

**AMENDMENT TO SUPERINTENDENT'S EMPLOYMENT CONTRACT**

**BY AND BETWEEN THE CHAPPAQUA CENTRAL SCHOOL DISTRICT**

(hereafter the "District"), and **MARILYN McKAY** (hereafter the "Superintendent");

**WHEREAS**, the District and Superintendent are in agreement to modify the provisions of the current Employment Contract to enable Dr. McKay's retirement to receive benefits from the New York State Teachers' Retirement System; and

**WHEREAS**, in order to facilitate the Superintendents retirement and post-employment interests modifications to her employment contract are necessary;

**NOW, THEREFORE**, the Superintendent and the District agree as follows:

1. The Superintendent shall be entitled to full pay and benefits in the current employment agreement through January 2, 2017, upon which day she shall resign from the District at the close of business to retire to receive benefits from the New York State Teachers Retirement System. Said letter of resignation for the purpose of retirement to receive benefits from the New York State Teachers Retirement System is annexed hereto as Appendix A.
2. The provisions of paragraph 7(B)(a) – Health Insurance – as set forth in the Superintendent's current Employment Contract shall remain in full force and effect for the duration of the time of her retirement. It is further understood that the District's retiree health insurance premium funding requirement shall be in the same percentage if the District's health insurance plan is changed in the future to a plan other than the Putnam Northern Westchester Health Insurance Plan.

3. Upon retirement, the Superintendent shall be entitled to payment for all remaining accumulated vacation days and sick leave days as provided for in paragraphs 7(A) and 7(B)(c) of her current Employment Contract, with payment of said monies to be placed in her Section 403(b) I.R.C. tax sheltered annuity account to the extent of the monetary cap placed upon contributions to said fund as set forth in Section 415 of the Internal Revenue Code, as a non-elective employer contribution, without a cash option. Any remaining sums shall be paid as regular compensation upon retirement. Such payments to the Section 403(b) and as regular compensation shall be paid after January 1, 2017 but in no event later than February 1, 2017.
4. During the period from November 1, 2016 through January 2, 2017, the Superintendent will be utilizing her annual allotment of vacation days and carry-forward vacation days, if any, as well as other paid leave accruals and will not be called upon to perform the services of her position during the time of this leave.
5. In consideration for retiring from the District in advance of the end date of the Superintendent's current employment contract, the Superintendent shall be paid the sum of five (5) months' pay, at the monthly rate of 1/12<sup>th</sup> of her 2016-17 Annual Salary. Such payment(s) shall be paid after January 1, 2017 but in no event later than February 1, 2017.
6. The District's officials and the Superintendent agree that they shall not make disparaging comments publicly or privately about each other or the District.
7. In consideration of the payments and benefits described above and for other good and valuable consideration which is in addition to anything of value the Superintendent is already entitled to, the Superintendent hereby waives, releases and forever discharges the

District, inclusive of its Board of Education members, administrators, staff members, employees, agents and representatives in their individual and official capacities from all debts, obligations, promises, covenants, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which the Superintendent ever had or now has, regarding any matter arising on or before the date of the Superintendent's execution of this Amendment to Superintendent's Employment Contract, including but not limited to all claims (whether known or unknown) or grievances regarding her employment with the District, any contract (express or implied), any claim for equitable relief or recovery of punitive, compensatory, or other damages or monies, attorneys' fees, any tort, and all claims for alleged discrimination based upon age, race, color, sex, sexual orientation, marital status, religion, national origin, handicap, disability, or retaliation of any kind, including any claim, asserted or un-asserted, which could arise under, Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967; the Americans With Disabilities Act of 1990, the Americans With Disabilities Amendments Act of 2008; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1983, including any liberty interest claims; the Employee Retirement Income Security Act of 1974; the Family and Medical Leave Act of 1993; the Civil Rights Act of 1991; the New York State Civil Service Law, the Westchester County Human Rights Law, the Taylor Law, the New York State Labor Law (except any claim that cannot be waived thereunder), the Fair Labor Standard Act, and any other federal, state or local laws, rules or regulations, whether equal employment opportunity laws, rules or regulations or otherwise, except any such rules, regulations, or laws that may not be waived by the

Superintendent. The District hereby waives, releases and forever discharges the Superintendent from all debts, obligations, promises, covenants, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which the District ever had or now has, regarding any matter arising on or before the date of the Superintendent's execution of this Amendment to Superintendent's Employment Contract, including but not limited to all claims (whether known or unknown) or grievances regarding the Superintendent's employment with the District. This Amendment to Superintendent's Employment Contract may not be cited as, and does not constitute an admission by the District or the Superintendent of any violation of any such law or legal obligation with respect to any aspect of the Superintendent's employment or separation therefrom. *The waivers and releases in this Amendment to the Superintendent's Employment Contract shall not be construed to waive any claims that the Superintendent may have against the District, its Board of Education members, officers, administrators, employees, agents and their successors that arise after the execution of this Amendment to Superintendent's Employment Contract.*

8. The District hereby releases the Superintendent of Schools from any claims, causes of action or other demands that it may have against her for all times during her service to the District through the date of the effective date of this Amendment to the Superintendent's Employment Contract, with respect to all matters of potential civil liability.
9. The Superintendent represents and warrants that she has not filed any lawsuits against the District, or filed or caused to be filed any other charges or complaints against the District with any other municipal, state or federal agency charged with the enforcement of any

law. Pursuant to and as a part of her release and discharge of the District, as set forth herein, with the sole exception of her right to bring a proceeding pursuant to the Older Workers Benefit Protection Act to challenge the validity of her release of claims pursuant to the Age Discrimination in Employment Act, she agrees, not inconsistent with EEOC Enforcement Guidance On Non-Waivable Employee Rights Under EEOC-Enforced Statutes dated April 11,1997, and to the fullest extent permitted by law, not to sue or file a charge, complaint, grievance or demand for arbitration against the District in any forum or assist or otherwise participate willingly or voluntarily in any claim, arbitration, suit, action, investigation or other proceeding of any kind which relates to any matter involving the District, and that occurred up to and including the date of her execution of this Employment Contract, unless requested by an administrative agency such as the EEOC or the New York State Division of Human Rights, or required to do so by court order, subpoena or other directive by a court, administrative agency, arbitration panel or legislative body, or to enforce this Amendment to Superintendent's Employment Contract. To the extent any such action may be brought by a third party, the Superintendent is not prohibited from cooperating with any investigation conducted by the EEOC or other local human rights agency, however, she expressly waives any claim to any form of monetary or other damages, or any other form of recovery or relief in connection with any such action. Nothing in the foregoing paragraph shall prevent the Superintendent or her attorneys from (i) commencing an action or proceeding to enforce this Amendment to Superintendent's Employment Contract or (ii) exercising her rights under the Older Workers Benefit Protection Act of

1990 to challenge the validity of her waiver of ADEA claims set forth in this Employment Contract.

10. The Superintendent represents, warrants, and agrees that the District owes her no other wages, bonuses, sick pay, personal leave pay, severance pay, vacation pay, retiree health insurance or other compensation, benefits, payments or form of remuneration of any kind or nature, other than that which is specifically provided for in this Amendment to the Superintendent's Employment Contract.
11. The indemnification provisions of paragraph 12 of the current Superintendent's Employment Contract as well as those in place through operation of applicable provisions of the Education Law and/or Public Officers Law of New York State shall remain in full force and effect during the time of the Superintendent's retirement from the District.
12. The parties hereby agree that this Amendment to Superintendent's Employment Contract represents the full, complete and final resolution of her employment rights with the District and the understanding of the parties of the matters contained in this Amendment to the Superintendent's Employment Contract. All of the provisions of the Superintendent's current Employment Contract shall be extinguished as of the date and time of her resignation, except as provided for in this Amendment to the Superintendent's Employment Contract, which shall not be altered or amended except by a writing signed by all parties hereto.
13. Without detracting in any respect from any other provision of this Amendment to the Superintendent's Employment Contract:
  - a. The Superintendent, in consideration of the payment and benefits provided to her as described above and other good and valuable consideration, agrees and

acknowledges that this Amendment to the Superintendent's Employment Contract constitutes a knowing and voluntary waiver of all rights or claims she has or may have against the District as set forth herein, including, but not limited to, all rights or claims arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), including, but not limited to, all claims of age discrimination in employment and all claims of retaliation in violation of the ADEA; and that she has no physical or mental impairment of any kind that has interfered with her ability to read and understand the meaning of this Amendment to the Superintendent's Employment Contract or its terms, and that she is not acting under the influence of any medication or mind-altering chemical of any type in entering into this Amendment to the Superintendent's Employment Contract.

- b. The Superintendent understands that, by entering into this Amendment to the Superintendent's Employment Contract, she does not waive rights or claims that may arise after the date of execution of this Amendment to the Superintendent's Employment Contract, including without limitation any rights or claims that she may have to secure enforcement of the terms and conditions hereof.
- c. The Superintendent agrees and acknowledges that the consideration provided to her under this Amendment to the Superintendent's Employment Contract is in addition to anything of value to which she is already entitled.
- d. ***The District hereby advises the Superintendent to consult with an attorney prior to executing this Amendment to the Superintendent's Employment Contract.***

- e. By signing this Amendment to the Superintendent's Employment Contract, the Superintendent represents that she understands all of the terms of this Amendment to the Superintendent's Employment Contract.
14. THE SUPERINTENDENT ACKNOWLEDGES THAT SHE HAS BEEN INFORMED THAT SHE HAS AT LEAST TWENTY ONE (21) DAYS IN WHICH TO REVIEW AND CONSIDER THIS EMPLOYMENT CONTRACT, AS REQUIRED BY THE ADEA, AND THAT SHE HAS CONSULTED WITH AN ATTORNEY REGARDING THE TERMS AND EFFECT OF THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT.
15. THE SUPERINTENDENT ACKNOWLEDGES THAT SHE WAS INFORMED THAT SHE MAY REVOKE THIS AMENDMENT TO THE TERMS OF THE SUPERINTENDENT'S EMPLOYMENT CONTRACT WITHIN SEVEN (7) DAYS FROM THE DATE SHE SIGNS THE SAME. THE SUPERINTENDENT UNDERSTANDS THAT IF SHE DOES REVOKE THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT IT WILL BE NULL AND VOID AND OF NO FORCE OR EFFECT ON EITHER THE DISTRICT OR THE SUPERINTENDENT. ANY REVOCATION MUST BE IN WRITING AND RECEIVED BY THE DISTRICT BY 5:00 P.M. ON OR BEFORE THE SEVENTH DAY AFTER THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT IS EXECUTED BY THE SUPERINTENDENT. SUCH REVOCATION MUST BE SENT VIA CERTIFIED MAIL TO:

DAVID S. SHAW, ESQ. OF SHAW, PERELSON, MAY  
& LAMBERT, LLP, 21 VAN WAGNER RD.,  
POUGHKEEPSIE, NY 12603.



16. THE SUPERINTENDENT EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT SHE HAS READ THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT CAREFULLY; THAT SHE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THE SAME; THAT THE DISTRICT HAS ADVISED HER TO CONSULT WITH AN ATTORNEY CONCERNING THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT; THAT SHE HAS IN FACT CONSULTED WITH AN ATTORNEY; THAT SHE UNDERSTANDS THAT THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT HAS BINDING LEGAL EFFECT; AND THAT SHE HAS EXECUTED THE SAME FREELY, KNOWINGLY AND VOLUNTARILY.
17. PLEASE READ CAREFULLY. THIS AMENDMENT TO THE SUPERINTENDENT'S EMPLOYMENT CONTRACT HAS IMPORTANT LEGAL CONSEQUENCES.
18. No signatory hereto is a minor or incompetent within the meaning of the laws of the State of New York; nor is any signatory to the Amendment to the Superintendent's Contract under the influence of alcohol, medication, or any drugs that would impair his or her exercise of judgment; nor has any signatory been coerced or placed under duress so as to inhibit his or her free will or knowledge or understanding of the terms set forth herein.
19. This Amendment to the Superintendent's Contract shall be governed by the laws of the State of New York, and the invalidity or unenforceability of any specific provision hereof shall in no way effect the validity or enforceability of any other provision.

20. This Amendment to the Superintendent's Contract consists of eleven (11) pages inclusive of the attachment.
21. This Amendment to the Superintendent's Contract shall be subject to the approval of the Board of Education of the Chappaqua Central School District and shall be null and void absent such approval.

**SO AGREED this 28<sup>th</sup> day of October 2016**

**THE SUPERINTENDENT**

  
MARILYN MCKAY

**THE DISTRICT**

BY:   
ALYSON GARDNER, BOARD OF  
EDUCATION PRESIDENT

APPENDIX A

October 31, 2016

Terry Dell'olio  
Board of Education Clerk  
66 Roaring Brook Road  
Chappaqua, New York 10514

Dear Ms. Dell'olio:

I am writing to advise you that, consistent with the terms of the amendment to my employment contract, I am resigning from my position as Superintendent of Schools of the Chappaqua Central School District for the purpose of retirement to receive benefits from the New York State Teachers' Retirement System, effective close of business on January 2, 2017.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn McKay". The signature is written in a cursive style with a large, stylized 'M' and 'K'.

Marilyn McKay