

MT. DIABLO UNIFIED SCHOOL DISTRICT
EMPLOYMENT AGREEMENT
FOR SERVICES OF DISTRICT INTERIM SUPERINTENDENT

This Employment Agreement for Services of District Interim Superintendent ("Agreement") is effective on June 10, 2019 and is made and entered into between the GOVERNING BOARD OF THE MT. DIABLO UNIFIED SCHOOL DISTRICT (the "Board"), on behalf of the MT. DIABLO UNIFIED SCHOOL DISTRICT (the "District"), and Roger C. Bylund (the "Interim Superintendent" or "Bylund").

WHEREAS, Bylund is a retiree in the California State Teachers' Retirement System (CalSTRS) and subject to the rules thereunder including those related to post-retirement earnings and limitations and has skills needed to perform work of limited duration; and

WHEREAS, the Board desires to employ Bylund as Interim Superintendent for the District and desires to provide him with a written contract in order to enhance the administrative stability within the schools, which the Board believes generally improves the quality of the District's overall educational program; and

WHEREAS, the Board and the Interim Superintendent believe that a written 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 functions in the operation of the District.

NOW, THEREFORE, the Board and the Interim Superintendent, for consideration herein, agree as follows:

1. TERM. The Board retains and Bylund accepts, employment as the Interim Superintendent of Schools for the District, for the period from July 1, 2019 to September 30, 2019, or ending at such earlier time that the Board hires a new, regular Superintendent and that person reports for duty, subject to the terms and conditions set forth herein. During the period of June 10, 2019 to June 30, 2019, Bylund will provide consulting services for two (2) working days, as scheduled by the current Superintendent.

2. DUTIES AND RESPONSIBILITIES.

2.1. During the period from July 1, 2019 to September 30, 2019 (or earlier), Bylund will perform all duties and responsibilities of Superintendent of the District as provided in Section 35035 of the Education Code, this includes all applicable state and federal laws and regulations and the directives, rules, regulations and policies of the Board.

2.2. Although the Board retains ultimate power and authority over decisions affecting the District, the Board members and the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Interim Superintendent. The Board retains the right to question, approve, or disapprove as it deems appropriate, the recommendations and decisions of the Interim Superintendent.

2.3. The Interim Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions with the understanding that all personnel are subject to the approval of the Board; assign and direct employees of the District; discipline District employees as provided by law and contract; and organize the central office, administrative and supervisory staff, as he believes best serves the District, as approved by the Board in advance.

2.4. The Interim Superintendent shall give his exclusive professional services to the District during the period of this Employment Contract and he shall attend all regular and special meetings of the Board, including Closed Session where no conflict of interest exists, unless otherwise excused by the Board. He shall faithfully and diligently perform the duties and responsibilities regularly performed by superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state. For his services to the District he shall accept as full payment the compensation provided in this Agreement.

2.5. This Agreement shall not be assigned to any other position, except in cases of disability (as described in this Agreement), or have his duties reassigned without his consent.

2.6. The Interim Superintendent shall render services in accordance with the District's standard work year for confidential administrators and he shall be entitled to the same holidays as are other non-represented managers of the District.

3. SALARY & BENEFITS

3.1. The Interim Superintendent shall be paid total compensation at a daily rate in the amount of \$800.00 for two (2) working days for independent consulting services provided under this Agreement during the period commencing June 10, 2019 through June 30, 2019, not to exceed \$1,600.00, as scheduled by agreement between the current Superintendent and Bylund. Commencing July 1, 2019 through September 30, 2019, the Interim Superintendent shall be paid at a daily rate of \$1,077.00, excluding weekend days, for forty-three (43) working days in the District not to exceed \$46,311.00. There being sixty-two (62) working days in the time period of July 1, 2019 to September 30, 2019, Bylund and the Board President shall meet and establish a work calendar that includes regular Board meeting days and other working days deemed required by the Board President to total forty-three (43) working days in the District.

3.2. Expenses that the Interim Superintendent incurs in attending appropriate professional conferences, academies, seminars, and meetings at local, state and national levels shall be reimbursed in accordance with the current District policy. However, any time spent outside of the District will not be considered working days as defined above and must be approved in advance by the Board President.

3.3. Except as otherwise provided for in this Agreement, the District shall not provide the Interim Superintendent any employee benefits, including health insurance or retirement contributions, as provided to other non-represented managers/confidential employees of the District, except as required by statutory law due to Interim Superintendent's status as a District employee.

3.4. Interim Superintendent hereby certifies that he has not received any unemployment insurance compensation arising out of prior employment subject to this section with a public employer in the prior twelve (12) months before the first day of the Term herein.

4. LEAVE & ABSENCE

4.1. The Interim Superintendent shall provide the Board with reasonable advance notice of any travel in excess of three (3) workdays, including any planned vacation, before any such travel is taken.

5. EXPENSES. The Interim Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing his professional

responsibilities for the District, including reasonable expenses for travel outside the District. The District shall reimburse the Interim Superintendent for automobile travel at the then-current deductible mileage rate as provided by the Internal Revenue Service. Any such request for reimbursement shall comply fully with all District rules and requirements relating to expense reimbursements; and shall be presented to the Board President for review and approval.

6. PROFESSIONAL AND OUTSIDE ACTIVITIES. The Interim Superintendent may engage in outside activities, such as consulting and speaking, provided that such activities do not interfere and are compatible with the Interim Superintendent's performance of his duties and responsibilities. Such outside activities are subject to the following approval and notification requirements: (1) if the activity requires no more than two (2) days of the Interim Superintendent's time, he shall provide reasonable advance notice to the Board of his participation in such activity; (2) if the activity requires more than two (2) days of the Interim Superintendent's time, he shall first receive prior approval from the Board President to participate in such activity and, if such approval is given, he must provide reasonable advance notice to the Board. The Interim Superintendent further understands and agrees that any outside employment which may be allowed by this Agreement must be at all times subservient to his duties as Interim Superintendent and must be performed on days that he has no duties at the District, and which have been authorized or approved by the Board.

7. TERMINATION. This Agreement may be terminated by the following:

7.1. Death of the Interim Superintendent. In the event of death of the Interim Superintendent, this Agreement shall terminate immediately, and the Board may appoint an alternative Administrator to fulfill the duties and responsibilities of the Interim Superintendent under this Agreement.

7.2. Disability. The Board may terminate this Agreement due to the disability of the Interim Superintendent, as defined below, and as provided by this Agreement, statute, and policies.

7.2.1 Disability shall mean that the Interim Superintendent is unable to further serve in his position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a physician selected by the Board and who is licensed to serve in the State of California.

7.2.2 In the event the Interim Superintendent is disabled and said disability would prevent him from reassuming his duties for a period of five (5) working days or more, the Board may appoint an alternative Administrator to fulfill the duties and responsibilities of the Interim Superintendent under this Agreement.

7.2.3 In the event the Interim Superintendent is disabled and unable to perform his duties under this Agreement, and such disability continues for more than five (5) working days, the Board may terminate this Agreement. In the event of termination due to disability, the Interim Superintendent shall continue to receive the salary provided for in the Agreement for a period of five (5) working days from the date of termination pursuant to the terms of this paragraph. The Board's decision and termination as to the disability of the Interim Superintendent shall be final and shall be based on the written opinion of a licensed physician, as set forth above.

7.3. By the Board without cause.

7.3.1 The Board may elect to terminate this Agreement, without cause, upon ten (10) working days written notice to the Interim Superintendent. Prior to exercising this option, the Board shall provide the Interim Superintendent with an opportunity to meet with the Board to discuss its intentions, except in the event a regular Superintendent is hired. However, no cause need be alleged or demonstrated by the Board in either event.

7.4. By the Board for cause.

7.4.1 The Board may elect to terminate this Agreement for cause upon forty-eight (48) hours written notice to the Interim Superintendent. Cause shall constitute conduct, which the Board decides is seriously prejudicial to the District or its students or both, including, but not limited to, the grounds enumerated section 44932 of the California Education Code and specifically including the following: (a) the Interim Superintendent's conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in the sole opinion of the Board cause embarrassment to the District; (b) the Interim Superintendent engages in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Interim Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Interim Superintendent's duties hereunder which could be injurious to the District in any way; (d) the Interim Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Interim Superintendent's material breach of any material term of this Agreement or his willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within forty-eight (48) hours after written notice of such noncompliance has been given to the Interim Superintendent by the Board; and (f) the Interim Superintendent's persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, or any other cause listed in the California Education Code.

7.4.2 Cause shall also constitute unsatisfactory performance as determined by the Board and as provided in writing to the Interim Superintendent. The Board shall provide the Interim Superintendent with written notice of the termination at least five (5) calendar days prior to the effective day of termination in this event.

7.4.3 Dismissal for cause shall be effective upon action taken by the Board, and all salary provided for in this Agreement shall cease upon said action by the Board. Salary earned or accrued prior to said action shall be paid to the Interim Superintendent within thirty (30) calendar days of said action.

7.4.4 Timely notice of discharge for cause shall be given in writing and the Interim Superintendent shall be entitled to appear before the Board to discuss such charges. If the Interim Superintendent chooses to be accompanied by legal counsel at such meeting, he shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Interim Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Interim Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

7.5. By the Interim Superintendent at any time during this Agreement by providing the Board with fourteen (14) calendar days written notice.

7.6. By mutual agreement between the Board and the Interim Superintendent at any time.

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8. APPLICABLE LAWS. This Agreement is subject to all applicable laws and regulations of the State of California, to the rules and regulations of the State Board of Education and to the rules, regulations and policies of the District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein. To the extent applicable to school districts, this Agreement is subject to the provisions of Government Code sections 53243-53243.4 which requires reimbursement under the circumstances stated therein.

9. ENTIRE AGREEMENT. It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

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

11. NOTICES. Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally; or the next day by electronic mail confirmed by electronic response; or on the third day after mailing if mailed, first class postage prepaid, certified and return receipt requested, and addressed to the addressee at the address stated in District records, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

12. OTHER EMPLOYMENT. If at any time during the term of this Agreement the Interim Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow himself to be considered, for such a position, the Interim Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate. If the Interim Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement, and the Board may then terminate this Agreement for cause and in accordance with section 7.4 herein.

13. INDEMNIFICATION OF INTERIM SUPERINTENDENT. In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Interim Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Interim Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Interim Superintendent was acting within the course and scope of his employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Agreement and any extensions thereof and after his employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Interim Superintendent against such demands, claims, suits, actions and legal proceedings. If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Interim Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent Interim Superintendent, then Interim Superintendent

may engage separate legal counsel for which the District shall indemnify Interim Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Interim Superintendent under any other insurance or professional association membership.

14. **WAIVERS.** No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

IN WITNESS WHEREOF, the parties hereto, affix their signatures on June __, 2019 to this Agreement at Concord, California.

GOVERNING BOARD OF THE MT.
DIABLO UNIFIED SCHOOL
DISTRICT:

INTERIM SUPERINTENDENT:


Roger C. Bylund

Joanne Durkee, President

Linda Mayo, Vice President

Brian Lawrence, Member

Debra Mason, Member

Cherise Khaund, Member