

EMPLOYMENT CONTRACT

Between

ALLEN D. CUMINGS

and

TRI COUNTY AREA SCHOOLS

MONTCALM, KENT, and NEWAYGO COUNTIES: STATE OF MICHIGAN

This Employment Contract ("Contract") which is effective as of the 1st day of July, 2016, is hereby entered into by and between the Board of Education (hereinafter referred to as "the Board") of the TRI COUNTY AREA SCHOOLS, Montcalm, Kent, and Newaygo Counties, Michigan, a school district under the laws of the State of Michigan, (hereinafter referred to as "the District") and Allen D. Cumings (hereinafter referred to as "the Superintendent.")

1. Term of Employment

- 1.1. Term. The District hereby employs Allen D. Cumings as its Superintendent of Schools under the provisions of Section 1229 of the Michigan Revised School Code for a term of three (3) years commencing July 1, 2016 and expiring on June 30, 2019. The Board specifically reserves the right to not renew this Contract or any extension of the Contract regardless of cause or reason. The Superintendent shall furnish the Board of Education President with a written reminder of the Contract expiration date no later than January 15 of the last year of this Contract.
- 1.2. Notice. The Board, no later than the 15th of March of each year during the term of this Contract, may extend the Contract for an additional one-year period. The Board, in its sole discretion and with or without cause, may decline to extend this Contract for an additional year.
- 1.3. Non-Renewal. This contract is subject to nonrenewal in accordance with Section 1229(1) of the Michigan Revised School Code.

2. Qualifications

- 2.1. Professional Licensures and Endorsement. The Superintendent represents that he will obtain and maintain all certificates, credentials, and qualifications required by law, including the regulations of the Department of Education, and those required by the Board to serve in the position assigned. Additionally, the Superintendent agrees, as a condition of his continued employment, to meet all continuing education requirements for the position assigned as may be required by the State Board of Education. If at any time the Superintendent fails to maintain all certificates, credentials, requirements, and/or qualifications for the position of

Superintendent or fails to satisfy any continuing education requirements, as required herein, this Contract shall automatically terminate and the Board shall have no further obligations hereunder. The Superintendent shall supply copies of all current certificates, credentials, and continuing education credits to the Board within 30 days from the first day of employment. The Superintendent shall supply copies of future certificates, credentials, and continuing education credits to the Board within 30 days of completion.

3. Professional Responsibilities of the Superintendent

- 3.1. Duties. The duties and responsibilities of the Superintendent shall be all those duties incident to the office of Superintendent as set forth in the job description, if any; those obligations imposed by state and federal law; and in addition, to serve as the executive officer of the Board and to perform such other duties as from time to time may be assigned to the Superintendent by the Board in its corporate capacity consistent with the position of chief executive officer of the District. 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 acknowledges the ultimate authority of the Board as to his duties and agrees to faithfully perform these duties as assigned, and to diligently implement the Board's policies and 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, rules, 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. Further, the Superintendent pledges to use his best efforts to maintain and improve the quality of the operation of the School District and constantly promote efficiency in all areas of his responsibility. At all times, the Superintendent shall faithfully serve the School District, uphold the Michigan Professional Educator's Code of Ethics, and be mindful of its interests during the term of this Contract, to the extent required by this Contract and by law.
- 3.2. Planning. The Superintendent shall formulate and recommend to the Board long term, strategic plan(s) for the District. The Superintendent shall then be responsible for implementation of the plan(s) approved by the Board consistent with Board policy.
- 3.3. Supervision. The Superintendent shall be primarily responsible for the evaluations of the administrative staff and shall evaluate the administrative staff in writing at least annually.

The Superintendent may organize or reorganize the administrative and supervisory staff, including instruction and business affairs in accordance with Board policy. Superintendent shall recommend the hire of professional and administrative staff to the Board, for final approval. The placement and transfer of all personnel shall be the responsibility of the Superintendent. Superintendent shall have authority to hire all other staff in accordance with Board policies and applicable collective bargaining agreements.

The Superintendent shall keep the Board promptly informed as to important issues of which he is aware. Further, the parties recognize that community relations are an important part of the Superintendent's responsibilities and duties. Thus, the Superintendent shall be active in community activities. The Superintendent shall belong to at least one service organization in the community and dues for one such organization will be paid by the District.

4. Activities

- 4.1. Conflict of Interest. The Superintendent shall not engage in any conflict of interest prohibited by law. In the event that a question reasonably arises as to whether a given interest is a conflict under this Section 4.1, the Superintendent shall make full disclosure of the same to the Board for its review and disposition, which disposition shall be controlling and complied with by the Superintendent. Failure to adhere to this requirement shall provide a basis for termination of employment.
- 4.2. Relationship to Board. The Board President shall promptly refer all criticisms, complaints, and suggestions, brought to the Board's attention, to the Superintendent for study and response. The Superintendent shall have the obligation, unless excused, to attend all Board meetings, serve as an ex-officio member of all Board committees, and provide administrative recommendations on each item of business considered by each of these Board Committees. All Operational Committees are under the authority of the Superintendent. The Board shall have the option to meet without the Superintendent present to discuss matters relating to the Superintendent's performance and status. It shall inform him of the nature of the discussion, and he shall be given an opportunity to respond to any criticism received or discussed in these sessions.
- 4.3. Outside Activities. With prior approval of the Board, which approval shall not be unreasonably withheld, the Superintendent may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties and obligations. Such activities may not impinge, in any manner, on the time and effort required to be exerted by the Superintendent in the discharge of his responsibilities under this Contract. The limitations imposed upon the Superintendent, as above expressed, are not intended to apply as a limitation on time spent for vacation purposes. In the event Superintendent is compensated for such activities, he shall utilize paid leave during the performance of such activities.

5. Nature of Employment

- 5.1. Tenure. It is mutually understood and agreed that this employment contract does not confer tenure upon the Superintendent in the position of Superintendent or in any other administrative or non-classroom position within the District.
- 5.2. Reassignment. The Superintendent shall be subject to reassignment and transfer at the discretion of the Board during the duration of the Contract to a position for

which he is qualified by education and experience; provided, however, that the Superintendent shall not be arbitrarily or capriciously reassigned or transferred and shall be entitled to all rights and benefits of this Contract for its duration.

6. Compensation

- 6.1. Salary. In consideration of his performance of his duties and responsibilities in Conformance with the requirements and expectations of the Board, the Superintendent shall be paid an annual (12 months) salary rate as follows:

07/01/2016 – 06/30/2017	\$117,077.00
07/01/2017 – 06/30/2018	
07/01/2018 – 06/30/2019	

The Board retains the right to adjust the annual salary of the Superintendent during the term of this Contract. Any such salary adjustment may not reduce the annual salary below the annual salary prescribed above. Any adjustments in salary made during the term of this Contract shall be in the form of a written amendment and when executed by the Superintendent and Board, shall become part of this Contract.

- 6.2. Merit Pay. The Merit Pay Rubric is tied to the Superintendent Evaluation/Board Goals. To that end, each contract year - no later than June 30 - the Board and Superintendent shall establish Board Goals to be measured during the following contract year, July 1 - June 1. Merit pay, if earned, shall be paid on or before June 30 of that year, based upon the degree to which mutually agreed upon goals identified within the Merit Pay Rubric have been achieved. If no goals are satisfied, there shall be no merit pay for that year.

Superintendent shall be eligible for Merit Pay, to be determined and awarded (if earned) in June of each year as stated within Exhibit A. For purposes of calculating merit pay, the percentage of merit pay awarded shall be calculated based on that current year's base salary.

- 6.3 Upon completion of the Michigan Administrative Education Certification, the Superintendent's base salary shall be increased by \$500.00.
- 6.4 The Superintendent's base salary shall be increased by 2% for each degree advancement. An advance degree must be in a planned program. An advance degree will include a second Masters' degree, an Education Specialist degree, or a Doctorate Degree. (2% increase shall be effective 1) First payroll after confirmation of degree is received, or 2) Beginning of next fiscal year. Example: If degree is earned in December of 2015, 2% shall become effective July 1, 2016.
- 6.5 In the event that the Board extends the term of this contract (beyond June 30, 2017) due to an Effective or Highly Effective year end performance evaluation rating, as additional compensation for services rendered, the Board shall make a non-elective contribution of \$1500 to a 403(b), 457(b) or other district approved retirement program, as designated by the Superintendent. This contribution shall be excluded from FICA contributions, however, it will be subject to MPSERS

7. Fringe Benefits

- 7.1. Health, Dental, Vision, and Long-Term Disability Insurance. The Superintendent shall be provided health, dental and vision insurance coverage under the policies carried or sponsored by the District and in compliance with applicable law (e.g. 2011 PA 152). In the event that Superintendent declines insurance because he demonstrates that he has access to other coverage, he shall be eligible for the same cash-in-lieu benefit as other eligible District administrators to be paid either throughout the year or contribution to a 403(b), 457(b), or other district approved retirement program, designated by the Superintendent (50% by December 31 and 50% June 30 of each contract year). Long-term disability insurance shall also be carried by the District in support of the Superintendent. The policy provided to the Superintendent will be the same provided to other eligible administrators. The Superintendent shall be subject to the same co-pays, deductibles, and employee contribution as the other administrators. However, if legislation is adopted which impacts the Superintendent's insurance benefits, the Board and Superintendent shall discuss the impact of such legislation. The Board reserves the right, after such discussion, to modify this paragraph to comply with such legislation.
- 7.2. Life Insurance. The Board will pay the premium for Term Life Insurance for the Superintendent at the same level as other administrators who are eligible to receive term life insurance provided by the Board.

The Board reserves the right to change the identity of any insurance carrier, policyholder or third party administrator for any of the above coverages, provided that reasonably comparable coverage, as determined by the Board, in its discretion, is maintained during the term of this Contract. The Board, however, 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 carrier, policyholder, or third party administrator. The terms and conditions of any insurance policy or contract(s) shall be controlling as to all matters, e.g., concerning benefits, eligibility coverage, termination of coverage, and other related matters. The Board, by payment of its share of premium payments required by this agreement (and subject to applicable law) to provide the above-described insurance coverage, shall be relieved from all liability with respect to insurance benefits.

- 7.3 Vacation. The Superintendent is employed on the basis of fifty-two (52) weeks of work per fiscal year (July 1 through June 30) as scheduled by the Board. The Superintendent shall be granted vacation time of twenty five (25) business days per fiscal year. Vacation days may accumulate up to 15 more than the amount awarded in one year (25) for a total amount no greater than forty (40) days. Upon resignation, retirement, or termination of employment with the District, provided that Superintendent has completed a full contract year of employment, pay will be given for unused accumulation of vacation days at the then applicable daily rate. In the event that Superintendent resigns for any reason other than death prior to completion of a full contract year, the payment for unused accumulated vacation days shall be prorated in proportion to the days worked during the

contract year in which the separation of employment occurs.

- 7.4. Scheduling. All scheduling of vacation is subject to the monitoring and approval of the Board President.
- 7.5. Holidays. The Superintendent is entitled to the following holidays for which no service to the District is required: New Year's Eve, New Year's Day, Good Friday, Memorial Day, Independence Day, the Friday before Labor Day if school is not in session, Labor Day, Thanksgiving, the Friday after Thanksgiving, Christmas Eve and Christmas Day.
- 7.6. Leave Days. Twelve (12) leave days per fiscal year will be granted at the beginning of each fiscal year, which may accrue on an annual basis and be carried over from year to year and may accumulate unlimited. These days may be used for sick days or up to five (5) per year for personal business. These days are subject to the same conditions as specified for the other administrators. The Superintendent shall upon request of the Board President provide a statement from the Superintendent's physician should a concern exist that sick leave days are not being properly utilized or should the Board require verification for other legitimate reasons, i.e., FMLA leave.

In the event of the Superintendent's death during the term of this contract, any unused leave days shall be paid in a lump sum to the beneficiary named on the "Beneficiary Form" which is on file in the District Personnel Office. In the event no Beneficiary Form is on file, or the designated beneficiary is no longer alive, then any unused leave days shall be paid out to an appropriate beneficiary in accordance with state law. The payment amount for unused leave days shall be determined by multiplying the number of unused leave days by the Superintendent's daily rate of pay at the time of death. Except as otherwise explicitly stated herein, there shall be no compensation for unused leave days upon resignation, retirement, termination or other separation of employment.

- 7.7. Retirement Benefits. The Superintendent having reached the requirements for retirement as determined by Michigan Public Schools Employees Retirement System, applied for receipt of said retirement benefits, and completed at least fifteen years of service with the District, upon retirement, shall receive a lump sum payment of one hundred dollars (\$100) for each year of service with Tri County Area Schools up to a maximum of three thousand dollars (\$3,000). Payment will be made to the Superintendent through a "special pay plan".
- 7.8. Bereavement. Five (5) days of bereavement leave will be granted. Bereavement leave shall be non-cumulative and may be used in the death of an immediate family member. Immediate family member shall mean spouse, child, stepchild, mother, father, brother, sister, grandchild, grandparents, mother-in-law, father-in-law, brother-in-law, and sister-in-law.
- 7.9. Professional Memberships and Activities. The Superintendent shall attend appropriate professional meetings and may participate in appropriate professional activities at the local and state levels. The Superintendent may attend one (1) professional conference per year at the national level as he and the Board determine appropriate. The Superintendent shall be reimbursed for his out-of-pocket expenses incurred on behalf of the Board and in accordance with the District

professional activities policies. This is to include professional reading and subscriptions not to exceed five-hundred dollars (\$500) per year. The Board will also pay the annual membership dues of the Superintendent for associations as approved by the Board.

- 7.10. Professional Development. Each year the Board will reimburse up to two thousand dollars (\$2,000) for college tuition upon satisfactory evidence of the successful completion of college or university credits. Additional reimbursement may be provided by the Board **pursuant to a majority vote of the Board.** This additional funding will be determined during the Superintendent's evaluation and mutually he and the Board will determine the professional growth needed and include the tuition cost in the budget.
- 7.11 Vehicle Expense. The Board shall provide the Superintendent reimbursement per mile for travel related to District business. The reimbursement amount will be determined by the current Internal Revenue Service mile per diem rate. The Superintendent will provide a detailed mileage log monthly to the District Business Office by the tenth (10th) of the following month.

8. Expense Reimbursement

The Superintendent shall be eligible to be reimbursed for travel, and lodging in accordance with per diem expense and reimbursement procedures established for other District administrators. 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.

9. Evaluation

- 9.1. Annual Review. The Board shall evaluate and assess in writing annually the performance of the Superintendent, no later than March 15, using the criteria and processes set by the Board Governance Policy Model (Policy Title 3.4 Monitoring SOS Performance) and the Michigan Revised School Code.
- 9.2. Evaluation Meeting. At the conclusion of each evaluation, the Board and the Superintendent shall meet in closed executive session at the Superintendent's request for the purpose of mutual evaluation of the performance of the Board and the Superintendent.
- 9.3. Recommendations and Response. In the event the Board determines that the performance of the Superintendent is less than Effective in any respect, the Board shall describe in writing, in reasonable detail, specific instances of performance to be improved. The evaluation shall include an improvement plan addressing areas of performance which must be improved, and shall recommend training and other suggestions designed to assist the Superintendent to achieve an Effective rating on the next evaluation. The Superintendent shall have the right to make a written response to the evaluation, which shall be attached to the Board's written evaluation

- 9.4. No Prerequisite. To the extent permitted by law, the parties agree that the evaluation process established by this Contract shall not be construed to be a prerequisite to or a condition of dismissal or termination except as otherwise provided herein.

10. Suspension

Subject to the provisions of this section, the Board may, at any time, suspend the Superintendent with pay and benefits and without prejudice for such purposes and period of time as the Board deems to be in the best interest of the District. Before any such suspension, the Superintendent shall be notified in writing by the Board President, of the proposed reasons for the suspension and shall be given opportunity to meet with the Board to respond to those reasons and evidence in support of those reasons prior to the suspension. This section shall not preclude the Board from imposing a suspension without pay, not to exceed the maximum period stated within the Tenure Act, as a disciplinary consequence if the Board determines that a suspension without pay is warranted. In the event that the Board undertakes to suspend the Superintendent without pay, he shall be entitled to prior written notice of charges and an opportunity for a hearing before the Board.

11. Termination

- 11.1. Discharge. The Board shall be entitled to terminate the Superintendent's Contract at any time during the term of this Contract for good cause, which includes, but is not limited to, a material breach of the terms and conditions of this Contract. To the extent required by applicable law, good cause shall mean any reason that is not arbitrary or capricious. 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. The Superintendent shall be provided with at least ten (10) days prior notice of a Board hearing. The Board hearing may be in closed or open session consistent with applicable law. The Superintendent may have legal counsel at his own expense.
- 11.2. Disability. In the event of the Superintendent's inability to perform the essential functions of his office, he shall be granted an initial leave of ninety (90) work days in any 365 consecutive day period, to be served concurrently, where applicable, with a FMLA leave for serious health condition. The Superintendent shall first exhaust any accumulated leave and may also use accrued vacation time, with the balance of the ninety (90) days to be unpaid. Health plan premium payments shall be made on behalf of the Superintendent during this interval to the extent required by law. Upon utilizing leave under this provision, the Superintendent shall furnish medical certification that is satisfactory to the Board verifying the necessity for the leave.

If the Board (or designee) has reason to doubt the validity of the medical certification supplied by the Superintendent, or otherwise disagrees with the opinion provided, it may require a second opinion, at Board expense and subject to the FMLA regulations, to the extent applicable. If the FMLA regulations are not applicable, the Board may identify the second provider in its sole discretion.

If it is immediately determined that Superintendent has a disability that is permanent, irreparable, or of such nature so that the Superintendent is unable to perform his essential job duties, the Board, at its option, may forthwith terminate this Contract, whereupon the respective rights, duties, and obligations of the parties shall cease and Superintendent shall be entitled to payment for any available/unused leave days and any available unused vacation days. This is the only other circumstance, except as stated within 7.6 above, in which payment for unused leave days is required.

The Superintendent may request a ninety (90) work day unpaid leave extension in the event of his inability to return to work due to disability at the expiration of the initial leave interval described above. Medical certification supporting the need for continued leave that is satisfactory to the Board 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 and shall include but not be limited to a determination whether Superintendent's continued absence constitutes an undue hardship to the District.

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, as the Superintendent is deemed to be a "key employee" for purposes of the FMLA, 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.

12. Indemnification

- 12.1. Hold Harmless. The District agrees that, to the extent it can legally do so, it shall defend, hold harmless, and indemnify the Superintendent 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 Superintendent by or on behalf of the District, and any criminal proceedings brought against the Superintendent), in his individual capacity or in his official capacity as agent and employee of the District, provided the incident giving rise to the claim arose while the Superintendent was acting within the scope of his employment and not willfully or wantonly and did not engage in intentional misconduct.
- 12.2. Provision of a Defense. The obligations of the District pursuant to this Section 12 shall be conditioned on (a) prompt notification to the District by the Superintendent of any claims known to him; (b) cooperation by the Superintendent with the District and legal counsel in defending the claim; and (c) the Superintendent not compromising, settling, negotiating or otherwise similarly dealing with the claim without the express consent of the Board. In the event the District has provided a defense pursuant to this Section 12, and a court or other

decision-making body having final jurisdiction over the matter determines that the act or omission of the Superintendent that resulted in liability did not occur during the performance of his duties hereunder and within the scope of his employment, or that the act or omission was willful or wanton, or that the Superintendent intentionally engaged in misconduct, the Superintendent shall reimburse the District for all costs of such defense and any final judgment or award paid on his behalf by the District.

12.3. Individual Liability of Board Members. In no event shall individual Board members be individually or collectively liable or responsible to the Superintendent for defending or indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings where such obligations would not otherwise be imposed.

12.4. Liability Insurance. The Board agrees to pay the premium amount of errors and omissions insurance coverage for the Superintendent while engaged in the performance of a governmental function and while the Superintendent is acting within the scope of his authority. Coverage shall not include any demands, claims, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action that are excluded under Section 12.2 above. The policy limits for this coverage shall be not less than \$2,000,000. In the event that such insurance coverage cannot be purchased in the above amount and/or at a reasonable premium rate, the Board shall have the right to discontinue or reduce said coverage and shall so notify the Superintendent; provided, however, the discontinuing or reduction of coverage shall not modify the District's obligations under Section 12.1 through 12.3, above.

13. Individual Provisions

If any provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, the remaining provisions of this Contract shall continue in full force and effect without said provisions; provided, however, that no such severability shall be effective if it materially changes the economic benefit of this Contract to any party. Further, in the event that a term or provision is found to be illegal, a court of competent jurisdiction may conform such contract term or provision to applicable law.

14. Entire Agreement

This Contract of Employment contains the entire agreements and understandings by and between the Board and the Superintendent with respect to the employment of the Superintendent and no representations, promises, contracts or understandings, written or oral, not contained herein shall be of any force or effect. All prior contracts pertaining to, connected with, or arising in any manner out of employment of the Superintendent by the Board is hereby terminated and shall hereafter be of no force or effect whatsoever. No changes or modifications to this Contract of Employment shall be valid or binding unless in writing and signed by the Superintendent and the Board. No waiver of any such provisions of this Contract shall be valid unless it is in writing and signed by the Superintendent and 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.

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IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the day and year written below.

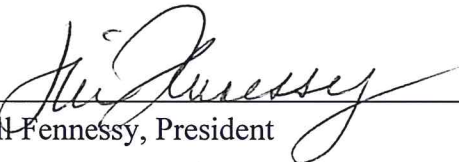
Date: May 11, 2016



Allen D. Cumings
Superintendent of Schools


TRI COUNTY AREA SCHOOLS
BOARD OF EDUCATION

Date: May 10, 2016

By: 

Jill Fennessy, President

Date: May 10, 2016

By: 

Keven Hoisington, Secretary

