

## CONTRACT OF EMPLOYMENT

### **School Superintendent**

It is hereby agreed by and between the Board of Education of Niles Community Schools (hereinafter "Board") and Daniel Applegate (hereinafter "Superintendent") that pursuant to Section 1229(1) of the Revised School Code, the Board in accordance with its action found in the minutes of its meeting held on the 1st day of February, 2021, has and does hereby employ the Superintendent for five (5) years commencing on July 1, 2021 and ending on June 30, 2026. The District's Board of Education may take official action to determine whether or not to extend the term of this Agreement for an additional school year on or before April 1<sup>st</sup> of the first year of this Agreement and on or before April 1<sup>st</sup> of each succeeding year; provided, the term of this Agreement will not be extended except by official and affirmative action on the District's Board of Education in a public meeting held in conformity with the Open Meetings Act according to the terms and conditions as described and set forth herein as follows:

1. The Superintendent shall perform the duties of Superintendent and serve as the chief executive officer of the District. He shall be entitled and expected, subject to the Board's desires in a particular matter, to:
  - a. Present his recommendations to the Board on any subject under consideration by said Board.
  - b. Attend each meeting of the Board unless excused or ill.
  - c. Serve as an ex-officio non-voting member of each committee established by the Board or shall be permitted to delegate this duty as he deems fit.

The Superintendent is responsible, subject to Board approval and ratification, for managing, organizing, and arranging District operations and personnel in a manner that, in his judgment, best serves the District. The responsibility for selection, placement, and transfer of personnel is vested in the Superintendent, with selection of certified personnel subject to final approval by the Board. The Board, individually and collectively, shall refer promptly all criticism, complaints, and suggestions called to its attention about District operations and personnel to the Superintendent for study and recommendation. The Superintendent is subject to assignment and transfer to another administrative position of employment in the School District at the discretion of the Board.

2. The Superintendent 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. The Superintendent agrees, as a condition of his continued employment, to meet 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 the Superintendent 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. The Superintendent agrees to devote his talents, skills, efforts, and abilities toward competently and proficiently fulfilling all duties and responsibilities of the position assigned. The Superintendent agrees to faithfully perform those duties assigned by the Board and to comply with the directives of the Board with respect thereto. Further, the Superintendent 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. The Superintendent agrees to devote substantially all of his business time, attention and services to the diligent, faithful, and competent discharge of his duties on behalf of the School District to enhance the operation of the School District and agrees to use his best efforts to maintain and improve the quality of the programs and services of the School District.

4. The Superintendent shall be paid at an annual (twelve month period from July 1 to June 30) salary rate of not less than \$137,115 in consideration of his performance of the duties and responsibilities of the position assigned in conformance with the requirements and expectations of the Board for the 2021-22 school year. For the 2022-23 school year, starting on July 1st, the Superintendent's salary will increase 1.3%, For the 2023-24 school year, starting on July 1st, the Superintendent's salary will increase 1.0% . For the 2024-25 school year, starting on July 1st, the Superintendent's salary will increase 1.5% . For the 2025-26 school year, starting on July 1st, the Superintendent's salary will increase 1.5% unless the Board acts to raise or lower the percentage increase.

Should the Superintendent be assigned or transferred to another administrative position, the salary paid shall not be lower than the initial salary of the current fiscal year. The annual salary shall be paid in twenty-six (26) equal bi-weekly installments beginning with the commencement of the fiscal/contract year (July 1 – June 30).

Consistent with the provisions of Section 1250 of the Revised School Code, the Superintendent's job performance and job accomplishments, based in part upon mutual goals established by the Board of Education and the Superintendent, will be significant factors in determining the Superintendent's effectiveness.

5. The Superintendent is employed on the basis of fifty-two (52) weeks of work per contract/fiscal year (July 1 through June 30) as scheduled by the Board. The Superintendent shall be granted vacation time of 25 days per contract year. Vacation days shall be prorated based upon actual time worked. Vacation days should be used within the fiscal year for which they are made available and the

Superintendent shall not receive any additional compensation in lieu of unused vacation days. However, the Superintendent may carry-over up to 10 days maximum. The Superintendent shall schedule use of vacation days in a manner to minimize interference with the orderly operation and conduct of business of the School District.

6. Superintendent's performance shall be evaluated by the Board at least annually using multiple rating categories that take into account data on student growth as a significant factor. The Board may schedule a quarterly update of performance and evaluation. The Superintendent or Board may request quarterly evaluation conferences, open or closed, at the Superintendent's request, prior to the final year-end evaluation.

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

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 the Superintendent 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 hereunder.

8. In the event of the Superintendent'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 Superintendent 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, the Superintendent 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 the Superintendent, it may require a second opinion, at Board expense.

The Superintendent 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 the Superintendent will be able to resume his duties at the

conclusion of the extended leave interval. Medical certification shall be supplied by the Superintendent as a condition to any leave extension. Any extensions of leave for this purpose shall be at the discretion of the Board.

If the Superintendent 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, the Superintendent shall provide to the Board a fitness for duty certification from the Superintendent'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.

9. The Superintendent 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 the Superintendent 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.

10. The Superintendent 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, the Superintendent shall authorize the release of medical information necessary to determine if the Superintendent 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 the Superintendent 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.

11. Upon proper application and acceptance for enrollment by the appropriate insurance underwriter, policyholder and/or third party administrator, the Board shall make premium payments on behalf of the Superintendent and his eligible dependents for enrollment in the following insurance programs:

(See Appendix A - attached)

The Superintendent shall contribute the amount not covered by the Board per month, as a condition to participating and enrolling in the above insurance programs. The Superintendent hereby authorizes payroll deduction for the above amount.

The Board, at its discretion, may alter the Superintendent's contribution based on the other employees' contribution method.

Should the Superintendent elect not to enroll in the Health Insurance plan, the Board shall provide cash-in-lieu of health insurance in the amount of \$125 monthly, with equal payments for each pay period, prorated for any partial years. Dental insurance, term life insurance, vision insurance, and long-term disability insurance shall continue as above.

12. The Board reserves the right to change the identity of the insurance carrier, policyholder, or third party administrator for any of the above coverage, provided that comparable coverage, as determined by the Board, is maintained during the term of this Agreement. The Board shall not be required to remit premiums for any insurance coverage for the Superintendent 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. The Superintendent is responsible for assuring completion of all forms and documents needed to receive the above-described insurance coverage. The Board, by remitting the premium payments required to provide the above-described insurance coverage(s), shall be relieved from all liability with respect to insurance benefits.

13. The Superintendent is entitled to the following holidays for which no service to the School District is required:

- Christmas – Three (3) days
- New Years – Three (3) days
- Martin Luther King Day – Service Hours or Work
- Friday before Spring Break – 3.5 hours
- Memorial Day – One (1) day
- Fourth of July – One (1) day
- Labor Day – Two (2) days
- Thanksgiving – Two and a half (2.5) days

14. If the Superintendent is absent from duty on account of personal illness or disability, he shall be allowed full pay for a total of twelve (12) days per contract year. Unused paid leave days hereunder shall be cumulative to a maximum of

ninety (90) days for absence due to personal illness or disability of the Superintendent.

15. A paid bereavement leave of absence of up to five (5) consecutive work days may be granted for the death of a spouse, child, parent, step-parent, mother-in-law, father-in-law, brother, sister, and stepchild or grandchildren if the Superintendent is the legal guardian. Under extenuating circumstances, additional days may be granted at the discretion of the Board.

A paid bereavement leave of absence of up to three (3) consecutive work days may be granted for the death of a grandparent, sister/brother-in-law, son/daughter-in-law, grandparent-in-law, and grandchildren (if not the legal guardian).

16. The Superintendent shall be entitled to three (3) personal business days per contract year (July 1 – June 30).

17. The Superintendent shall receive \$7,200, subject to state and federal tax withholdings, for mileage, car, and lunch expenses while on school business. Superintendent 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 for conference expenses. Any expense to be incurred by the Superintendent for travel outside of 60 miles from the Administrative Offices of Niles Community Schools shall be submitted for review and approval by the Board when appropriate. The Superintendent shall be required to present an itemized account of his reasonable and necessary expenses in accordance with direction of the Board or its designee for travel outside of 60 miles from the Administrative Offices of Niles Community Schools and conference expenses.

Subject to expense 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 Superintendent 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 in relation thereto not prepaid by the Board. Prior approval is not needed for MASB, MASA, MNA, Berrien County or Middle Cities conferences.

Subject to prior approval by the Board, the Superintendent shall be reimbursed for up to six (6) credits annually for successfully completed academic university courses considered to be related to the performance of his duties and to the field of education.

18. The Board shall also offer an annuity payment annually in the amount of \$5,000 plus 5% of the base to invest at the Superintendent's discretion.

19. The Board agrees to pay the premium amount for errors and omissions insurance coverage for the Superintendent where the district shall be named

insured while engaged in the performance of a governmental function and while the Superintendent is acting within the scope of his authority. The policy limits for this coverage shall be not less than One Million Dollars (\$1,000,000). The terms of the errors and omissions insurance policy shall be controlling respecting defense and indemnity of the Superintendent. The sole obligation undertaken by the Board shall be limited to the payment of premium amounts for the above errors and omissions coverage. The Board agrees on a case-by-case basis to consider providing legal defense and/or indemnification to the Superintendent as is authorized under MCL 691.1408 and MCL 380.11a(3)(d).

#### 20. Other Benefits

- A. The Superintendent shall be provided a district owned cell phone with data plans not to exceed \$1,200 per year.
- B. Limited to 10 years, the Superintendent shall receive longevity pay in the amount of \$1,000 per year cumulative for each year of service to the Niles Community Schools when he receives a rating of effective or higher on his annual evaluation
- C. The Superintendent shall receive a payment of \$4,000 for his professional expenses.

21. This Contract contains the entire agreement and understanding by and between the Board and the Superintendent with respect to the employment of the Superintendent 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 suspended by 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 the Superintendent and the President and the 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.

22. In the event of any dispute between the parties relating to discharge of the Superintendent 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 Arbitration Act, MCL 600.5001 *et seq* and MCR 3.602.

The parties intend that this process of dispute resolution shall be inclusive of all contract and statutory claims advanced by the Superintendent arising from the Superintendent'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 the Superintendent 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 the Superintendent. 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 the Superintendent is waiving his right to adjudicate discrimination claims in a judicial forum and is instead opting to arbitrate those claims. In any such arbitration proceedings, Superintendent 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, the Superintendent, 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 fee and the costs imposed by the American Arbitration Association shall be shared equally by the Board and the Superintendent, subject to the right of the Superintendent 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 the Superintendent'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 2<sup>nd</sup> Circuit Court of Michigan (Berrien County), pursuant to MCL 600.5001.

23. 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).

24. The Superintendent agrees that any claim or suit arising out of the Superintendent'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. The Superintendent 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 lawsuit, it is the intent of the parties that the court enforce this provision to the extent possible and declare the lawsuit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced.



25. This agreement is executed on behalf of the Niles Community School District pursuant to the authority granted as contained in the resolution of the Board adopted on February 1st, 2021, 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: 2-1-21, 2021

  
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Daniel Applegate, Superintendent

NILES COMMUNITY SCHOOLS  
BOARD OF EDUCATION

Date: 2/1/21, 2021

By:   
\_\_\_\_\_  
President  
By:   
\_\_\_\_\_  
Secretary

