

Superintendent Contract of Employment Western Heights Public Schools

This Employment Contract ("Contract") is made and entered into this 1st day of August, 2019, by and between Western Heights Public Schools, Independent School District 41 of Oklahoma County, Oklahoma ("District") and Mannix D. Barnes ("Superintendent"). District, acting through its Board of Education, is authorized under the laws of the State of Oklahoma to contract with and fix the duties and compensation of the District's Superintendent.

1. Term:

The Board, by and on behalf of the District, hereby employs and Superintendent hereby accepts employment as Superintendent of Western Heights Public Schools for a maximum term commencing August 1, 2019 and ending June 30, 2022.

2. Professional Certification, Duties and Responsibilities:

A. Certification.

The Superintendent shall obtain and maintain an appropriate certification issued by the Oklahoma State Department of Education ("OSDE"). The Superintendent shall provide a copy of such certification and keep on file with the Board Clerk and the District's Office of Personnel Management. The Superintendent shall also provide evidence of degrees earned, previous professional experience and other records required by the District's Office of Personnel Management.

B. Duties.

The Superintendent shall faithfully perform the duties of Superintendent for the District as prescribed by law, Board policies and in the job description and as may be assigned by the Board from time to time, including, but not limited to, participating in District leadership sustainability planning and implementation with the Board. The Superintendent shall comply with all lawful Board directives, policies, rules and regulations and state and federal laws, as they exist or may hereinafter be amended or adopted during the term of this Contract. Except as provided in this Contract, Superintendent agrees to devote his full time, energy and skill to the performance of these duties in a faithful, diligent, conscientious and efficient manner.

Superintendent shall be the sole employee under the supervision of the Board. He shall be in charge of the administration of the schools under the direction of the Board. He shall be the Chief Executive Officer of the District; shall direct and assign teachers and other employees of the schools under his supervision; shall organize, reorganize, arrange and evaluate the relevant administrative and supervisory staff, including instructional and business affairs, as best serves the District; shall select, hire and terminate all personnel subject to the approval of the Board; shall direct, supervise, transfer, assign and reassign all personnel, including consultants, in the manner which in his judgement best serves the district; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district; and in general perform all duties incident to the Office of the Superintendent and such duties as may be lawfully prescribed by the Board from time to time.

The Board, individually and collectively, shall promptly refer all criticisms, complaints and suggestions called to its attention to the Superintendent for study and recommendation and, if appropriate, action. The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, except closed or executive session meetings of the Board involving the evaluation of the Superintendent. All duties assigned to the Superintendent by the Board should be appropriate to and consistent with the professional role and responsibility of the Superintendent.

C. Reassignment.

The Superintendent is employed specifically and solely to perform the duties of the Superintendent for the District and may not be reassigned from the position of Superintendent to any other position in the District except by mutual written agreement of the parties.

D. Outside Activities.

The Superintendent shall devote his time, attention and energy to the business of the District. However, he may at his discretion serve as a paid consultant to other Districts, educational agencies, businesses, lecture, engage in writing activities and speaking engagements and engage in other outside activities that are for compensation, whether for short term in nature or long term but intermittent in nature. The Superintendent will be provided with up to twenty (20) days of unpaid leave per year to engage in outside activities with written notice to the Board President, provided that such activities do not interfere with the performance of his duties as Superintendent nor promote or advance a position or activity the Board determines to be contrary to the best interest of the District. The Superintendent may, at his option, continue to draw his salary from accrued vacation or Personal Business Leave while engaged in the outside activity as described above. In all cases, the compensation paid to the Superintendent in connection with these outside activities shall be retained by the Superintendent.

3. Professional Growth and Community Involvement of Superintendent:

The Board encourages the continuing professional growth of Superintendent through his participation, as he might decide in light of his responsibilities as Superintendent, in:

- a. The operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations (e.g., AASA – the School Superintendents Association, National Academy of School Executives, National School Board Association, Council of Great City Schools, OSSBA, CCOSA, etc.);
- b. Seminars, conventions, workshops and courses offered by public or private educational institutions, including but not limited to universities;
- c. Informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of Superintendent to perform his professional responsibilities for the District; and
- d. Visits to other institutions and districts.

In its encouragement, the District shall permit a reasonable amount of release time for Superintendent, as he and the Board deem appropriate, to attend to such matters and pay for the necessary fees for registration, tuition, travel and subsistence expenses as provided by the Board. Further, the District

shall pay the dues in which the Superintendent feels it is necessary to maintain and improve his professional skills for the District, as permitted by state law and approved by the Board. Additionally, the Board encourages the Superintendent to further his education in graduate courses that would further help the district and pay the necessary fees up to twenty-five (25) semester credit hours annually; become a member of and participate in community and civic affairs, including but not limited to, the chamber of commerce, civic clubs, arts organizations, governmental committees, boards of directors and educational organizations. The Board concludes such participation will serve a legitimate purpose related to the educational mission of the Board. The Superintendent may hold offices or accept responsibilities in these organizations, provided that such responsibilities do not interfere with the performance of his duties as Superintendent. Prior to engaging in these activities, the Superintendent will notify the Board President in writing of his proposed activity. The Board President will notify the Superintendent if the activity presents a conflict or interferes with the performance of his duties as Superintendent. To encourage community activity on the part of the Superintendent, the Board shall pay the membership dues for the Superintendent's membership in local community and civic organizations selected by the Superintendent, as permitted by state law and as approved by the Board.

4. Compensation:

A. Salary.

The District shall pay the Superintendent an annual salary of \$220,000 for Fiscal Years 2019-2020, 2020-2021 and 2021-2022. As used herein, the term Fiscal Year means the period of time from July 1 to June 30th of each calendar year and each ensuing calendar year. The annual salary shall be paid to the Superintendent in accordance with the payroll dates in effect for other certified employees or as may be mutually agreed to by the parties. The annual salary shall be increased, effective on July 1st of each Fiscal Year in an amount equal to the average of the percentage salary increases of the teacher and support personnel bargaining units. In addition to the annual cost of living adjustment, District and Superintendent may mutually agree to adjust the salary of Superintendent during the term of this Contract, but in no event shall Superintendent be paid less than the annual base salary of \$220,000, plus any adjustment having been made pursuant to paragraph 4(A) above. Any adjustment in salary or fringe benefits made during the life of this Contract shall be in the form of a written amendment and made a part of this Contract, but it shall not be deemed that the District and Superintendent have entered into a new contract nor the termination date of the Contract has been extended. If and when Superintendent earns a Doctorate Degree, District agrees to increase the base salary of Superintendent by 2% for each Doctorate Degree earned. Increase in base salary will take effect once Superintendent submits Degree or proof to the District's Office of Personnel Management. The Superintendent's annual salary for each fiscal year of this Contract shall be paid in twenty-four (24) installments. Superintendent shall cause a copy of this Contract and any amendments thereto to be filed with the Oklahoma State Department of Education in accordance with state law.

5.

Fringe Benefits:

A. Medical, Dental and Vision Insurance.

For the term of this Contract, District shall pay the premiums for the Superintendent, the Superintendent's spouse and dependents for medical, vision and dental insurance with the State and Education Employees Group Insurance Fund and or other flexible insurance benefits as Superintendent selects from the District's benefits program available for administrative employees.

B. Life Insurance.

While this Contract is in effect, District shall pay the premiums for group life insurance for the Superintendent with the same benefit amount as District provides for its administrative employees. Additionally, Superintendent is authorized to purchase a term policy of insurance on his life with a death benefit that does not exceed \$250,000 and if the premium is a level premium, for a term that does not exceed twenty years. Superintendent shall be the owner of the term policy. The District shall, within 30 days after Superintendent's submission of the invoice for payment of the premium on the Term Policy, pay the premium.

C. Disability Insurance.

While the Contract is in effect, District will pay for both short and long term disability insurance for the Superintendent. In the event the Superintendent is off work due to disability or illness, District shall continue to provide for such insurance, including continuation of premiums if premiums are required, until Superintendent is able to return to work or until disability insurance payments commence. In the event of Superintendent's disability or illness, District will pay Superintendent's Base Salary, after all of Superintendent's sick leave is exhausted, for the balance of any waiting period prior to commencement of Superintendent's short term or long term disability insurance payments. The amount of short term or long term disability benefits payable to Superintendent shall be up to 52 weeks and 60% of the salary for short term and up to 10 years and 70% of the salary for long term.

D. Vacation.

District shall provide Superintendent with 40 days of vacation each Fiscal Year during the term of this Contract, exclusive of school holidays. Superintendent's vacation days will vest at the beginning of the 2019-20 Fiscal Year. In the event Superintendent's employment is terminated during the term of this Contract due to his resignation or death, or in the event Superintendent's employment is not extended or renewed, Superintendent or his beneficiaries shall be paid for all unused vacation days in accordance with state law and the policies of District. The per diem value of any accrued but unused vacation days shall be determined by dividing the then current salary of the Superintendent by 226 days. At the end of each Fiscal Year during the term of this Contract, the Superintendent shall elect to have the District pay either in a lump sum to the Superintendent any accrued but unused vacation days or continue to carry forward any accrued unused vacation days to the next Fiscal Year.

E. Sick Leave.

District shall provide Superintendent with 20 days of sick leave each Fiscal Year under this Contract to vest at the beginning of the 2019-20 Fiscal Year. Unused sick leave will carry over to the next Fiscal Year and accrue as long as Superintendent remains an employee of District. District agrees that in the event this Contract is not extended or renewed subsequent to the end of the term or in the event Superintendent's employment is terminated during any Fiscal Year of the term due to his resignation or death, Superintendent or his beneficiaries shall be paid for all unused sick leave in accordance with state law and the policies of District. The per diem value of any unused sick days shall be determined by dividing the then current salary of the Superintendent by 226 days.

F. Personal Business Leave.

District shall provide Superintendent with 20 paid days of personal business leave at the beginning of each Fiscal Year during the term of this Contract.

G. Holiday Leave.

Superintendent will have the same holidays provided by law or Board of Education action for administrative employees on a twelve-month contract.

H. Travel and Business Expenses.

District shall provide reimbursement for reasonable and necessary travel expenses, including mileage, incurred by Superintendent in the performance of his official duties as Superintendent. Travel expenses may only be reimbursed for out-of-district travel. Superintendent shall provide all travel expense receipts and other documentation for reimbursement of such expenses in accordance with the requirements of board policies or regulations. In addition to reimbursement for travel expenses, District shall reimburse Superintendent for other reasonable and necessary business expenses made by him, including but not limited to meals for his and others, when such expenses are incurred by Superintendent for the benefit of the District, without regard to where they are incurred. Superintendent must be able to demonstrate the benefit the District received from the expense. Any dispute as to the reasonableness and necessity of any expense incurred by Superintendent in the performance of his duties shall be determined by the Board whose decision is final in all respects. Superintendent shall, to the extent practicable, obtain advance approval from District's Board of Education for unique or unusually large expenses. Superintendent's travel and business expenses will be reviewed periodically by the Board.

I. State Retirement Contribution.

The District shall pay Superintendent's full retirement contribution to the Oklahoma Teacher's Retirement System (OTRS) if allowed by OTRS. If at any time OTRS does not allow such a contribution, then the District shall reimburse the Superintendent for an amount each pay period equal to his employee retirement contribution to OTRS (the "Cash Reimbursement").

J. Tax Qualified Retirement Plan.

The District will establish a 403(b) tax qualified retirement plan for the sole benefit of Superintendent to which the District will contribute Eight Percent (8%) of Superintendent's Base Salary each Fiscal Year of employment to the extent permitted by law. Such contribution shall be made annually no later than June 30th each year as long as Superintendent is employed by District and shall be fully vested when made by the District.

K. Retention Bonus.

The District shall pay to Superintendent in the last full week of June, 2022, a retention bonus (the "Retention Bonus") in the amount of \$75,000, provided the Superintendent must have been continuously employed by the District as its Superintendent from the period that begins August 1, 2019 and ends June 15, 2022.

L. Jury Duty. In the event the Superintendent is summoned for jury service and is required to serve on a jury during the term of this Contract, he will be paid his Base Salary during his service as well as any fringe benefits under Section 5. In that event, the Superintendent shall tender to the District any pay he receives for his jury service.

6. Professional Liability:

- A. The District shall indemnify, defend and hold Superintendent harmless regarding any claims, demands, duties, actions, or other legal proceedings against Superintendent for any act or failure to act involving the exercise of judgment and discretion within the normal course and scope of his duties as Superintendent of the District to the extent and to the limits permitted by law. This paragraph does not apply if Superintendent is found to have acted with gross negligence or with intent to violate a person's clearly-established legal rights or to have engaged in criminal conduct, nor does it apply to criminal litigation. The District may, at its sole option, fulfill its obligation under this paragraph by purchasing appropriate insurance coverage for the benefit of Superintendent or by including Superintendent as a covered party under any errors and omissions insurance coverage purchased for the protection of the District and the professional employees of the District. No individual member of the Board shall be personally liable for indemnifying and defending Superintendent under this paragraph.
- B. If in the good faith opinion of legal counsel for the District, a conflict of interest exists in providing a defense of any claim between the legal position of Superintendent and the legal position of District, Superintendent may engage counsel in which event the District shall indemnify Superintendent for the costs of legal defense as permitted by law.
- C. Superintendent shall fully cooperate with the District in the defense of any and all demands, claims, suits, actions, and legal proceedings brought against the District.
- D. The indemnifications provided by this Section 6 shall survive termination of this Contract.

7. **Superintendent Evaluation and Annual Performance Incentive Stipend:**

The Board shall evaluate and assess the performance of Superintendent in writing at the times required under the Board-approved Superintendent evaluation instrument and at such other times as deemed necessary and appropriate by the Board. The meetings at which the Board evaluates and assesses the performance of Superintendent will be held in closed or executive session unless the Board and Superintendent mutually agree, in writing, that they should be held in open session. The evaluation shall be in accordance with the Board's policies and state and federal law and shall be related to the duties of Superintendent as prescribed by law, Board policies, this Contract and in Superintendent's job description.

The annual evaluation shall use a grading scale of 1 to 4 (4 being the highest) with each respective number of the scale corresponding to the quality of Superintendent's performance as to each indicator in the evaluation instrument as determined by the Board. The evaluation process shall conclude in June of each fiscal year with a final summative score (that is, the composite numerical average) for all Board members submitting an evaluation. For purposes of calculating the final summative score, each indicator shall carry the weight assigned to it in the Board-approved evaluation instrument.

In order to provide a further incentive to Superintendent to improve and enhance the education provided by the District to its students, the Superintendent shall be eligible to receive an annual incentive stipend of \$25,000. In order to receive an annual incentive stipend, Superintendent's final summative evaluation score for that fiscal year must be "effective" as defined by the evaluation tool scoring. The earning of an annual incentive stipend, as determined by the Board of Education, shall be final and conclusive and shall not be subject to appeal.

8. **Extension of Employment Contract Beyond Its Term:**

The Board reserves the right to consider an extension of the term of this Contract beyond the 2021-22 Fiscal Year at any time as may be determined by the Board. If the Board fails or refuses to extend the Contract beyond the 2021-22 Fiscal Year, the Contract shall lapse and be of no further force and effect at the close of business on June 30, 2022. The requirements of cause for such non-extension/nonrenewal as well as a hearing before the Board on the contract non-extension/employment nonrenewal are hereby agreed to be voluntarily and knowingly waived by Superintendent in all respects.

9. **Termination of Employment Contract:**

This Employment Contract may be terminated in all respects by:

A. **Mutual Agreement of the Parties.**

B. **Resignation of Superintendent.**

C. **Retirement of Superintendent.**

D. **Disability of Superintendent.**

Should Superintendent become unable to perform any or all of the duties of his position by reason of illness, accident or other cause, and said disability exists after all accrued sick or other District-paid leave has been

exhausted and short and long term disability benefits have been exhausted, the District may make appropriate deduction from Superintendent's annual base salary for those days in which Superintendent is unable to perform the duties of his position. If such disability is permanent or irrevocable, the Board may, at its option, terminate this Contract, whereupon the respective rights, duties and obligations of the parties stated shall terminate for all purposes.

If a question arises concerning the capacity of Superintendent to return his duties, the Board may require Superintendent to submit to a medical examination to be performed by a doctor licensed to practice medicine in Oklahoma. The Board shall select the physician who shall conduct the examination. The examination shall be done at the expense of the Board. The physician shall limit the report to the issue of whether Superintendent has a continuing disability, which prohibits him from performing his duties, and such physician's determination shall be final and binding in all respects on the parties and shall be non-appealable in any forum.

E. Discharge for Cause.

The Board may dismiss Superintendent for good cause as defined by state law including Superintendent's failure to perform his duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. Any act by Superintendent shall constitute good cause for discharge if it is inconsistent with the continued existence of a mutually satisfactory Board and Superintendent relationship. Reasons for a proposed discharge for good cause shall be given in writing and Superintendent shall be entitled to all procedural and substantive rights as set forth in the Board's policies and applicable state law. If Superintendent chooses to be represented by legal counsel at any such hearing, Superintendent shall bear his attorneys' fees costs therein involved.

F. Unilateral Termination by Board Without Cause.

The Board may, at its option, and by a minimum of 90 days written notice to Superintendent, unilaterally and without cause terminate this Contract without cause and dismiss Superintendent from employment with the District.

In the event of such unilateral dismissal without cause and Contract termination without cause during the Contract term, the Board shall pay to Superintendent, upon the execution by Superintendent of a complete release satisfactory to the Board, severance pay equal to the sum of (i) Superintendent's base salary for the remainder of the Contract term; or (ii) Superintendent's then base salary for twelve (12) calendar months measured from the date of written notice of termination. Whichever amount is lesser. In the event the Board terminates the Contract by paying such amounts, the requirement of a hearing before the Board is hereby agreed to be voluntarily, knowingly and irrevocably waived by Superintendent in all respects.

10. **Miscellaneous:**

A. Extension.

If, on the District's request or with the District's consent, Superintendent continues in his employment as Superintendent beyond the date of the

expiration of the term of Superintendent's employment, or other mutually agreed-upon date, this Contract shall remain in full force and effect during the continuation of such employment, except as otherwise expressly provided by written mutual agreement.

B. Inapplicability of Collective Bargaining Agreements.

No collective bargaining agreement to which the District is a party shall, in whole or in part, govern, apply to, or be deemed part of or incorporated into this Contract.

C. Venue.

Any civil action arising out of this Contract, or the nonperformance or breach of any covenant contained in it, shall be brought only in Oklahoma County, Oklahoma.

D. Waiver.

The District's waiver of any breach of any term, condition or covenant of this Contract shall not constitute the waiver of any other breach of the same or any other term, condition or covenant of this Contract.

E. Applicability to Successors.

This Contract shall be binding on and inure to the benefit of:

- i. Superintendent's heirs and personal representatives; and
- ii. The District, regardless of changes in the persons holding office as members of District's Board of Education.

F. Severability of Provisions.

If any provision of this Contract or the application of any provision to any party or circumstance shall be prohibited by or invalid under applicable law, that provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Contract or their application to other parties or circumstances.

G. Governing Law.

This Contract, and the terms, conditions and covenants contained in it, shall be governed by and construed in accordance with the laws of the State of Oklahoma.

H. Integration of All Contracts and Understandings.

This Contract contains the entire agreement between the District and Superintendent as of August 1, 2019. All prior agreements and understandings, whether written or oral, pertaining to the District's employment of Superintendent are fully abrogated and of no further force and effect from and after August 1, 2019. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Contract, Superintendent and District agree that in case of any uncertainty or any ambiguity of any language in this Contract, all of the provisions of this Contract shall be interpreted in accordance the dictates of Title 15, Section 170 of the Oklahoma Statutes as to a contract between a public body and a private party. The omission from this Contract of a term or provision contained in an earlier draft of this Contract shall have no evidentiary significance regarding the contractual intent of the parties. The

terms, conditions and provisions of this Contract may mutually be changed by the parties if such changes are reduced to writing and signed by both parties. No modifications or changes to this Contract will be binding upon the District unless the changes/modifications are approved by a majority vote of a quorum of District's Board of Education at a regular meeting as an agenda item for that meeting.


I. Execution of Contract.

This Contract may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Contract shall be binding on their party until both parties have signed this Contract.

IN WITNESS WHEREOF, Board has caused this Employment Contract to be executed on its behalf by its duly authorized President and Clerk and Superintendent has approved this Contract effective on the day and year specified in paragraph 1 above.

Western Heights Public Schools
Independent School District 41
Of Oklahoma County, Oklahoma

("District")

By: 
Robert Everman
Board President

("Superintendent")

By: 
Mannix Barnes
Superintendent

ATTEST:


Vicki Parker
Clerk of the Board

OK as to form

By District Legal Counsel: 