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Attorney for Petitioner, Clara Brito Herrera

CLARA BRITO HERRERA,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWN OF WEST NEW YORK,
HUDSON COUNTY, AND
MONICA M. TONE, INTERIM
EXECUTIVE COUNTY
SUPERINTENDENT FOR HUDSON
COUNTY,**

Respondents.

BEFORE THE COMMISSIONER
OF EDUCATION OF THE
STATE OF NEW JERSEY

Agency Dkt. #

OAL Docket #

AFFIDAVIT OF SERVICE

ANN L. CAHILL, of full age, being duly sworn according to law upon her oath deposes and says:


1. I am a secretary working under Andrew Babiak, Attorney-at-Law for Petitioner, Diane Bacher.
2. At the direction of Andrew Babiak, on September 24, 2015, I did cause the within Petition and this Affidavit of Service to be sent by certified mail, return receipt requested, to Counsel for Respondent, Lester E. Taylor, III, Esq., of the law firm of Florio, Perrucci, Steinhardt & Fader, with offices located at 218 Route 17 North, Suite 300, Rochelle Park, New Jersey 07662.

3. The within Petition and Affidavit of Service have also been sent by certified mail, return receipt requested, to Dean Austin, Board Secretary for the West New York Board of Education with administrative offices located at 6028 Broadway, West New York, New Jersey 07093.

4. The within Petition and Affidavit of Service have also been sent by certified mail, return receipt requested, to the Office of the Attorney General with offices located at the Hughes Justice Complex, 25 Market Street, Post Office Box 080, Trenton, New Jersey 08625-0080.

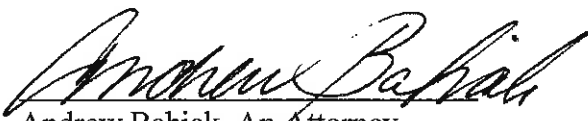
5. The within Petition and Affidavit of Service have also been sent by certified mail, return receipt requested, to Monica M. Tone, Interim Executive County Superintendent for Hudson County, with administrative offices located at 595 Newark Avenue, Jersey City, New Jersey 07306.

I HEREBY CERTIFY that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Ann L. Cahill

Sworn & Subscribed to Before
Me This 24th Day of September 2015



Andrew Babiak, An Attorney-
at-Law of the State of New Jersey

ANDREW BABIAK, ESQ.
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Trenton, New Jersey 08618
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**PETITION FOR DECLARATORY
AND OTHER RELIEF**

PETITIONER, CLARA BRITO HERRERA, residing at 6312, Jackson Street, West New York, New Jersey 07093, hereby requests the Commissioner of Education to render a declaratory ruling concerning the application of *N.J.S.A. 18A:28-5* and *N.J.S.A. 18A:17-20.4 vis-a-vis N.J.S.A. 18A:7-8(j)* and *N.J.A.C. 6A:23A-1.2* and *-3.1(e)(2)*, in connection with a controversy which has arisen between Petitioner and Respondent, Board of Education of the Town of West New York, Hudson County, with administrative offices located at 6028 Broadway, West New York, New Jersey 07093, and Respondent, Monica M. Tone, Interim Executive County Superintendent for Hudson County, whose administrative offices are located at 595 Newark Avenue, Jersey City, New Jersey 07306, pursuant to the authority of the Commissioner to hear and determine controversies under the school law, *N.J.S.A. 18A:6-9* and *N.J.A.C. 6A:3-2.1*, by reason of the following facts:

COUNT I

REQUEST FOR DECLARATORY RULING THAT LIFETIME TENURED ASSISTANT SUPERINTENDENT CANNOT HAVE HER SALARY REDUCED UPON PROMOTION TO SUPERINTENDENT IN THE SAME SCHOOL DISTRICT

1. Since February 1, 1981, Petitioner, Clara Brito Herrera (hereinafter "Petitioner"), has been continuously employed by the Respondent, Board of Education of the Town of West New York (hereinafter referred to as the "Board") as a teaching staff member.

2. Petitioner began her employment with the Board as a Teacher.

3. Beginning July 1, 1999, Petitioner was promoted by the Board and began employment as a Supervisor.

4. Beginning July 1, 2002, Petitioner was promoted by the Board and began employment as a Principal.

5. Beginning on or about November 16, 2011, Petitioner was appointed by the Board and undertook the duties of Acting Assistant Superintendent.

6. Beginning on or about December 16, 2011, Petitioner was promoted by the Board and began employment as Assistant Superintendent.

7. Petitioner holds a standard Instructional Certificate and holds a standard Administrative Certificate with Supervisor, Principal, and School Administrator endorsements.

8. Pursuant to *N.J.S.A. 18A:28-5*, Petitioner holds lifetime tenure with the Board in the positions of Teacher, Supervisor, Principal, and Assistant Superintendent.

9. Petitioner's annual salary for the 2014-15 school year was \$190,587.00.

10. In or about May 2015, the Board offered to promote Petitioner to the position of Superintendent of Schools, and Petitioner accepted the offer.

11. Subsequently, Petitioner contacted Respondent, Monica M. Tone, Interim Executive County Superintendent (hereinafter referred to as the "ECS"), and discussed, among other things, the issue of her

salary as Superintendent of Schools.

12. Based on the salary cap regulations, *N.J.A.C. 6A:23A-1.2* and *-3.1(e)(2)*, the “maximum salary amount” for a Superintendent of Schools in the Board’s school district was \$177,500.00, which amount includes a “high school salary increment” of \$2,500.00.

13. Petitioner informed the ECS that she had lifetime tenure as an Assistant Superintendent, that her annual salary was above the maximum salary amount, and that she did not believe her salary could be reduced by the salary cap regulations.

14. The ECS informed Petitioner that she would research the issue, and after researching the issue, the ECS informed Petitioner that she would not approve an employment contract for her as Superintendent unless the salary conformed to the salary cap regulations.

15. In order to begin the school year with Petitioner in place as the Superintendent of Schools, the Board and Petitioner prepared an employment contract for the position of Superintendent which was submitted to the ECS for approval.

16. By letter dated June 29, 2015, the ECS approved the Employment Contract. A true and correct copy of the ECS’s approval letter is attached hereto as Exhibit “A.”

17. On or about July 15, 2015, the Board approved the Employment Contract. A true and correct copy of the Employment Contract is attached hereto as Exhibit “B.”

18. The Employment Contract erroneously reduces Petitioner’s annual salary in violation of her tenure rights under *N.J.S.A. 18A:28-5* and *N.J.S.A. 18A:17-20.4*.

19. The ECS erred in determining that Petitioner’s salary had to conform with the salary cap regulations, since this determination conflicts with *N.J.S.A. 18A:28-5* and *N.J.S.A. 18A:17-20.4*.

20. Since Petitioner’s appointment as Superintendent, the Board has reduced Petitioner’s annual, pro-rated base salary from \$190,587.00 to \$177,500.00.

WHEREFORE, Petitioner, Clara Brito Herrera, respectfully prays that the Commissioner construe the provisions of *N.J.S.A.* 18A:28-5, *N.J.S.A.* 18A:17-20.4, *N.J.S.A.* 18A:7-8(j), and *N.J.A.C.* 6A:23A-1.2 and -3.1(e)(2), and determine and declare as follows:

- (a) by virtue of Petitioner's lifetime tenure as an Assistant Superintendent in the Board's school district, that Petitioner's tenure rights were violated when her salary was reduced upon being promoted to Superintendent of Schools; and
- (b) the ECS erred in advising that, in order to approve the Employment Contract, Petitioner's salary had to be reduced to conform with the salary cap regulations.

COUNT II

**REQUEST FOR ORDER THAT THE EXECUTIVE COUNTY SUPERINTENDENT
BE DIRECTED TO APPROVE A NEW EMPLOYMENT CONTRACT
FOR PETITIONER WITH AN ANNUAL SALARY WITH THE SAME
AMOUNT AS SHE HELD AS ASSISTANT SUPERINTENDENT**

- 1. Petitioner repeats the allegations of Count I as if fully set forth at length herein.
- 2. The ECS should have approved an Employment Contract between the Board and Petitioner containing an annual salary of \$190,587.00 which was the same salary Petitioner received as Assistant Superintendent.

WHEREFORE, Petitioner, Clara Brito Herrera, requests the Commissioner to conduct a full adversary hearing on the allegations of the Petition and, if he finds such allegations to be true, to:

- (a) find and order that the ECS's decision to force a reduction in Petitioner's salary was arbitrary, capricious and unreasonable;
- (b) find and order that the ECS approve a new Employment Contract between the Petitioner and the Board, retroactive to July 1, 2015, containing an annual base salary of \$190,587.00; and
- (c) grant any other relief the Commissioner deems just, equitable and proper.

COUNT III

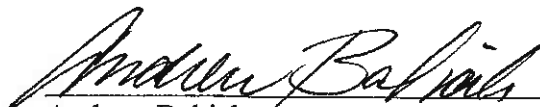
**REQUEST FOR ORDER THAT BOARD RESTORE
PETITIONER'S ANNUAL SALARY TO THE SAME
AMOUNT AS SHE HELD AS ASSISTANT SUPERINTENDENT**

1. Petitioner repeats the allegations of Count I as if fully set forth at length herein.
2. The Board reduced Petitioner's annual salary in contravention of her tenure rights.

WHEREFORE, Petitioner, Clara Brito Herrera, requests the Commissioner to conduct a full adversary hearing on the allegations of the Petition and, if he finds such allegations to be true, to:

- (a) find and order that the Board's action to reduce her salary was in violation of her tenure rights not to be reduced in compensation absent the filing of tenure charges;
- (b) find and order that the Board's action to reduce her salary was arbitrary, capricious and unreasonable;
- (c) order the restoration of her annual salary and order back pay retroactive to July 1, 2015; and
- (d) grant any other relief the Commissioner deems just, equitable and proper.

Respectfully submitted,



Andrew Babiak
Counsel for Petitioner, Clara Brito Herrera

Dated: September 24, 2015

VERIFICATION


CLARA BRITO HERRERA, of full age, being duly sworn upon her oath according to law deposes and says:

1. I am the Petitioner in the foregoing matter.
2. I have read the Petition and aver that the facts contained herein are true to the best of my knowledge and belief.



Clara Brito Herrera

Sworn & Subscribed to Before Me
This 24th Day of September 2015



ANN L. CAHILL
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2231748
MY COMMISSION EXPIRES NOVEMBER 1, 2019



State of New Jersey
DEPARTMENT OF EDUCATION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Hudson County Office
595 Newark Avenue
Jersey City, NJ 07306
Telephone (201) 369-5290
Facsimile (201) 369-5288

DAVID C. HESPE
Commissioner

MONICA M. TONE
Interim Executive County Superintendent

June 29, 2015

Mr. Steven A. Rodas, Board President
West New York Board of Education
6028 Broadway
West New York, NJ 07093

Dear Mr. Rodas:

I have reviewed the employment contract for Clara Brito Herrera, Superintendent, in accordance with N.J.S.A. 18A:7-8(j) and to determine compliance with the standards adopted by the Commissioner of Education at N.J.A.C. 6A:23A-3.1. Based upon my review, I have determined that those provisions of the contract subject to my review are in compliance with applicable laws and regulations. Therefore, I approve the contract for a period commencing on July 1, 2015 through June 30, 2020. A signed copy of said contract should be forwarded to my office.

If there are any changes to the terms of this contract, you will need to submit it to Monica M. Tone, Interim Executive County Superintendent, for review and approval prior to the required public notice and hearing of such changes.

Sincerely,

Monica M. Tone
Interim Executive County Superintendent

c: Clara Brito Herrera
Allan Roth



**SUPERINTENDENT
CONTRACT OF EMPLOYMENT**

This Contract is made this day of , 2015, between THE BOARD OF EDUCATION OF WEST NEW YORK, in Hudson County (hereinafter "the Board") with offices located at 6028 Broadway, West New York, New Jersey 07093 and CLARA BRITO HERRERA (hereinafter "the Superintendent"), collectively referred to hereinafter as "the parties."

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; 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 functions 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

EMPLOYMENT

The Board hereby agrees to employ Clara Brito Herrera as Superintendent of Schools for the period July 1, 2015 through 12:01 a.m. July 1, 2020. The parties acknowledge that this Contract must be approved by the Hudson County Executive County Superintendent in accordance with applicable law and regulation.

ARTICLE II

CERTIFICATION

The parties acknowledge that the Superintendent currently possesses the appropriate New Jersey administrative certification and school administrator endorsement.

If, at any time during the term of this Contract, the Superintendent's certification(s) is revoked, this Contract shall be null and void as of the date of the revocation. The Superintendent will provide official course transcripts for all earned postsecondary degrees to the Board of Education. These transcripts will be kept on file in the Board office.

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.

B. Work Hours: The workday for the Superintendent shall be 8:00 a.m. to 4:00 p.m., Monday through Friday, except that it is understood that the Superintendent is employed for specific tasks and

is expected to work beyond the regular workday due to the nature of the position. The Superintendent shall work the calendar set by the Board for Central Office staff. Such employment is considered part of the Agreement and no additional remuneration shall be provided.

C. 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 until after July 1, 2015, nor without written permission of the Board which permission shall not be withheld for capricious reasons. Should the Superintendent choose to engage in such outside activities on weekends, on her vacation time, or at other times when she is not required to be present in the District or performing District duties, she shall retain any honoraria paid. The Superintendent shall notify the Board President or Vice President in the event she 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 her to work long and irregular hours, and occasionally may require that she attend to District business outside of the District.

D. 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*.

E. 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.

F. To study and make recommendations with respect to all criticisms and complaints, which the Board, either by committee or collectively, shall refer to her. The Superintendent shall have the right to contact the Board's attorney for legal assistance as the need arises in carrying out her duties.

G. 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.

H. 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 her that her 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.

I. To suggest, from time to time, regulations, rules, policies, and procedures deemed necessary for compliance with law and/or for the well-being of the school district.

J. 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. In the event the Board intends to substantially increase the duties of the Superintendent by assigning her the duties or responsibilities of another position or title, the parties shall negotiate additional compensation for the Superintendent commensurate with the increase in her duties. Any such additional compensation shall be reflected in addendum to this contract and shall be subject to review and approval by the Executive County Superintendent. 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 adjustment in salary made during the life of this Employment Contract (beyond those contained herein) 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:

a. Initial Salary. The Board shall pay the Superintendent an annual salary of one-hundred-seventy-seven thousand five hundred dollars (\$177,500) for the 2015-2016 through the 2019-2020 school years. This annual salary consists of a base salary of one-hundred-seventy-five thousand dollars (\$175,000) plus a high school salary increment of two-thousand-five hundred dollars (\$2,500). This annual salary rate shall be paid to the Superintendent in accordance with the schedule of salary payments in effect for other certified employees and shall be prorated for partial portions of the year.

b. In the event the Salary Cap Regulations expire, are amended, and/or are determined to be invalid by a court or administrative agency of competent jurisdiction, the parties may agree to negotiate additional salary increases; or the salary may be adjusted pursuant to Article III(I) of this Agreement.

c. Merit Bonus. The Superintendent may receive a merit bonus in addition to her annual base salary. The merit bonus will be based upon her achievement of quantitative merit criterion and/or qualitative merit criterion. The Board and Superintendent shall select three (3) quantitative merit criteria and two (2) qualitative merit criteria per contract year. The Executive County Superintendent shall approve or disapprove the selection of quantitative merit and/or qualitative merit criteria and the data that forms the basis of measuring the achievement of quantitative merit and/or qualitative merit criteria. The Superintendent shall receive a merit bonus in the amount up to 3.33% of her annual base salary for each quantitative merit criterion achieved, and/or a merit bonus in the amount of up to 2.5% of annual base salary for each qualitative merit criterion achieved. For each year of this Contract, the Superintendent may be eligible to receive a merit bonus totaling 14.99% of the Superintendent's annual base salary. The Board and Superintendent shall meet on or before April 30th of each year of the term of this contract for the purpose of selecting the merit bonus criteria for the next subsequent school year. Those criteria shall be reduced to writing and submitted to the Executive County Superintendent for review and approval. The approved criteria shall then be reflected in an addendum to this contract. Following the completion of the school year, the Board shall submit a resolution to the Executive County Superintendent certifying that the quantitative merit and/or qualitative merit criterion have been satisfied and shall await a confirmation of the satisfaction of that criterion from the Executive County Superintendent prior to payment of the merit bonus.

2. Notwithstanding the foregoing, no salary increase of any kind will take effect at 12:00 a.m. on July 1, 2020 (the final day of this Contract) unless the parties have agreed to a contract renewal and that renewal has been approved by the Hudson County Executive County Superintendent. The terms

of the renewal will govern all increases to take effect after July 1, 2020. Any renewal or 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.

B. Sick leave.

1. The Superintendent shall receive fifteen (15) sick days annually. The unused portion of such leave, at the end of each year, shall be cumulative in accordance with Title 18A. Upon retirement from the District, the Superintendent shall be entitled to receive payment for accumulated sick days pursuant to the following criteria, as provided in NJSA 18A:30-3.5;

2. Pursuant to NJSA 18A:30-3.5 and 18A:30-3.6, the District shall not pay supplemental compensation to the Superintendent for accumulated unused sick leave in an amount in excess of \$15,000.00, except when the employee was covered under the terms of any collective bargaining agreement with a relevant provision in force on the effective date of the employee's hire. As of ~~the~~ June 8, 2007, as the Assistant Superintendent and for her continuous, uninterrupted service with the District, the Superintendent had earned and accrued 209.5 sick days in the District under a valid collective bargaining agreement. Pursuant to *NJSA* 18A:30-3.5, 18A:30-3.6 and the collective bargaining agreement under which she accrued said days, the Superintendent is eligible to receive not more than the amount so accumulated (\$55,000.00) or not more than \$15,000.00, whichever is greater. The terms of this paragraph are considered to be consistent with Article VI of this Contract.

3. Any calculation of terminal pay shall be based upon the rate of 1/260th rate of her current annual salary.

4. In the event of death during service to the District, no payment of terminal leave shall be paid to the Assistant Superintendent's estate.

C. Professional Membership and Professional Development. The Superintendent shall be entitled to membership (which, to the extent applicable, shall be identified as membership for the West New York School District with the Superintendent as its designee) at the Board's expense for

professional dues in the following professional associations: NJASA, NJAFPA, AASA, ASCD (the Association for Supervision and Curriculum Development) and the Hudson County Association of School Administrators (and/or other organizations deemed important by the Superintendent with Board approval), not to exceed not to exceed \$3,800.00. The Superintendent also shall be entitled to reimbursement for expenses incurred for attendance at professional conferences, and similar expenses which she 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 reimbursement shall comply with all applicable provisions of state 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 NJAFPA, and the annual conference of the NJASA and the Board shall pay for the applicable registration fee(s).

D. The Superintendent may subscribe to appropriate educational and/or professional publications within the limit set in the annual budget, not to exceed \$300.00. The Board shall pay all costs and fees associated with any state-mandated continuing education.

E. Health Benefits:

The Superintendent shall be entitled to the following insurance benefits:

1. Enrollment in the District's Hospitalization and Medical Insurance Program, Dental Insurance (if offered) and Prescription Insurance Program, including family coverage, if applicable.

2. Children will be covered up until their 26th birthday in accordance with the provisions of state law.

3. The Board shall pay the full premium, minus an employee contribution in accordance with P.L. 2011, chapter 78.

4. The Board shall provide the Superintendent a \$125 cafeteria plan in accordance with P.L. 2011, chapter 78.

F. Vacation Leave:

1. The Superintendent shall be entitled to an annual vacation of twenty-five (25) working days per year, earned on a monthly basis. All of the vacation days shall be available to the Superintendent at the beginning of each July 1st, with the understanding that said days are earned on a monthly basis.

2. The Superintendent shall take her 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 District. The Superintendent shall document the use of accrued vacation days with the Business Administrator/Board Secretary.

3. The Board encourages the Superintendent to take her full vacation allotment each year. The Superintendent may carry over any unused vacation leave into the next year consistent with *N.J.S.A. 18A:30-9*, if, because of business demands of the Board and/or District, she is unable to use the total amount of her allotted vacation days. All days carried over to the following school year must be used in the next school year, or those days not taken or used will be forfeited. The Superintendent shall be permitted to take vacation days at any time. The Board, through the Board's Business Office, shall be responsible for maintaining written documentation of the Superintendent's earned and accrued vacation days.

4. Upon the Superintendent's separation from employment, earned but unused vacation time will be paid at the Superintendent's daily rate of pay, based upon a 260-day work year, and based on her final annual salary. Any such payment shall be made within 60 days of the Superintendent's last day of employment. In the event of the Superintendent's death, payment for her unused accumulated vacation days shall be made to her estate.

G. The Superintendent shall be entitled to all holidays granted to other 12-month administrators in the District as follows: Independence Day, Labor Day, Columbus Day, Teacher's Convention, Veterans' Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day, New

Year's Eve Day, Martin Luther King Jr. Day, Lincoln's Birthday Observed, Presidents' Day, Good Friday and Memorial Day.

H. The Superintendent shall be entitled to four (4) non-cumulative personal days per school year with full pay. Personal days may be taken during the school year with the prior permission of the Board President or Vice President which permission shall not be unreasonably withheld. As much advance notice as possible of the request to take personal time will be given. Personal day usage shall be maintained with the Business Administrator/Board Secretary. Unused personal days are converted to sick leave, as permitted by law, at the end of each school year and can be used in calculating sick leave upon retirement.

I. Funeral Leave: The Superintendent may receive up to five (5) days at any one time in the event of the death of her spouse, child, parent, grandchild, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother or sister. This leave shall commence with the first day of bereavement. Upon request, the Board, at its discretion, may grant extra time due to extenuating circumstances.

J. The Superintendent shall be reimbursed for actual mileage when using her 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.

K. The Superintendent shall be responsible for filing a Request for Absence, in advance of the time off, as set forth herein, or immediately upon his return to the district in the event of unplanned absence, with the designated staff member in charge of maintaining district attendance records each time any leave is taken. The Superintendent and Board President shall periodically review the Superintendent's attendance record to assure correctness.

L. Indemnification. The Board shall defend, hold harmless and indemnify the Superintendent from any and all demands, claims, suits actions and legal proceedings of any kind brought against the Superintendent in her capacity as an agent and/or employee of the Board. If, in the good faith opinion

of the Superintendent, a conflict exists in regard to the defense of any claim, demand or action brought against her, and the position of the Board in relation thereto, the Superintendent may engage her own legal counsel, in which event the Board shall indemnify the Superintendent for the costs of her legal defense.

ARTICLE V

ANNUAL EVALUATION and GOALS AND OBJECTIVES

The Board shall evaluate the performance of the Superintendent at least once a year on or before June 30th in accordance with statutes, regulations and Board policy relating to Superintendent evaluation. The evaluation format shall be developed and approved jointly by the Board and the Superintendent within ninety (90) days of the execution of this Contract. Each annual evaluation shall be in writing and shall represent a consensus of the Board. A copy of the evaluation shall be provided to the Superintendent prior to final Board approval, 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 the criteria adopted by the Board, the goals and objectives of the district, which shall include encouragement of student achievement, the responsibilities of the Superintendent as set forth in the job description for the position of Superintendent, the District's placement on the NJQSAC continuum (with respect to those District Performance Reviews that are within the Superintendent's control, and such other criteria as the State Board of Education shall by regulation prescribe. The final draft of the annual evaluation shall be adopted by the Board in April prior to the annual school district elections.

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 instances of unsatisfactory performance. The evaluation shall include 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 Superintendent's personnel file upon the Superintendent's request. On or before June 1st of each year of this 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 school year. The Superintendent shall propose a schedule for evaluation for the next year to the Board President by the regular June Board meeting each year.

To the extent that they have not already done so, within sixty (60) days of the execution of this Contract, the parties shall meet to discuss the district's goals and objectives for the 2015-16 school year. Said goals and objectives shall be reduced to writing and shall be among the criteria by which the Superintendent is evaluated, as provided herein. 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.

ARTICLE VI

TERMINATION OF EMPLOYMENT CONTRACT

A. This Contract shall terminate, the Superintendent's employment will cease, and no compensation shall thereafter be paid, 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 one hundred and fifty (150) calendar days, in accordance with N.J.S.A. 18A:17-20.1 of the Board's intent not to renew this Contract; or

(6) material misrepresentation of employment history, educational and professional credentials, and criminal background.

B. In the event the Superintendent is arrested and charged with a criminal offense, which could result in forfeiture under *N.J.S.A. 2C: 51-2*, the Board reserves the right to suspend her 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 case law.

D. The Superintendent may terminate this Employment Contract upon at least ninety (90) calendar days written notice to the Board, filed with the Board Secretary, of her 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 the authority to relieve the Superintendent of the performance of her duties in accordance with *N.J.S.A. 18A:27-9*. 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 Board desires to terminate this Contract prior to its expiration date in the best interest of the District, and to relieve the Superintendent from the actual performance of her duties, upon approval of the Commissioner of Education, the Board shall compensate the Superintendent three (3) months' salary for each year remaining on the contract, not to exceed 12 months, or the remaining salary under the terms of the contract, whichever is less. The Board's only

obligation will be to compensate the Superintendent in accordance with payment due under this section as well as other non-compensation benefits such as health benefit premiums and reimbursement for expenses incurred for attendance at professional conferences.

G. Throughout the term of this Agreement, the Superintendent shall retain all tenure rights, and shall continue to accrue seniority, in all prior positions held within the District. If the Board determines to terminate the Superintendent's employment pursuant to the provisions of this Article or the Board determines not to renew the Superintendent's employment agreement as Superintendent of Schools, the Superintendent shall be permitted to assert her tenure, seniority, and bumping rights to her prior positions.

ARTICLE VII

RENEWAL - NON RENEWAL

This Employment Contract shall automatically renew for a term of five (5) school years, expiring July 1, 2025, unless either of the following occurs:

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

B. notification in writing by the Board to the Superintendent on or before December 31, 2019, of the Board's intent not to renew this Contract of Employment.

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 and the approval of the Executive County Superintendent.

ARTICLE IX

SAVINGS & 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. In the event of any conflict between the terms, conditions and provisions of this Contract and the provisions of any permissive federal or State law, the terms of this Contract shall take precedence over the contrary provisions of any such permissive law, unless otherwise prohibited by law.

ARTICLE X

**RELEASE OF PERSONNEL INFORMATION
PERSONNEL RECORDS**

The Superintendent shall have the right, upon request, to review the contents of her personnel file and to receive copies at Board expense of any documents contained therein. She shall be entitled to have a representative accompany her during such review.

No material derogatory to the Superintendent's conduct, service, character, or personality shall be placed in her personnel file unless she has had an opportunity to review the material. The Superintendent shall acknowledge that she has had the opportunity to review such material by affixing her 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.

ARTICLE XI

MISCELLANEOUS

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, is given the opportunity to address the Board in closed session, and is permitted to have a representative of his choosing speak on

his behalf. In addition, the Board shall not hold any discussions with regard 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,

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 WEST NEW YORK SCHOOL DISTRICT

Date: *C Brito*
WITNESS: *8-26-15*

Date: *St. A. R.*
WITNESS: *8/26/15*