

**BERRYESSA UNION SCHOOL DISTRICT**  
**THIRD AMENDED AGREEMENT FOR**  
**SERVICES AS SUPERINTENDENT**

This Agreement was originally entered into on June 28, 2011, between the Berryessa Union School District ("District") Governing Board ("Board") and Will H. Ector, Jr. ("Superintendent"), and was amended effective April 15, 2014 and March 10, 2015. This Third Amended Agreement ("Agreement") is effective April 12, 2016, and supersedes all prior agreements and amendments. The provisions set forth below reflect the full Agreement between the parties.

1. **Employment As Superintendent**

By this Agreement, the Board employs the Superintendent and the Superintendent accepts employment as the Superintendent of the Berryessa Union School District of Santa Clara County in the State of California, under the terms and conditions indicated below.

2. **Term Of Agreement**

- 2.1 The terms of this amended Agreement shall become effective on April 12, 2016, unless otherwise specified herein. The term of the Agreement shall end on June 30, 2017, unless otherwise terminated or extended. Upon the Superintendent's receipt of a satisfactory performance evaluation at the end of the 2015-2016 school year (through the evaluation process described in Section 5 of this Agreement), the term of this Agreement shall automatically be extended to June 30, 2018.
- 2.2 The Board shall at least annually complete a written evaluation of the Superintendent's job performance including an assessment of his progress toward the performance goals and objectives established pursuant to Section 4.
- 2.3 Following each annual evaluation (based on the same time line and process set forth in Section 2.2) of the Superintendent's job performance, if the Board determines that the evaluation is satisfactory, the Board may enter into a new three-year agreement with the Superintendent to take effect on the next succeeding July 1. A less than satisfactory evaluation shall be determined solely by the Board.
- 2.4 If the Board decides not to reelect or reemploy the Superintendent at the expiration of this Agreement, the Board shall notify the Superintendent in writing at least 45 days before this Agreement expires, as provided in Education Code Section 35031.

3. Duties And Responsibilities

- 3.1 The Superintendent shall serve as the Superintendent of the Berryessa Union School District and act as its Chief Executive Officer. The Board is responsible for developing District policy and general goals; the Superintendent is responsible for executing said policies and implementing the identified goals. The parties agree to cooperate fully and to assist each other in satisfying these responsibilities.
- 3.2 The Superintendent shall recommend persons to the Board for appointment to the District's administrative staff and for employment as certificated or classified employees. He shall also recommend persons to the Board as independent contractors should the Board so request. The Board retains the final decision whether to appoint or employ any of the persons recommended or nominated by the Superintendent.
- 3.3 The Superintendent shall perform the duties prescribed for a superintendent by the laws of the State of California and Board policy. The Superintendent shall act as Secretary to the Board as described in Education Code Section 35025. In addition to the powers and duties described in Education Code Sections 35035 and 35250, the Superintendent shall have such additional powers and duties as delegated to him by the Board. In the performance of his duties, the Superintendent shall adhere to all Board policies, rules, regulations, ordinances, and direction, and all applicable state and federal laws.

4. Superintendent's Performance Objectives

The Board, in consultation with the Superintendent, shall establish the Superintendent's goals and performance objectives. These objectives shall be reduced to writing and shall be among the criteria by which the Board evaluates the Superintendent's performance. Following the completion of the Superintendent's evaluation each year and by August 15, the parties will meet to establish goals and performance objectives for the next succeeding year in the same manner.

5. Evaluation

- 5.1 The Board shall evaluate the Superintendent's performance at least two times a year during the term of this Agreement and more frequently at the Board's discretion. An informal evaluation should be completed before December 31 of each year; an annual written evaluation should be completed by June 30 of each year, using the performance evaluation form mutually agreed upon by the Superintendent and the District. The Board President or designee will deliver a copy of the written evaluation to Personnel Services for placement in the Superintendent's personnel file.

5.2 No later than November 15th and March 15th each year, the Superintendent shall notify the Board of its evaluation responsibilities; provide the Board with copies of this Agreement, the performance evaluation form previously agreed upon, the completed evaluation from the previous year and the Superintendent's current performance objectives; and schedule a meeting for the Superintendent and Board to review the Board's completed written evaluation of the Superintendent.

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

- the duties and responsibilities of the Superintendent as described in this Agreement and provided by state law, Board policies, procedures, and direction;
- the Superintendent's goals and performance objectives for the year in question;
- the working relationships between the Superintendent and the Board;
- the working relationships between the Superintendent and the community served by the District; and
- the improvement in student achievement as measured by state tests or other multiple measures.

## 6. Salary

6.1 **2015-2016 Base Salary:** Effective July 1, 2015, the Board shall pay the Superintendent an annual base salary of two hundred and twenty four thousand, three hundred dollars (\$224,300).

6.2 **2016-2017 Base Salary:** Effective July 1, 2016, the Board shall pay the Superintendent an annual base salary of two hundred forty thousand, seven hundred and thirty dollars (\$240,730).

6.3 **Career Administrative Service Increments:** In addition to the base salary listed in Section 6.1 above, the District shall provide the same career administrative service increments to the Superintendent as provided to the certificated Assistant Superintendents, specifically the following: 2% additional compensation for 12 years of career administrative service, 2% additional compensation for 15 years of career administrative service, and 2% additional compensation for 18 years of career administrative service, and 2% additional compensation for 26 years of career administrative service. The Superintendent shall receive one career administrative service increment beginning in the 2012-2013 fiscal year, two beginning in the 2013-2014 fiscal year,

and three beginning in the 2014-2015 fiscal year, and four beginning in the 2015-2016 fiscal year.

- 6.4 Master's Degree Stipend: Consistent with the certificated management salary schedule, the Superintendent shall continue to receive the 2% Master's Degree Stipend.
- 6.5 2011-2012 Salary Reduction: For the 2011-2012 fiscal year, the Superintendent's annual base salary was reduced by 2.5%, for a total annual base salary of one hundred eighty-one thousand dollars (\$181,000). This annual amount shall be prorated to reflect the July 19, 2011 start date. This salary reduction shall end, and the full annual base salary provided in Section 6.1 shall apply beginning on July 1 of the fiscal year in which the certificated bargaining unit's two-day reduced work year and salary schedule are restored.
- 6.6 Merit Increases: Based on merit, job performance, and any other criteria determined by the 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.
- 6.7 Modifications Of Salary: Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.
- 6.8 Installments: The Superintendent's annual salary shall be payable in 12 equal monthly installments on the last working day of each month for that month's service. The per diem rate shall be calculated according to current District practice.
- 6.9 STRS Rules: The District shall report the Superintendent's creditable compensation to the State Teachers Retirement System (STRS) as required by law and applicable regulations, and makes no warranties regarding whether any particular compensation or service credit will be deemed creditable by STRS.

## 7. Health And Welfare Benefits

The Superintendent shall receive only the health and welfare benefits described below:

- 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, 2011, this minimum contribution amount was \$112 per month. The Superintendent 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 \$100,000 life insurance policy. This increase is subject to the District's ability to secure the increased policy coverage at a reasonable additional cost.

8. Professional Memberships

The District shall continue to contribute up to a maximum of \$1,800 per school year toward individual memberships in ACSA or other organizations directly related to the Superintendent's service to the District. In addition, the District shall pay up to \$700 for the cost of a retiree lifetime membership in ACSA if the Superintendent retires from the District.

9. Medical Examination

The Superintendent is required to have an annual comprehensive physical examination by a licensed physician. The Superintendent may opt to be examined by his personal licensed physician. Following the examination, the physician shall provide to the Board a signed statement concerning the Superintendent's continued physical fitness to perform the Superintendent's duties. The physician's statement shall be confidential. The District shall pay the costs of the examination and report, to the extent they are not covered by insurance.

10. Business Expenses

10.1 Mileage/Expense Reimbursement: The District will not provide expense reimbursement except as specifically authorized in advance pursuant to Section 10.2.

10.2 Business Expenses: If, by action of the Board, the District requires the Superintendent to travel or attend meetings outside of Santa Clara County, the District will reimburse the Superintendent for authorized expenses. The Superintendent will follow normal District procedures for requesting expense reimbursement. Each reimbursement request shall be accompanied by receipts and other appropriate documentation and must be submitted to the Board for approval. Prior Board approval is required for anticipated airfare or other transportation expenses, hotel, and meeting/conference registration costs. In the event that prior approval by the full Board is not feasible, the Board President may provide this approval.

11. Workyear/Vacation

- 11.1 The Superintendent's work year shall be 220 days during each annual period covered by this Agreement. In addition to 220 workdays, the Superintendent shall be entitled to twenty-five (25) days annual vacation, non-work time, with pay, and legal and Board declared District holidays as described in the adopted District calendar.
- 11.2 Vacation shall accrue on a monthly basis (approximately 2.08 days per month). The Superintendent may carry over no more than ten (10) days of vacation from one fiscal year to the next. This maximum may be exceeded only with the written approval of the Board. Unless modified by written agreement between the Board and Superintendent, at the conclusion of each school year ending June 30, the Superintendent shall be paid for any portion of accrued vacation time that exceeds ten (10) days at the Superintendent's daily rate of pay in effect on June 30 of the school year from which the vacation was carried over.
- 11.3 If this Agreement is terminated or the Superintendent retires, the Superintendent shall be entitled to full compensation for unused vacation up to a maximum total accrual of twenty (20) days at the Superintendent's then existing current daily rate. No more than twenty (20) days of paid vacation will be accrued or paid at the expiration or termination of this Agreement or the Superintendent's retirement, unless the Board increases this maximum in writing pursuant to Section 11.2.
- 11.4 Each year the Superintendent shall use at least five (5) days of vacation consecutively.
- 11.5 Advance written notification to the Board and Board approval is required for the Superintendent's use of five (5) or more consecutive vacation days.
- 11.6 The Superintendent shall keep the Board informed about his calendar, including written reports at least each December and June about paid leave and vacation used, days worked, and the Superintendent's proposed work schedule for the following six months. These written reports shall be placed in the Superintendent's personnel file.
- 11.7 For purposes of calculating vacation payout pursuant to Section 11.3 as well as for any pro-ration of pay, the Superintendent's daily rate shall be calculated based on his annual base salary specified in Section 6.1 plus applicable administrative career service increments specified in Section 6.2 divided by 220.

12. Sick Leave

- 12.1 As permitted by Education Code Section 44979, the Superintendent shall be entitled to transfer accumulated and unused leave from the Evergreen School District to the Berryessa Union School District.
- 12.2 The Superintendent shall be entitled to 12 working days of sick leave each current contract year. Unused sick leave days shall be accumulated.
- 12.3 Upon termination or expiration of this Agreement, the Superintendent may transfer the accumulated and unused sick leave days to another school district as permitted by Education Code Section 44979.
- 12.4 In no event shall the District make a cash payment to the Superintendent for accumulated and unused sick leave.
- 12.5 The Superintendent shall follow District procedures and use District forms for reporting sick leave use to the Board and the District personnel department.

13. Outside Professional Activities

- 13.1 With the Board's prior approval, the Superintendent may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties and obligations; said outside professional activities may be performed for consideration provided they do not interfere with or conflict with the Superintendent's performance of his duties under this Agreement.
- 13.2 If performed on District time, honorariums paid to the Superintendent for such activities shall be transferred to the District.

14. Contract Termination

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

- 14.1 Parties' mutual written agreement.
- 14.2 Superintendent's retirement or death.
- 14.3 Superintendent's disability. The Superintendent 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 Superintendent and indicates that the Superintendent is unable to perform the essential functions of the Superintendent's position or will be unable to perform the essential functions of the position for at least six months or longer.

14.4 Termination For Cause:

- 14.4.1 The Board may terminate this Agreement for good and just cause. This shall include, by way of illustration and not limitation, failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to District, unprofessional conduct, incompetency, neglect of duty, or breach of this Agreement. Determination of whether cause exists shall be in the sole discretion of Board. The Board will not make this determination in an arbitrary or capricious manner.
- 14.4.2 Prior to Board action terminating the Agreement for cause, if the identified cause is for unsatisfactory performance, Governing Board shall identify the specific areas of unsatisfactory performance and give Superintendent a stated timeline to correct said areas.
- 14.4.3 If the Board proposes to terminate this Agreement prior to its expiration date for cause pursuant to this section, it shall give the Superintendent written notice of its intent to terminate for cause ("Notice"), including a detailed delineation of the charge(s) against him, and copies of any documents substantiating the charges. The Superintendent shall be given not less than 15 days from the date of receipt of the Notice to meet with the Board and respond to the charge(s). The Superintendent may bring a representative of his choice, and at his expense, to attend and participate in such meeting.
- 14.4.4 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 Superintendent shall have no right to further employment by the District, nor shall he be paid a salary nor be provided any other benefit beyond the given date of termination.

14.5 Discharge Without Cause

- 14.5.1 Notwithstanding any other provision of this Agreement, Governing Board shall have the sole right, upon the giving of at least sixty (60) days notice, to terminate this Agreement during its term.
- 14.5.2 Except as provided in Government Code Section 53260 (b), if the Board terminates the Agreement before its normal expiration, except pursuant to Sections 14.1 through 14.4



above, it shall pay Superintendent, commencing from date of notification, not more than nine (9) months of salary and benefits, or for the number of months remaining on his contract with District, whichever is less.

The actual amount to be paid shall be determined by the number of months remaining on the Agreement, and the base annual salary paid in the last year of actual employment with District.

14.5.3 If Superintendent is gainfully employed, or commences drawing retirement benefits from a retirement system during any portion of the time he is being compensated by District pursuant to this Section 14.5, such earnings shall reduce, on a dollar-for-dollar basis, District's obligation under this section.

14.5.4 For each affected month during the period of time Superintendent is to be compensated by District pursuant to this Section 14.5, Superintendent shall provide District with a statement of earnings, if any, which shall become a prorated offset against District's monthly obligation under this section for the following month.

14.5.5 The compensation set forth in this Section 14.5 shall be the only compensation of any kind that shall be due Superintendent upon termination of this Agreement pursuant to this Section 14.5. As required by law, the Superintendent shall fully reimburse the District for any cash settlement related to the termination of this Agreement if he is convicted of a crime involving an abuse of his office or position.

#### 14.6 Superintendent's Election To Terminate Agreement

Superintendent shall have the sole right, upon the giving of at least ninety (90) days' notice, to terminate this Agreement during its term. Should Superintendent become a candidate for a position elsewhere during the term of this Agreement, Superintendent shall advise the Board through the Board President of Superintendent's intention when Superintendent becomes a finalist for any position.

14.7 The parties agree than any breach or termination of this Agreement by the District shall not result in the Superintendent's continued employment or reinstatement. The remedies provided in this Agreement are the exclusive remedies available to the Superintendent.

15. Amendment

This Agreement may be amended by mutual consent of the Board and Superintendent.

16. Severability And Savings

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

17. 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.

18. General Provisions

18.1 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 California State Teachers Retirement System, and to the lawful rules and regulations of the Berryessa Union School District Governing Board. If any provisions of this Agreement conflict with any District rules or regulations, the terms of this Agreement shall prevail.

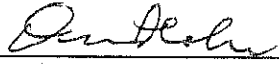
18.2 This Agreement is the full and complete agreement between the parties, and it can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.


18.3 This Agreement shall be construed as a whole according to its plain and fair meaning and shall not be construed more strongly against either party regardless of who is responsible for its preparation.

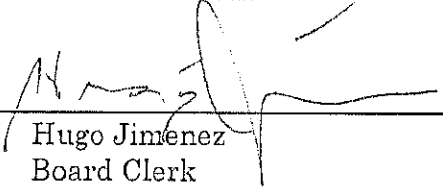
18.4 We sign this Agreement as the full and complete understanding of the relationships between the parties.

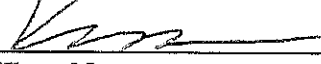
18.5 This Agreement and all related application and employment documents will be placed in the Superintendent's personnel file.

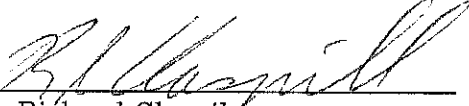
APPROVED BY THE GOVERNING BOARD OF THE BERRYESSA UNION SCHOOL DISTRICT ON MARCH 10, 2015, SANTA CLARA COUNTY, STATE OF CALIFORNIA:

By:   
David Cohen  
Board President

By:   
Thelma Boac  
Board Vice President

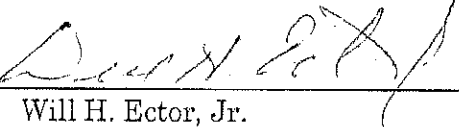
By:   
Hugo Jimenez  
Board Clerk

By:   
Khoa Nguyen  
Board Member

By:   
Richard Claspil  
Board Member

Date: 4-12-16

I accept this Third Amended Agreement and agree to comply with the conditions of this Agreement and to fulfill all of the duties of employment of the Superintendent of the Berryessa Union School District.

By:   
Will H. Ector, Jr.

4/12/16  
Date