2015-2016 year in his Interim capacity meets the District's needs, standards, and expectations, the Superintendent may designate the Interim Assistant Superintendent of Education Services as the Assistant Superintendent of Education Services effective July 1, 2016. In addition, the Superintendent may recommend to the Board that this Agreement be extended for an additional two-year term. Approval by the Board and Assistant Superintendent of Education Services is required for any extension of the term of this Agreement.

7. Salary

The initial annual salary of the Interim Assistant Superintendent of Education Services shall not be less than one hundred fifty thousand dollars (\$150,000) per year for the first year of this Agreement (July 1, 2015 – June 30, 2016), payable in twelve (12) equal monthly payments (Initial Base Salary). If the Superintendent designates the Interim Assistant Superintendent of Education Services to be the Assistant Superintendent of Education Services pursuant to the provisions of paragraph 6 above, then the Initial Base Salary of the Assistant Superintendent of Education Services shall be increased by five thousand dollars (\$5,000) effective July 1, 2016.

- The Board may also grant the Assistant Superintendent for Education Services an increase in total compensation (including salary, health and welfare benefits, and related compensation and/or benefits), in an amount equivalent to the highest annual percentage total compensation adjustment provided to any certificated employee group during the term of this Agreement, adjusted downward to reflect any compensation-related concessions made by that employee group. The Assistant Superintendent of Education Services agrees to accept a total compensation reduction equivalent to the total compensation reduction that may be accepted by any other certificated employee group, whether through furloughs, reduced work years, salary schedule reductions, or similar mechanisms. The Board and Assistant Superintendent of Education Services shall revise this Agreement to reflect any compensation adjustments made pursuant to this paragraph, and to specify how such compensation adjustments shall be made to salary, health and welfare benefits, and/or related compensation. To fully implement this paragraph for the 2015-2016 and 2016-2017 fiscal years, the Assistant Superintendent of Education Services' annual salary for these years shall be as follows, and no additional base salary shall be due for these years pursuant to the provisions of this paragraph:

- **2015-2016 Base Salary:** The annual base salary for the Assistant Superintendent of Education Services shall be one hundred and fifty-six thousand, five hundred and seventy-two dollars (\$156,572) for the full 2015-2016 year.

- **2016-2017 Base Salary:** The annual base salary for the Assistant Superintendent of Education Services shall be one hundred and seventy-three thousand four hundred and even dollars (\$173,407) for the full 2016-2017 year. This amount includes the \$5,000 for movement from Interim to full Assistant Superintendent status effective July 1, 2016. If the Superintendent decides not to move the Interim Assistant Superintendent of Education Services to be the full Assistant Superintendent of Education Services as authorized above, the annual 2016-2017 base salary will be reduced by \$5,000.
- Two percent (2%) of the base salary will be awarded for a Master's Degree; and three percent (3%) of the base salary will be awarded for a Doctoral Degree. No more than one Master's Degree and one Doctoral Degree shall be counted for this purpose.
- Career administrative service increments will be granted as follows:
 - Upon completion of twelve (12) years of career administrative services, two percent (2%) additional compensation;
 - Upon completion of fifteen (15) years of career administrative service, two percent (2%) additional compensation; and
 - Upon completion of eighteen (18) years of career administrative service, two percent (2%) additional compensation.
 - Upon completion of twenty-six (26) years of career administrative service, two percent (2%) additional compensation.

Based on merit, job performance, and any other criteria determined by the Superintendent and Board, the Board may provide additional increases for any and all years of the Agreement. Specific Board action is required to approve any salary increase. Any salary increase shall not be considered either as entering into a new agreement or extending the term of this Agreement.

Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.

The District is required to follow the requirements of law and related regulations of the State Teachers Retirement System. This Agreement includes no promises or warranties regarding whether any particular item of compensation or service credit will be deemed creditable by STRS.

8. Health and Welfare Benefits

The Assistant Superintendent of Education Services shall receive only the following health and welfare benefits:

- Fully paid dental and vision insurance.
- The minimum contribution toward medical insurance premiums under the Public Employees' Medical and Hospital Care Act (PEMHCA), as required by Government Code Section 22892, to the extent that such contribution is required by law and the District continues to participate in the PEMHCA program. As of June 1, 2015, this minimum contribution amount is one hundred and twenty-two dollars (\$122) per month. The Assistant Superintendent of Education Services shall be responsible for paying the full medical insurance premium above the minimum amount required by Government Code Section 22892 (if any), and may use an IRC Section 125 plan for this purpose.
- Premiums fully paid by the District for the District-provided fifty thousand dollar (\$50,000) life insurance policy.

9. Business Expenses

In accordance with Board policies, the Assistant Superintendent of Education Services shall also be compensated for actual reasonable and necessary expenses incurred when District-related duties and obligations require him to travel outside the boundaries of Santa Clara County.

10. Professional Memberships

The District shall contribute up to a maximum of one thousand eight hundred dollars (\$1800) per school year towards an individual membership for the Assistant Superintendent in ACSA, AERA, NAESP, and ASCD and other organizations pre-approved by the Superintendent.

11. Work Year

During the term of this Agreement, the Assistant Superintendent shall provide two hundred and twenty-five (225) days of service per year. Periods of leaves of absences, including sick leave, bereavement leave, and personal necessity shall be considered days of service. The Assistant Superintendent shall not earn vacation during the term of this Agreement.

12. Sick Leave

12.1 The Assistant Superintendent of Education Services shall be entitled to twelve (12) working days of sick leave per year. Unused sick leave days shall be accumulated.

12.2 Upon termination or expiration of this Agreement, the Assistant Superintendent of Education Services may transfer the accumulated and unused sick leave days to another school district as permitted by Education Code Section 44979.

12.3 In no event shall the District make a cash payment to the Assistant Superintendent of Education Services for accumulated and unused sick leave.

12.4 The Assistant Superintendent for Education Services shall follow District procedures and use District forms for reporting sick leave use.

13. Termination of Agreement

This Agreement may be terminated by any of the following events:

- Parties' mutual written agreement.
- Assistant Superintendent of Education Services' retirement or death.
- Assistant Superintendent of Education Services' disability.

The Assistant Superintendent of Education Services may be removed from his position by the Board if, in the Board's opinion, he is unable to serve in this position due to a physical and/or mental condition, and a licensed physician selected by the District evaluates the Assistant Superintendent of Education Services and indicates the Assistant Superintendent of Education Services is unable to perform the essential functions of his position or will be unable to perform the essential functions of the position for at least six (6) months or longer.

Termination for Cause

The Board may terminate this Agreement for good and just cause.

If the Board proposes to terminate this Agreement for cause, it shall give the Assistant Superintendent of Education Services written notice of its intent to terminate for cause ("Notice"); a detailed delineation of charge(s) against him; and copies of any documents substantiating the charge(s). The Assistant Superintendent of Education Services shall be given not less than fifteen (15) days from the date of receipt of the Notice, charge(s), and documents in which to meet with the Board and respond to the charge(s).

The Board's official decision to terminate this Agreement for cause shall not be made until after the conclusion of the pre-termination meeting. If the proposed termination for cause is finalized by Board vote, the Assistant Superintendent of Education Services shall have no right to further employment by the District; nor shall he be paid a salary or provided any

other benefit beyond the given date of termination, which in no event shall be earlier than thirty (30) days from the receipt of the Notice.

If this Agreement is terminated for cause, the Assistant Superintendent shall have no right of action against the Board for breach of contract.

Discharge Without Cause

The Board may terminate this Agreement without cause, with forty-five (45) days written notice to the Assistant Superintendent of Education Services. Upon exercising its option under this subsection, the Board shall pay to the Assistant Superintendent of Education Services any amounts specified in this paragraph and shall advise the public and prospective employers that the Assistant Superintendent of Education Services was terminated under a provision of this contract that does not require cause.

If the Board terminates this Agreement without cause during the first year of this Agreement while the Assistant Superintendent of Education Services is serving in an interim capacity, the District shall not be required to pay the Assistant Superintendent of Education Services any additional monthly sums.

Except as provided in Government Code Section 53260 (b), if the Board terminates this Agreement without cause after the Interim Assistant Superintendent of Education Services has been designated the Assistant Superintendent of Education Services, the District shall pay the Assistant Superintendent of Education Services monthly sums equal to the Assistant Superintendent's current salary rate for a period of six (6) months following the effective date of termination, or the number of months remaining on the unexpired term of this Agreement beyond the termination date, whichever is less. The Assistant Superintendent of Education Services shall fully reimburse the District for any such payment if he is convicted of a crime involving abuse of his office or position.

The provisions of this paragraph comply with California Government Code Sections 53243 – 53243.4 and 53260.

The parties expressly understand and agree that any breach or termination of this Agreement by the District shall not result in the Assistant Superintendent of Education Services' continued employment or reinstatement. The remedies provided in this Agreement are the exclusive remedies available to the Assistant Superintendent of Education Services.

Assistant Superintendent of Education Services' Election to Terminate Agreement

The Assistant Superintendent of Education Services shall notify the Superintendent and all Board members if he becomes a finalist for a position

with another employer. The Assistant Superintendent of Education Services may resign at any time upon giving forty-five (45) days written notice to the Board.

14. Professional Liability

The Governing Board agrees that, consistent with the requirements of law, it shall defend, hold harmless and indemnify the Assistant Superintendent of Education Services from any and all demands, claims, suits, actions, and legal proceedings at law or in equity (specifically excluding, however, any demands, claims, suits, actions, or legal proceedings brought against the Assistant Superintendent of Education Services by or on behalf of the District, any criminal proceedings brought against the Assistant Superintendent of Education Services in his individual capacity or in his official capacity as agent and employee of the Governing Board), provided the incident giving rise to the claim arose while the Assistant Superintendent of Education Services was acting in good faith and within the scope of his employment. In no event shall individual Governing Board members be individually liable or responsible to the Assistant Superintendent of Education Services, for defending or indemnifying him against such demands, claims, suits, actions, and legal proceedings.

15. Severability and Savings

If any provisions of this Agreement shall be held invalid by operation of law of any arbitrator, tribunal, or court of competent jurisdiction, or if compliance with or enforcement of any provisions should be restrained by an arbitrator, tribunal, or court pending a final determination as to its validity, the remainder of this Agreement shall not be affected.

16. Arbitration

No civil action concerning any dispute arising under this Agreement shall be instituted before any court. All disputes under this Agreement shall be submitted to final and binding arbitration under either informal mediation procedures if the parties agree, or to formal arbitration procedures under the auspices of the American Arbitration Association if the parties cannot agree on an informal mediation procedure. The formal arbitration shall be conducted in accordance with the rules of the American Arbitration Association before a single arbitrator. All costs of the arbitration shall be divided equally between the parties. The arbitrator's award resulting from the arbitration shall be final and binding and may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly.

17. Amendment

This Agreement may be amended by mutual consent of the Governing Board and Assistant Superintendent of Education Services.

18. General Provisions

This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education and the California State Teachers Retirement System, and to the lawful rules and regulations of the Governing Board of the Berryessa Union School District.

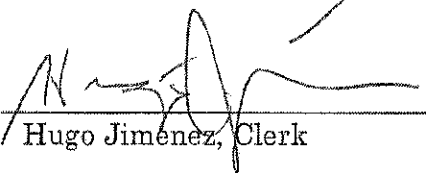
This Agreement is the full and complete agreement between the parties, and it can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

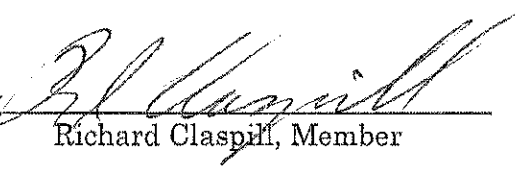
We sign this Agreement as the full and complete understanding of the relationships between the parties.

GOVERNING BOARD OF TRUSTEES OF THE BERRYESSA SCHOOL DISTRICT, SANTA CLARA COUNTY, STATE OF CALIFORNIA:

By: 
David Cohen, President

By: 
Thelma Boac, Vice President

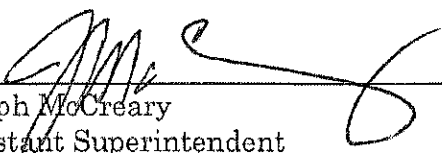
By: 
Hugo Jiménez, Clerk

By: 
Richard Claspill, Member

By: 
Khoa Nguyen, Member

Date: 4-12-16

I accept this First Amended Agreement and agree to comply with the conditions of this Agreement and to fulfill all of the duties of employment of Assistant Superintendent of Education Services for the Berryessa Union School District.

By: 
Joseph McCreary
Assistant Superintendent
Education Services

Date: 4/12/16