

CONTRACT OF EMPLOYMENT

This Agreement is made this 2nd day May, 2017 between Montague

Township BOARD OF EDUCATION

In Sussex County (hereinafter "the Board")

With offices located at 476 U.S. Highway 206, Montague, NJ 07827

And Timothy C. Capone (hereinafter "the Superintendent").

PREAMBLE

WITNESSETH

THIS EMPLOYMENT CONTRACT REPLACES AND SUPERSEDES ALL PRIOR Employment Contracts between the parties hereto. Signature of this Contract constitutes assent to a rescission of any and all prior contracts, as well as agreement to the terms herein;

WHEREAS, the Board desires to employ the Superintendent as the Chief Education Officer of the school district; and,

WHEREAS, the Board desires to provide the Superintendent with a written employment contract in order to enhance administrative stability and continuity within the schools, which the Board believes generally improves the quality of its overall educational program; and,

WHEREAS, the Board and the Superintendent believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative function in the operation of the education program of the schools; and,

WHEREAS, the superintendent is the holder of an appropriate certificate as prescribed by the State Board of Education and as required by N.J.S.A. 18A: 17-17;

NOW, THEREFORE, in consideration of the following mutual promises and obligations, the parties agree as follows:

ARTICLE I

TERM OF CONTRACT

The Board agrees to employ the Superintendent for the period on or about May 1, 2017 through June 30, 2021.

ARTICLE II

CERTIFICATION

The parties acknowledge that the Superintendent currently possesses the appropriate New Jersey administrative certification and school administrator endorsement. In the event the Superintendent's certificate is revoked, the Employment Contract shall be null and void effective upon such revocation.

ARTICLE III

DUTIES

In consideration of the employment, salary and fringe benefits established hereby, the Superintendent hereby agrees to the following:

- A. To perform faithfully the duties of Superintendent of Schools for the Board and to serve as the chief school administrator in accordance with the laws of the State of New Jersey, Rules and Regulations adopted by the State Board of Education, existing Board policies and those which are adopted by the Board in the future. The specific job description adopted by the Board, applicable to the position of Superintendent of Schools, is incorporated by reference into this Contract, (attached as Exhibit A).
- B. To devote the Superintendent's full time, skills, labor, and attention to this employment during the term of this Contract; and further agrees not to undertake consultative work, speaking engagements, writing, lecturing, or other professional duties for compensation without written permission of the Board. Should the Superintendent choose to engage in such outside activities

on weekends, on his vacation time, or at other times when he is not required to be present in the district, he shall retain any honoraria paid. The Superintendent shall notify the Board President in the event he is going to be away from the district on district business for two (2) or more days in any week. Any time away from the district that is not for district business must be arranged in accordance with provisions in this Contract governing time off. The Board recognizes that the demands of the Superintendent's position require him to work long and irregular hours, and occasionally may require that he attend district business outside of the district.

- C. To assume the responsibilities for the selection, renewal, placement, removal, and transfer of personnel, subject to the approval of the Board, by recorded roll call majority vote of the full membership of the Board, and subject to applicable Board policies and directives. The Board shall not withhold its approval of any such recommendation for arbitrary or capricious reasons, all in accordance with N.J.S.A. 18A:27-4.1
- D. To non-renew personnel pursuant to N.J.S.A. 18A:27-4.1, and to provide a written statement of reasons for non-renewal upon proper request to the employee.
- E. To study and make recommendations with respect to all criticisms and complaints, which the Board, either by committee or collectively, shall refer to him. The Superintendent shall have the right to contact the Board's attorney for legal assistance as the need arises in carrying out his duties.
- F. To assume responsibility for the administration of the affairs of the school district, including but not limited to programs, personnel, fiscal operations, and instructional programs. All duties and responsibilities therein will be performed and discharged by the Superintendent, or by staff, at the Superintendent's direction.
- G. To have a seat on the Board and have the right to speak (but not vote) on all issues before the Board in accordance with applicable law. The Superintendent shall attend all regular and special meetings of the Board, (except where a Rice notice has been served upon the Superintendent notifying him that his employment will be discussed in closed session, and the Superintendent

had not requested that the meeting be conducted in public, or where the Superintendent has a conflict of interest), and all committee meetings thereof, and shall serve as advisor to the Board and said committees on all matters affecting the school district.

- H. To suggest, from time to time, regulations, rules, policies, and procedures deemed necessary for compliance with law and/or for the wellbeing of the school district.
- I. To perform all duties incident to the Office of the Superintendent and such other duties as may be prescribed by the Board from time to time. The Superintendent shall, at all times, adhere to all applicable federal and state statutes, rules, regulations, and executive orders, as well as district policies and regulations.

ARTICLE IV

SALARY AND BENEFITS

A. Any adjustments made during the life of the Employment Contract shall be in the form of an amendment and shall become part of this Employment Contract, but it shall not be deemed that the Board and the Superintendent have entered into a new Employment Contract.

- 1. Salary. The Board shall provide the following salary as part of the Superintendent's compensation:

Initial Salary. The Board shall pay the Superintendent an annual salary of:

\$125,000 prorated for the balance of the 2016-2017 school year. The annual salary for July 1, 2017-June 30, 2018 shall be \$125,000. The annual salary for July 1, 2018-June 30, 2019 shall be \$125,000. The annual salary for July 1, 2019-June 30, 2020 shall be \$125,000. The annual salary for July 1, 2020-June 30, 2021 shall be \$125,000.

- 2. Notwithstanding the foregoing, no salary increase of any kind will take effect on Midnight July 1, 2021 unless the parties have agreed to a contract extension and that

extension has been approved by the Sussex County Executive County Superintendent. The terms of the extension will govern all increases to take effect after July 1, 2021. Any renewal, extension, modification of this Contract shall comply with the notice provisions of P.L. 2007, c. 53, The School District Accountability Act and N.J.A.C. 6A:23A-3.1, et seq.

3. No Reduction in Salary/Compensation: During the term of the Employment Contract, including any extension hereof, the Superintendent shall not be reduced in compensation and/or benefits except as otherwise provided by law.
4. Statutory Annuity Salary Reduction Program: The Superintendent shall have the right at any time prior to the commencement of, or at any time during the Superintendent's employment, to take a reduction in salary and require the Board to use an amount corresponding to such reduction to purchase a tax sheltered annuity and/or mutual fund investment in accordance with N.J.S.A. 18A:66-127, et seq. and applicable tax laws, including Sections 403 (b) and 457(b) of the Federal Internal Revenue Code. The maximum amount of reduction in salary authorized shall be the maximum tax deferral amount permitted by the Federal Internal Revenue Code.

B. Sick Leave. The Superintendent shall receive twelve (12) sick days annually which shall be prorated for the 2016-2017 school year. Unused sick leave days shall be cumulative in accordance with the provisions of Title 18A. Upon the Superintendent's retirement from the District, the Board shall pay him for his unused accumulated sick leave days at his per diem rate of pay at that time, subject to a maximum payment of fifteen thousand dollars (\$15,000.00) as per N.J.S.A. 18A:30-3.6. The per diem rate will be calculated at 1/260th of his then annual salary. Payment shall be made within sixty (60) days of the Superintendent's last day of employment. Accumulated unused sick leave compensation shall not be paid to the Superintendent's estate or beneficiaries in the event of death prior to Retirement.

- C. Professional Membership. The Superintendent shall be entitled to membership at the Board's expense for professional dues in the following professional associations: NJASA, AASA, and the Sussex County Administrators Association, and/or other organizations deemed important by the Superintendent and the Board. The Superintendent also shall be entitled to reimbursement for expenses incurred for attendance at professional conferences up to three thousand dollars (\$3,000) per school year, and similar expenses which he may incur while discharging the duties of Superintendent in accordance with P.L. 2007, c. 53, The School District Accountability Act, and affiliated regulations. (N.J.S.A. 18A:11-12 and N.J.A.C. 6A:23A-7, et seq.) Such reimbursements shall comply with all applicable provisions of state and federal statutory and regulatory provisions and guidance, and with Board policy. The Superintendent shall be entitled to attend the annual NJSBA Workshop and Convention, the annual conference of the NJASA, and TechSpo. Reimbursement or payment for such expenses shall be made in accordance with P.L. 2007, c. 53, The School District Accountability Act, affiliated regulations, current OMB circulars and Board policies which amount shall not exceed three thousand dollars (\$3,000) per school year.
- D. Professional Development. The Superintendent may attend the "New Superintendent's Academy" sponsored by the New Jersey Association of School Administrators at Board expense. The Board shall pay all fees for the cost associated with attendance of the Academy. The Board shall pay all costs and fees for the Superintendent to complete state-mandated mentoring. The Board shall pay all costs and fees associated with any state-mandated continuing education.
- E. Health Benefits:
1. The Board shall provide the Superintendent with individual or family health benefits coverage, at his option. The Superintendent shall contribute towards the premium costs for all such coverages set forth in Chapter 78, P.L. 2011 and any implementing

regulations. The premium contribution shall be paid by the Superintendent through payroll deduction.

2. The Superintendent may waive coverage in any of the health benefits plans if covered through a spouse, civil union or domestic partner's health plan, and in accordance with procedures established by the Board. The Superintendent will be paid the lesser of twenty-five percent (25%) of premium or five thousand dollars (\$5,000) for the cost of waiving such coverage.
3. The Board shall provide the Superintendent a \$125 cafeteria plan in accordance with P.L. 2011, ch. 78.

F. Vacation Leave:

1. The Superintendent shall be entitled to an annual vacation of twenty-five (25) days per year, prorated for the 2016-2017 school year. All of the vacation days shall be available for the Superintendent's use on July 1st of each year of the Contract.
2. The Superintendent shall take his vacation time after giving the Board President reasonable notice. The Superintendent may take vacation days during the school year, upon notice to the Board President. The Superintendent is expected to attend to the business of the district as required for the smooth and efficient operation of the school district. The Superintendent shall document the use of accrued vacation days with the Board Secretary.
3. The Board encourages the Superintendent to take his full vacation allotment each year; however, not more than ten (10) days may be carried over by the Superintendent from year to year. All days carried over must be used in the next year, or those days not taken will be forfeited.
4. Upon separation from employment, the Superintendent shall be paid for his unused, accumulated vacation days. The per diem rate for unused vacation days shall be calculated as 1/260th of the Superintendent's final salary. The Board shall make any such

payment within thirty (30) days after the Superintendent's last day of employment. In the event of the Superintendent's death, payment for his unused accumulated vacation days shall be made to his estate.

- G. Holiday Leave. The Superintendent shall be entitled to all holidays granted to other administrators in the district.
- H. Personal Leave. The Superintendent shall be entitled to five (5) personal days, to attend to personal business during the school day, with full pay during the work year. Personal days may be taken during the school year with prior permission of the Board President. As much advance notice as possible of the request to take personal time will be given. Personal day usage shall be reflected on time-off slips filed with the Board Secretary. Unused personal days shall convert to sick days at the conclusion of each school year subject to a maximum accumulation of fifteen (15) sick days per school year.
- I. Mileage Reimbursement. The Superintendent shall be reimbursed for actual mileage when using his personal vehicle for Board business as annually established by the Annual Appropriations Act or the New Jersey Office of Management and Budget. Reimbursement for the use of a personal vehicle shall be tendered only upon proof of compliance with applicable regulations. There shall be no reimbursements for commuting between the Superintendent's home and Montague School.
- J. Attendance Record. The Superintendent shall be responsible for filing a time-off slip, in advance of the time off, as set forth herein, or immediately upon his return to the district in the event of an unplanned absence, with the Board Secretary each time any leave is taken. The Superintendent and Board President shall periodically review the Superintendent's attendance record to assure correctness.
- K. Tuition Reimbursement. The Board shall reimburse the Superintendent for tuition costs up to a maximum of 12 credits per year at the rate set by New Jersey State colleges incurred for graduate level courses at an accredited institution of higher education that are part of a

formal program of studies leading to the awarding of a Master's Degree or a Doctoral Degree in an area or discipline to the Board judges to be of benefit to the District. The Superintendent shall seek Board approval prior to enrolling in any graduate course of study. If the Superintendent becomes no longer employed by the Board within two years following the completion of any such graduate level courses, the Superintendent shall reimburse the Board for tuition expenses paid by the Board for such course work.

L. Professional Liability. The Board agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his individual capacity as agent and/or employee of the Board, provided the incident, which is the subject of any such demand, claim, suit, action or legal proceeding, arose while the Superintendent was acting within the scope of his employment. If, in the good faith of the Superintendent, a conflict exists in regards to the defense of any claim, demand or action brought against him, and the position of the Board in relation thereto, the Superintendent may engage his own legal counsel, in which event the Board shall indemnify the Superintendent for the costs of his legal defense. The Board further agrees to cover the Superintendent under the Board's liability insurance policies, including employment practices liability coverage, in the minimum amount of \$1 million dollars.

M. Bereavement. The Superintendent shall be entitled to five (5) days of leave, without loss of pay due to the death of his father, mother, husband, partner in a civil union, brother, sister, father-in-law, mother-in-law, son, daughter, grandchild, or any person permanently living with the Superintendent. The Superintendent shall be entitled to two (2) days of leave, per incident, without loss of pay due to the death of a sister-in-law, brother-in-law, aunt, uncle or other near relative.

N. Sick Leave Bank. Upon commencing employment, the Board shall provide the Superintendent with a sick leave bank of fifty (50) sick days which shall be available for the Superintendent's use in the event

he exhausts his earned sick leave days. The sick days in the sick leave bank shall not be available for compensation upon the Superintendent's retirement.

1. Computer/iPad. The Board shall supply the Superintendent with the use of a laptop computer/iPad (with Internet access) which is the property of the Board and shall be returned to the District at the end of the Superintendent's employment with the District. The Board shall be responsible for all maintenance and software updates associated with the laptop computer. The laptop computer/iPad shall be replaced as necessary.
- Blackberry/iPhone (or equivalent device). The Board shall supply the Superintendent with the use of a Blackberry/iPhone or equivalent device which is the property of the Board and shall be returned to the District at the end of the Superintendent's employment with the District. The Board shall be responsible for all costs associated with its maintenance.
- Incidental personal use of the device by the Superintendent shall be permitted. The Blackberry/iPhone or other device shall be replaced as necessary.

ARTICLE V

ANNUAL EVALUATION

- A. The Board shall evaluate the performance of the Superintendent once a year on or before June 30th in accordance with statutes, regulations and Board policy relating to Superintendent's evaluation. Each annual evaluation shall be in writing and shall represent a majority of the Board. Prior to finalization, a copy of the evaluation shall be provided to the Superintendent, and the Superintendent and the Board shall meet to discuss the findings. The Board may meet in closed session to discuss the evaluation and the Superintendent's performance where a Rice notice has been served upon the Superintendent, giving notice that the Superintendent's employment will be discussed in closed session, and the Superintendent has not requested that the meeting be conducted in public. The evaluations shall be based upon criteria agreed upon by the Board and the Superintendent, and are consistent with the goals and objectives of the district. In the

event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, and in reasonable detail, the specific recommendations for improvement in all instances where the Board deems performance to be unsatisfactory. The Superintendent shall have the right to respond in writing to the evaluation; this response shall become a permanent attachment to the evaluation in question. On or before June 1st of each year of this Employment Contract, the Superintendent and the Board shall meet to review the evaluation format and to mutually determine the evaluation format to be used in the subsequent year. The final draft of the annual evaluation shall be adopted by the Board by June 30 of each year of this Contract. The Superintendent shall propose a schedule for evaluation for the next year by the annual organization meeting each year.

- B. Within sixty (60) days of the execution of this Employment Contract, the parties shall meet to establish the district's goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and shall be among the criteria by which the Superintendent is evaluated, as hereinafter provided. On or prior to, June 1st of each succeeding school year, the parties will meet to establish the district's goals and objectives for the next succeeding school year, in the same manner and with the same effect as heretofore described.
- C. The parties also agree that the Board shall not hold any discussions regarding the Superintendent's employment, unless the Superintendent is given written notice at least 48 hours in advance, and is given the opportunity to address the Board in closed session with a representative of his choosing. In addition, the Board shall not hold any discussions with regards to the Superintendent's performance, or that may adversely affect the Superintendent's employment, in public session, unless the Superintendent requests that such discussions be held in public session, pursuant to the Open Public Meetings Act.

ARTICLE VI

TERMINATION OF EMPLOYMENT CONTRACT

A. This Contract shall terminate and the Superintendent's employment will cease, under any one of the following circumstances:

- (1) failure to possess/obtain proper certification;
- (2) revocation or suspension of the Superintendent's certificate, in which case this

Contract shall be null and void as of the date of revocation, as required by N.J.S.A. 18A:17-15.1;

- (3) forfeiture under N.J.S.A. 2C:51-2;
- (4) mutual agreement of the parties;
- (5) notification in writing by the Board to the Superintendent at least 30 calendar

days for each year of the term of the Contract up to a maximum of 150 days prior to the expiration of this contract, of the Board's intent not to renew this Contract; or

- (6) material misrepresentations of employment history, educational and professional credentials, and criminal background, subject to N.J.S.A. 18A:6-10, et seq.

B. In the event the Superintendent is arrested and charged with a criminal offense, which could result in the forfeiture under N.J.S.A. 2C:51-2, the Board reserves the right to suspend him pending resolution of the criminal charges. Such suspension shall be with pay prior to indictment, and may be with or without pay, at the Board's discretion, subsequent to indictment, unless the Board certifies contractual tenure charges.

C. Nothing in this contract shall affect the Board's rights with regard to suspension under N.J.S.A. 18A:6-8.3 and applicable law.

D. The Superintendent may terminate this Employment Contract upon at least 90 calendar days written notice to the Board, filed with the Board Secretary, of his intention to resign.

E. The Superintendent shall not be dismissed or reduced in compensation during the term of this Contract, except as authorized by paragraphs B and C supra and N.J.S.A. 18A:17-20.2 provided, however that the Board shall have authority to relieve the Superintendent of the performance of his duties in accordance with N.J.S.A. 18A:27-9, so long as it continues to pay his salary and benefits for the duration of the term. The parties understand that any early termination, must comply with the provisions of P.L. 2007, c. 53, The School District Accountability Act.

F. In the event the parties agree to terminate this contract prior to its expiration date, and to relieve the Superintendent from the actual performance of his duties, upon the approval of the Commissioner of Education, the Board shall compensate the Superintendent with three (3) months' salary times the number of years remaining in this contract or the remaining salary due to completion of this Contract, whichever is less, minus compensation from any and all other employment. It is understood that the Superintendent must make a good faith effort to find employment elsewhere as soon as possible and prior to the expiration of the within Contract. The salary received by the Superintendent in such employment shall be deducted from the payments made to the Superintendent by the Board. Insurance benefits will be adjusted to reflect coverage, if any, in the new position.

ARTICLE VII

RENEWAL-NON RENEWAL

This Employment Contract shall automatically renew for a term of five school years, expiring June 30, 2026, unless either of the following occurs:

- A. The Board by contract reappoints the Superintendent for a different term allowable by law; or

- B. The Board notifies the Superintendent in writing 150 calendar days prior to the expiration of this contract, that he will not be reappointed at the end of the current term, in which case his employment shall cease upon the expiration of this Contract.

ARTICLE VIII

COMPLETE AGREEMENT

This contract embodies the entire agreement between the parties hereto and cannot be varied except by written agreement of the undersigned parties.

ARTICLE IX

SAVINGS AND CONFLICTS CLAUSE

If, during the term of this Contract, it is found that a specific clause of the Contract is illegal under federal or state law, the remainder of the Employment Contract is not affected by such a ruling and shall remain in full force.

ARTICLE X

RELEASE OF PERSONNEL INFORMATION

PERSONNEL RECORDS

The Superintendent shall have the rights, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. He shall be entitled to have a representative accompany him during such review. At least once every year, the Superintendent shall have the right to indicate those documents and/or other materials in his file that he believes to be obsolete or otherwise inappropriate to retain; and, upon final approval of the Board, such documents identified by him shall be destroyed, consistent with the provisions of the Open Public Records Act and the Records Destruction Act.

No material derogatory to the Superintendent's conduct, service, character, or personality shall be placed in his personnel file unless he has an opportunity to review the material. The Superintendent shall acknowledge that he has had the opportunity to review such material affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The Superintendent shall also have the right to submit a written answer to such material.

IN WITNESS WHEREOF, the parties have set their hands and seals to this Employment Contract effective on the day and year first above written.

SUPERINTENDENT

BOARD OF EDUCATION OF THE
MONTAGUE TOWNSHIP SCHOOL DISTRICT

Date: 5/4/17

Date: 5/9/2017



TIMOTHY C. CAPONE



BOARD PRESIDENT

WITNESS:

WITNESS:

