

**EMPLOYMENT CONTRACT**

**BETWEEN**

**JOSEPH DI PONIO**

**AND THE**

**LAKE SHORE BOARD OF EDUCATION**

**OF THE**

**LAKE SHORE SCHOOL DISTRICT**

This contract is made and entered into as of the 28<sup>th</sup> day of March, 2016, between the **BOARD OF EDUCATION OF THE LAKE SHORE SCHOOL DISTRICT**, hereinafter referred to as the “**BOARD OF EDUCATION**,” and **JOSEPH DI PONIO**, hereinafter referred to as “**DI PONIO**” or “**SUPERINTENDENT**”.

**WHEREAS**, the **BOARD OF EDUCATION** seeks to employ **DI PONIO** as **SUPERINTENDENT** and enter into an Employment Contract effective no later than April 1, 2016 immediately through the 30th day of June, 2019; and,

**WHEREAS**, **DI PONIO** desires to accept employment by the **BOARD OF EDUCATION** as **SUPERINTENDENT** in accordance with the terms and conditions of this new contract;

**NOW, THEREFORE**, in consideration of the mutual promises contained in this contract, it is agreed between the parties, as follows:

1. **TERM.** This contract shall take effect no later than April 1, 2016 upon approval by the Board and continue in force thereafter through the 30th day of June, 2019, subject to extension and termination as provided in Paragraphs 4 and 8.
2. **PERFORMANCE OF DUTIES.** **DI PONIO** represents that he meets all Michigan requirements and holds all certificates necessary for employment by the **BOARD OF EDUCATION** as Superintendent of Schools. During the term of this Contract, **DI PONIO** agrees to faithfully perform all duties of the position of **SUPERINTENDENT** as prescribed by the Board in a competent, ethical and professional manner in compliance with the law applicable to the School District and to implement the bylaws, policies and regulations of the Board with the means provided by the School District. He will act as an advisor to the Board on matters pertaining to the school administration of the School District, and he will inform the Board as to administrative action taken on its behalf. He shall

recommend, effect or cause to be effected, the policies and programs of the Board as may be adopted. He will faithfully and diligently fulfill all the duties and obligations incumbent upon him as the executive head of the administrative section of the school system and the School District. He further agrees that he will faithfully observe and implement policies, rules, regulations and directives of the Board for the governance of the District. He shall have managerial authority necessary to organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, which is in the best interest of the School District, subject to approval by the Board. The responsibility for selection, placement, and transfer of personnel shall be vested in the Superintendent subject to approval by the Board.

3. **EXTENSION.** This contract may be extended at the option of the **BOARD OF EDUCATION**. Unless the **BOARD OF EDUCATION** gives written notice of non-renewal of this contract to **DI PONIO** at least 90 days before the contract's termination date or the termination date of any extension thereof, this contract will, without further action, be automatically renewed for an additional one-year period as provided by Public Act 183 of 1979.
  - A. **DI PONIO** shall advise the **BOARD OF EDUCATION** of the provisions found in Paragraph 3 above during the month of January of any year in which this contract or any extension thereof is due to terminate. Failure to provide notice shall act as an estoppel for any claimed damages by **DI PONIO** arising out of the Board's failure to provide notice as required by PA 183 of 1979.
  - B. For any termination or non-renewal under this contract, **DI PONIO** shall be provided with written notice of possible termination or non-renewal at least 30 days in advance of the **BOARD OF EDUCATION'S** consideration of non-renewal or termination together with a written statement of the reasons the **BOARD OF EDUCATION** is considering termination or non-renewal.
4. **TENURE EXCLUSION.** In accordance with Article III of Act 4, P.A. 1937, as amended, this contract does not confer tenure upon the **DI PONIO** in the position of **SUPERINTENDENT** or any other administrative position in the District.
5. **COMPENSATION.** **DI PONIO** shall be placed in a three-step salary schedule. The **SUPERINTENDENT'S** first year salary step shall be \$140,000.00 annually. The salary for the 2015-2016 school year shall be pro-rated. The salary for 2016-2017 shall be continued at \$140,000.00. **DI PONIO's** salary for the 2017-2018 school year shall be \$147,000.00. **DI PONIO's** salary for the 2018-2019 school year shall be \$155,000.00. The **BOARD OF EDUCATION** also retains the right to adjust the total compensation during any continuation of this contract, but no adjustment shall reduce the salary below the current salary rate.

Consistent with other administrative contracts, the daily rate of pay shall be computed by dividing the base salary by 248 work days.

6. **BENEFITS.** During the term of this contract, **DI PONIO** shall receive those benefits set forth in “Appendix A” which is incorporated herein.
7. **TERMINATION.** The **SUPERINTENDENT** may be discharged and this contract terminated during its term at any time for cause. “Cause” shall include, but not be limited to, the following:
  - A. **DI PONIO** becomes legally disqualified to serve as **SUPERINTENDENT**;
  - B. **DI PONIO** materially breaches any provision of this Agreement applicable to him and such breach is not corrected within thirty (30) days after the **SUPERINTENDENT** receives written notice thereof;
  - C. **DI PONIO**, within any year of this contract, is prevented from rendering services or performing his duties due to illness, incapacity or injury for a period of 120 work days.
  - D. **DI PONIO** engages in conduct which constitutes just cause for termination. Just cause shall include, but is not limited to, any of the following:
    - a) Fraud, dishonesty, or other intentional misconduct either:
      1. in the performance of **SUPERINTENDENT’S** duties and responsibilities pursuant to this Agreement; or
      2. which has a material adverse impact on the **BOARD OF EDUCATION**, its officials, administrators or the **SUPERINTENDENT**.
    - b) The use by **SUPERINTENDENT** of alcohol, drugs, or any other intoxicant or controlled substance, in such a manner as to impair his ability to perform his duties and responsibilities pursuant to this Agreement in a competent and diligent manner or in such a manner which harms the reputation of the **BOARD OF EDUCATION**.
    - c) The **SUPERINTENDENT’S** arrest and binding over for trial or a plea of guilty or nolo contendere to a crime providing for a term of imprisonment (other than traffic violations and crimes not requiring the knowing involvement of the **SUPERINTENDENT** in the commission thereof).

## APPENDIX A

### FRINGE BENEFITS

1. **SICKNESS AND ACCIDENT INSURANCE.** Long Term Disability insurance shall take effect after a sixty (60) calendar day waiting period. For the first six (6) months of disability the **SUPERINTENDENT** will receive 90% of his monthly salary. Further payments beyond six (6) months will vary between 70% and 85% depending on eligibility for Social Security and MPERS. This description is a general description of the benefit. An official description is contained in the insurance policy as provided by the carrier.
2. **TERM LIFE INSURANCE.** The **SUPERINTENDENT** shall be insured in the amount of \$200,000.00 in a term life insurance policy paid by the **BOARD OF EDUCATION**. The **SUPERINTENDENT** shall have the option to purchase an additional ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS in life insurance coverage from personal funds through the **BOARD OF EDUCATION'S** carrier.
3. **HOSPITALIZATION, DENTAL AND OPTICAL INSURANCE.** The **SUPERINTENDENT** and eligible family members shall be provided, through the **BOARD OF EDUCATION'S** carrier, with hospitalization, dental and optical insurance on the same terms and conditions as provided to the other Central Administration employees of the school district.
4. **SICK AND EMERGENCY LEAVE.** The **SUPERINTENDENT** shall annually accumulate twelve (12) days of sick and emergency leave to be used for illness, emergency or other disability prior to the commencement of the Sickness and Accident Insurance provisions set forth in Paragraph 1 above. All insurance benefits shall be continued during use of leave days pursuant to this paragraph. Any unused leave days will be placed in the **SUPERINTENDENT'S** leave bank up to a maximum of 90. Unused sick leave accumulated over said limit shall be cashed in annually at 30% of the current daily rate of pay. Cash payment for unused sick and emergency leave shall not exceed twelve (12) days annually.
5. **BEREAVEMENT.** The **SUPERINTENDENT** shall be permitted five (5) days for any death in the immediate family. For the purposes of this provision, "immediate family" shall be defined as spouse, child, mother, father, brother, sister, grandmother, grandfather, grandchild or any person for whom the **SUPERINTENDENT** is a legal guardian. The use of two (2) of the five (5) days may be deferred for up to four months for business directly related to the death. The **SUPERINTENDENT** will be permitted one (1) day for bereavement of other individuals if approved by the **BOARD PRESIDENT**.

6. **PROFESSIONAL DUES, PUBLICATIONS AND CONFERENCES.** The **SUPERINTENDENT** will be reimbursed for any reasonable professional association membership or publication that he joins or purchases in the best interest of the Lake Shore School District. Said membership and publication shall be submitted to the **BOARD OF EDUCATION** for review prior to actual expenditure. The **SUPERINTENDENT** shall be reimbursed for his attendance at professional conferences which are submitted to the **BOARD OF EDUCATION** for review prior to actual expenditure.
  
7. **VACATION.** The **SUPERINTENDENT** shall receive an annual vacation of twenty-five (25) working days (2.083 days per month) which may be taken upon prior notification to the **BOARD OF EDUCATION**. Carryover, payment or forfeiture or earned vacation not taken shall be administered in the same manner as for other Central Administration employees of the school district. The following days shall be deemed non-working days for the **SUPERINTENDENT** and not be counted against the **SUPERINTENDENT'S** earned vacation time under this provision:  
  
New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day following, Christmas Eve Day, Christmas Day, and those days between Christmas Day and New Year's Day.
  
8. **AUTO ALLOWANCE.** The **SUPERINTENDENT** shall be provided a monthly automobile allowance of Four Hundred Dollars (\$400.00) for the use of his personal automobile in fulfilling his responsibilities for the School District.
  
9. **EDUCATION STIPEND.** The **BOARD OF EDUCATION** shall provide the **SUPERINTENDENT** a stipend of three-percent (3.0%) of his annual compensation for possession of his doctorate degree. The **BOARD OF EDUCATION** will pay this stipend annually in the month of December commencing December 2016 for the 2016/2017 school year. For the 2015/2016 school year: A one-time, prorated Education Stipend of \$1,050.00 (equal to one-quarter of three-percent of \$140,000.00) shall be paid to the **SUPERINTENDENT** in June 2016.
  
10. **OTHER EXPENSES.** The **BOARD OF EDUCATION** shall provide the **SUPERINTENDENT** with a **BOARD OF EDUCATION** purchase card which shall be utilized by the **SUPERINTENDENT** for reasonable non-transportation expenses which he would customarily incur in the performance of his duties on behalf of the **BOARD OF EDUCATION**. The determination of reasonable expenses shall be the exclusive prerogative of the **BOARD OF EDUCATION**.
  
11. **OUTSIDE PROFESSIONAL ACTIVITIES.** The **SUPERINTENDENT** shall notify the **BOARD OF EDUCATION** prior to undertaking any professional activities as outlined herein. The **SUPERINTENDENT** may undertake outside professional activities including consulting, speaking and writing, with or without compensation,

- d) (i) A pattern of neglect or persistent failure to perform the duties herein contained with respect to duties previously communicated to the **SUPERINTENDENT** in writing by the **BOARD OF EDUCATION** but only after the **SUPERINTENDENT** has been provided notice by the **BOARD OF EDUCATION** of its dissatisfaction with the performance of said duties and **SUPERINTENDENT** has been provided a reasonable opportunity to correct his performance;
- (ii) Otherwise willful misconduct in connection with the performance of his duties hereunder.
- e) For the first full school year only of this Agreement (July 1, 2016 through June 30, 2017) **DI PONIO's** performance is unsatisfactory in the opinion of the majority of the **BOARD OF EDUCATION**. Said opinion shall be based upon reasons that are neither arbitrary or capricious.

E. Upon termination of the **SUPERINTENDENT'S** employment pursuant to Paragraph 8 (a) – 8 (e), the **SUPERINTENDENT** shall receive from the **BOARD OF EDUCATION** in full settlement of its obligations to him under this contract, salary earned, but unpaid as of the date of termination, plus any fringe benefits due him, pursuant to this contract, through the date of termination. The amount due hereunder shall be paid not later than forty-five (45) days after such date of termination, but shall be subject to set-off for amounts due the **BOARD OF EDUCATION** by the **SUPERINTENDENT**.

- 8. **WAIVER OF BREACH.** The waiver by the **BOARD OF EDUCATION** of a breach of any provision of this contract by the **SUPERINTENDENT** shall not operate or be construed as a waiver of any subsequent breach by the **SUPERINTENDENT**.
- 9. **ASSIGNMENT.** The rights and obligations of the **BOARD OF EDUCATION** under this contract shall inure to the benefit of, and shall be binding upon the successors and assigns of the **BOARD OF EDUCATION**. This contract shall not be assignable by the **SUPERINTENDENT**.
- 10. **SEVERABILITY.** The provisions of this contract are severable. If any section, paragraph, sub-paragraph, sentence or provision shall be invalid or unenforceable, it shall not affect any of the remaining provisions of this instrument, and all provisions shall be given full force and effect separately from the unenforceable or invalid section, paragraph, sub-paragraph, sentence or provision, as the case may be.

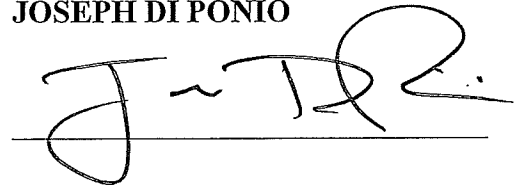
11. **GOVERNING LAW.** This contract shall be construed and be enforced in accordance with the laws of the State of Michigan.
  
12. **ARBITRATION.** Any dispute arising under this contract shall be resolved through binding arbitration conducted under the labor arbitration rules, then in effect, of the American Arbitration Association. The arbitrator shall have no power to render a decision that will add to, subtract from, or alter, change or modify the terms of this contract, and his power shall be limited to interpretation or application of the express terms of this contract. Each party shall be entitled to legal representation before the arbitrator and shall bear his own personal costs and expenses.
  
13. **ENTIRE AGREEMENT.** This instrument contains the entire contract of the parties. It may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. This contract supersedes all prior agreements.

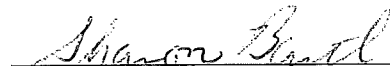
IN WITNESS WHEREOF, the parties have duly executed this SUPERINTENDENT'S Employment Contract as of the day and year written in the opening paragraphs.

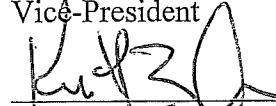
FOR THE BOARD OF EDUCATION

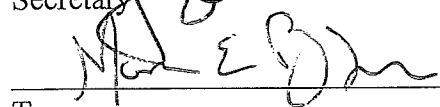
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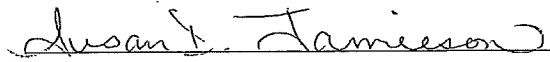
  
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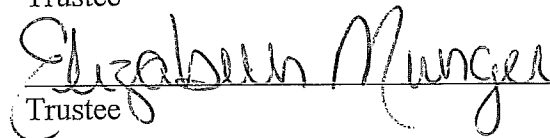
  
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provided such activities do not, in the exclusive judgment of the **BOARD OF EDUCATION**, interfere with or conflict with the **SUPERINTENDENT'S** performance of his duties under this Agreement. The **SUPERINTENDENT** may retain any income which may be derived therefrom.

12. **ANNUITY.** The **BOARD OF EDUCATION** shall purchase an annual annuity on behalf of the **SUPERINTENDENT** in each school year of this Agreement, commencing July 1, 2016 under the following conditions. The **BOARD OF EDUCATION** agrees to contribute the sum of Fifteen Thousand Dollars (\$15,000.00) into a tax-sheltered annuity as designated by the **SUPERINTENDENT**, within the first two months of the 2016-2017 school year. In each subsequent school year of this Agreement, July 1, 2017 through June 30, 2018 and July 1, 2018 through June 30, 2019, the **BOARD OF EDUCATION** agrees to again contribute an additional sum of Fifteen Thousand Dollars (\$15,000.00) to a tax-sheltered annuity as designated by the **SUPERINTENDENT**. Contribution of this amount in each subsequent year shall be initiated by the **BOARD OF EDUCATION** within the first two months of each school year. At the option of the **SUPERINTENDENT**, the Annuity paid under this Paragraph may be paid directly to him as taxable compensation. For the 2015/2016 school year: the **BOARD OF EDUCATION** will contribute three-thousand seven-hundred and fifty dollars (\$3,750.00), which is equal to one-quarter of the annual annuity benefit of \$15,000.00, into the tax-sheltered annuity as designated by the **SUPERINTENDENT** no later than June 30, 2016.
  
13. **INDEMNIFICATION.** The **BOARD OF EDUCATION** agrees to pay the premium amount for errors and omissions insurance coverage for the **SUPERINTENDENT** when engaged in the performance of a governmental function and when the **SUPERINTENDENT** is acting within the scope of his authority. The policy limits for this coverage shall not be less than \$2,000,000.00 per occurrence with an aggregate policy limit of \$2,000,000.00. 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 school district 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 OF EDUCATION** shall have the right to discontinue said coverage and shall so notify the **SUPERINTENDENT**. In that event, the **BOARD OF EDUCATION** agrees on a case-by-case basis to consider providing legal defense and indemnification to the **SUPERINTENDENT** as is authorized under MCL 691.1408, as amended.