Special Governing Board Meeting

CABRILLO UNIFIED SCHOOL DISTRICT

Published on September 9, 2024

Date and Time

Tuesday, September 10, 2024, at 6:30 PM PDT

Location

Cabrillo Unified School District Boardroom, 498 Kelly Avenue, Half Moon Bay, CA 94019

In compliance with the Americans with Disabilities Act, individuals who require special accommodations (accessible seating, documentation in an accessible format, etc.) should contact the Administrative Assistant to the Superintendent at acostar@cabrillo.k12.ca.us or (650) 240-3146. Please notify the district at least 48 hours before the meeting to facilitate reasonable arrangements for accessibility and necessary accommodations, auxiliary aids, or services.

The District provides Spanish interpretation upon request. To request this service, please contact the Administrative Assistant to the Superintendent at acostar@cabrillo.k12.ca.us or (650) 240-3146.

Documents provided to a majority of the Governing Board regarding an open session item on the agenda will be made available for public inspection in the District Office located at 498 Kelly Avenue, Half Moon Bay, California, during regular business hours. Additionally, these documents are accessible on the district's website, cabrillo.k12.ca.us.

PUBLIC COMMENTS GUIDELINES

Members of the public are encouraged to participate in Board meetings and express their views on agenda items or matters within the Board's jurisdiction. To facilitate this, there are two methods available for providing comments:

Submission of Written Comments in Advance: Written comments can be submitted using the Google Public Comments form at cusd.info/comments. Comments are accepted from the posting of the agenda until 3:00 p.m. on the day of the meeting. Comments should not exceed 300 words; longer comments may not be shared publicly during the meeting. However, all comments

received by the deadlines described above, whether or not they are shared publicly during the meeting, will be made available to all Board members and included in the minutes.

Provision of In-Person Comments During the Meeting: To address the Board during the meeting, members of the public should submit a "Request to Address the Board" slip, available on the handout table, to the Administrative Assistant to the Superintendent before the item is introduced. It is recommended to submit the slip as early as possible. When recognized by the Board President, speakers should proceed to the podium and keep their comments brief.

The Board limits total public input to 20 minutes per item, with equitable adjustments to time limits to accommodate diverse viewpoints. In exceptional circumstances requiring full public input, the Board President, with Board consent, may adjust the time allowed per speaker or for public input as needed. The Board President may also ask members of the public with the same viewpoint to select a few individuals to address the Board on behalf of that viewpoint. The Administrative Assistant will monitor time and notify speakers when there are 30 seconds remaining and when the time is up. Please adhere to these time limits.

- **Agenda items** may be addressed after the staff presentation.
- **Closed session items** may be addressed under "Public Comment on Closed Session Topics."
- Note that during **special meetings, workshops, or retreats**, there is no provision for discussing nonagenda topics. Any matters not on the agenda can be addressed at regular meetings during "Public Comments" under the Communication section.

IMPORTANT BOARD PROTOCOLS REGARDING PUBLIC COMMENTS

The CUSD Governing Board does not act upon matters non-agendized except under limited circumstances as permitted by law. Matters raised will be referred to staff for further examination and action where appropriate.

I. OPENING ITEMS

A. Call Public Session to Order

B. Roll Call / Quorum

C. Pledge of Allegiance

D. Approval of the Agenda

II. GENERAL BUSINESS

A. Adoption of Emergency Resolution 25-2024 in the Event of a Concerted Refusal to Work by Employees (Action)

2.a Board_Memo_Emergency_Resolution.pdf (p. 4)

2.a.1 Resolution_Strike_Emergency_Powers_(4284164.2).pdf (p. 5)

B. Approval of Swing Education Platform and Services Agreement (Action)

2.b Board Memo SWING Agreement.pdf (p. 8)

2.b.1 Swing Agreement_2024_Redacted.pdf (p. 9)

III. CLOSED SESSION

A. Identification of Closed Session Topics of Discussion (Please refer to the list of items identified in Agenda Section IIc, below.)

B. Public Comments on Closed Session Topics

C. Adjourn to Closed Session

Board Members will meet privately for Closed Session. Any action taken during Closed Session will be reported out under "Closed Session Action Report."

1. **Conference with Labor Negotiators (Government Code §54957.6)**

   - **District-designated representatives:** Amber Lee-Alva, Superintendent
   - **Employee organizations:** Cabrillo Unified Teachers Association

D. Adjourn Closed Session and Reconvene Open Session

IV. OPEN SESSION

A. Closed Session Action Report

V. CLOSING ITEMS

A. Adjourn Meeting (Action)

CABRILLO UNIFIED SCHOOL DISTRICT

498 Kelly Avenue, Half Moon Bay, California 94019 • 650 712-7100 • Fax 650 726-0279 • www.cabrillo.k12.ca.us

SUPERINTENDENT
Amber Lee-Alva

GOVERNING BOARD
Mary Beth Alexander
Lizet Cortes
Carmen Daniel
Kimberly Hines
Sophia Layne

MEMORANDUM

MEETING DATE: September 10, 2024
TO: Members of the Governing Board
FROM: Bianca Forrester, M.Ed., Associate Superintendent of Human Resources & Student Services
CATEGORY: Action
ITEM TITLE: Adoption of Emergency Resolution 25-2024 in the Event of a Concerted Refusal to Work by Employees

BACKGROUND INFORMATION

The Board of Education ("Board") of the Cabrillo Unified School District ("District") is responsible for:

- Providing students and staff with safe, secure, and peaceful learning environments and worksites.
- Preparing for all emergencies that may occur in the District.
- Taking appropriate action in response to such emergencies.

The Governing Board recognizes that:

- There is a significant likelihood that a substantial number of certificated employees may strike or engage in a concerted refusal to work.
- Such actions could interfere with or impede the District's normal operations.
- These actions may jeopardize student welfare and safety, as well as the continuity of the instructional program.

While the Board and District administration hope to avoid any strike or disruption to schools, they acknowledge that:

- In the event of a strike, work stoppage, or interruption, the District is obligated to: a. Ensure schools remain open and available to students. b. Maintain student safety. c. Continue educational activities without disruption.
- Education Code section 35161 permits the Board to delegate its powers and duties to District officers or employees.
- The Board wishes to delegate to the Superintendent, or her designee(s), the lawful powers and duties necessary to: a. Prevent a strike. b. Mitigate the impacts of a strike, work stoppage, or disruption, should one occur.

FISCAL ANALYSIS

The financial impact

RECOMMENDATION

Staff recommends the adoption of Resolution 25-2024.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

RESOLUTION NO. 25-2024

EMERGENCY RESOLUTION IN THE EVENT OF A CONCERTED REFUSAL TO WORK BY EMPLOYEES

WHEREAS, it is the responsibility of the Board of Education ("Board") of the Cabrillo Unified School District ("District") to provide students and staff with safe, secure, and peaceful learning environments and worksites, and to be prepared for all emergencies that may occur in the District and take appropriate action in response thereof;

WHEREAS, the Board finds that there is a significant likelihood that a substantial number of certificated employees are about to strike or engage in a concerted refusal to work, which would interfere with or impede the normal operations of the District and/or jeopardize the welfare and safety of students and the continuity of the instructional program;

WHEREAS, the Board and District administration hope to avoid any strike or other disruption to schools, but in the event of a strike or other work stoppage or interruption, the District has an obligation to take all appropriate steps to ensure schools remain open and available to students to continue their education, as well as to ensure that students who attend school are safe and continue with their educational activities without disruption; and

WHEREAS, Education Code section 35161 permits the Board to delegate to an officer or employee of the District any of the Board's powers and duties, and the Board desires to delegate to the Superintendent, or her designee(s), those lawful powers and duties as may be necessary to prevent a strike, or to mitigate the impacts of a strike or other work stoppage or disruption, if one were to occur.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Cabrillo Unified School District:

Strikes and Concerted Refusals to Work

1. That any actual or serious risk of a concerted refusal to work by employees will impede or interfere with the normal operations of the District resulting in great or irreparable damage to students and the District. For the purposes of this or other emergency resolutions, the term "concerted refusal to work" shall mean any actual, or reasonably-anticipated, strike, work stoppage, slow-down, sick out, unauthorized leave, or other interruptions of work planned or accomplished by employees together.

2. That any actual or serious risk of a concerted refusal to work by employees will constitute a legitimate emergency. In the event of any actual or serious risk of a concerted refusal to work by employees, the Superintendent is empowered to take appropriate action including, but not limited to, any action:

- To ensure and protect the welfare, safety and educational well-being of all students;
- To ensure and protect the welfare and safety of persons working for the District which shall include its agents, employees, representatives and all others acting for or on behalf of the District;
- To protect District property;
- To ensure and protect the personal property of persons working for the District when such property is on District grounds;
- To provide necessary staffing.

3. That the Superintendent shall report all such actions taken in accordance with this Resolution to the Board.

Maintenance of the Instructional Program

4. That in the event of any actual or serious risk of a concerted refusal to work by employees, all schools should remain open to provide an educational program for students. In view of the emergency situation, however, the Superintendent has the authority to temporarily close a school or schools, cancel or modify specific educational programs or courses, cancel or postpone any extracurricular activities, modify school schedules, and modify class or school site configurations. Only the Superintendent has such authority.

5. That once any school is open and students are present, every reasonable effort shall be made to provide a quality educational program. If a site administrator concludes at any time that a school should be closed, this report should be communicated to the Superintendent for action. Facilities shall be closed, and activities and events suspended, when, in the opinion of the Superintendent or her designee, the safety and welfare of the students or staff on a site is in jeopardy due to inadequate staffing.

6. That the Superintendent is directed to take and have other administrators take action against individuals who are involved in acts of malicious mischief, vandalism, disturbing the peace, assault, harassment, unlawfully disrupting the educational program, trespass, and other violations of the law.

7. That all student grades given during the emergency will stand as recorded and will not be made up or modified at the end of the emergency.

Employee Participation in a Concerted Activity or Strike

8. That the Superintendent shall implement appropriate administrative procedures so that employee participation in any concerted refusal to work shall be documented. In no case shall an employee be allowed to use sick leave, personal necessity leave, or other authorized leaves if the employee is participating or participated in any concerted refusal to work for that period. If the Superintendent determines concerted effort is occurring, the Superintendent shall require verification for use of leave. Absences for which verification is not provided may be treated as and deemed to be unauthorized leave.

9. That no warrant for compensation shall be drawn in favor of any District employee for any day(s) of unauthorized leave or on any day(s) on which the employee has not faithfully performed all of the duties prescribed (Ed. Code, § 45055); and that any day(s) of unauthorized leave are not reported as creditable compensation for the employee for State retirement purposes under CalSTRS or CalPERS, if applicable. The term “compensation,” as used herein, shall not include the District’s contribution, if any, toward the cost of any health, welfare or group insurance benefits of the employee and such contributions shall continue, unless subsequent administrative proceedings authorize otherwise.

Emergency Substitute and Other Employees and Services

10. That the Superintendent is hereby authorized to employ emergency substitute and/or other employees:

- To ensure and protect the welfare, safety and educational well-being of all students.
- To ensure and protect the welfare and safety of persons working for the District which shall include its agents, employees, representatives and all others acting for or on behalf of the District;
- To protect District property;
- To ensure and protect the personal property of persons working for the District when such property is on District grounds;
- To provide necessary staffing and instruction.

11. That the Superintendent is hereby authorized to employ emergency substitute employees during any actual concerted refusal to work at a daily rate determined by the Superintendent. Such rate shall not exceed $500 per day, unless otherwise approved by the Board. If necessary, the Superintendent or designee may also authorize reimbursement for mileage in excess of fifteen (15) miles, as well as the cost of registering an applicant’s credential with the San Mateo County Office of Education.

12. That the Superintendent is hereby authorized to employ temporary employees for the duration of an emergency at the rate now in effect for regular employees.

13. That the Superintendent is hereby authorized to employ credentialed and/or classified part-time personnel for the duration of the emergency at a rate determined by the Superintendent.

14. That the Superintendent is hereby authorized to retain whatever additional services which are necessary for the duration of the emergency. Such additional services may include the employment of individuals and the contracting with independent contractors which provide such services.

Reorganization of District Administration

15. That the Superintendent is hereby authorized to organize the District's personnel and its resources in any manner necessary to keep schools open and operating during the emergency, including the authority to transfer or assign additional duties to management, supervisory and confidential employees on a temporary basis so that the District can manage more effectively during an actual or serious risk of a concerted refusal to work by employees.

16. That the Superintendent is hereby authorized and directed to reassign and replace any management, supervisory and confidential employee who is performing in an unsatisfactory fashion during emergency.

17. That the Superintendent is hereby granted the discretionary authority to renumerate unrepresented (i.e., non-bargaining unit) employees beyond the salary schedule (premium pay) for performing additional assigned duties.

Use of Volunteers

18. That the Superintendent is hereby authorized to allow at her discretion the use of volunteers at any school facility during an emergency; these volunteers will be under the supervision of a credentialed employee including the Superintendent. All volunteers shall receive clear instructions regarding their responsibilities.

BE IT FURTHER RESOLVED that this Resolution is an emergency measure within the mandate and jurisdiction of the Board and is necessary for the immediate welfare of the District's schools and students. Therefore, this Resolution shall become effective immediately upon its adoption and shall remain in effect until repealed by formal action.

PASSED AND ADOPTED by the Board of Education of the Cabrillo Unified School District this 10th day of September 2024, by the following vote:

Mary Beth Alexander:	_____ Aye	_____ No	_____ Abstain	_____ Absent
Lizet Cortes:	_____ Aye	_____ No	_____ Abstain	_____ Absent
Carmen Daniel:	_____ Aye	_____ No	_____ Abstain	_____ Absent
Kimberly Hines:	_____ Aye	_____ No	_____ Abstain	_____ Absent
Sophia Layne:	_____ Aye	_____ No	_____ Abstain	_____ Absent

_____
President, Governing Board

I hereby certify that the foregoing is a true and correct copy of a Resolution of the Board of Education of the Cabrillo Unified School District of San Mateo County, California, adopted by said Board at its meeting on September 10, 2024.

_____
Secretary, Governing Board

CABRILLO UNIFIED SCHOOL DISTRICT

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SUPERINTENDENT
Amber Lee-Alva

GOVERNING BOARD
Mary Beth Alexander
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Kimberly Hines
Sophia Layne

MEMORANDUM

MEETING DATE: September 10, 2024
TO: Members of the Governing Board
FROM: Bianca Forrester, M.A.Ed., Associate Superintendent, Human Resources & Student Services
CATEGORY: Action
ITEM TITLE: Approval of Swing Education Platform and Services Agreement

BACKGROUND INFORMATION

The district will enter into an agreement effective September 5th, 2024, by and between Swing Education. This agreement will provide the district with access to the Swing Education Platform & Services, which allows the District, School sites, and School representatives to post and manage requests for substitute teachers and related professionals.

FISCAL ANALYSIS

The financial impact is included in the budget.

RECOMMENDATION

Staff recommends approval of the Swing Education Agreement.

Cabrillo Unified School District and
Swing Education Platform and Service Agreement
September 2024

This **Platform & Services Agreement** ("Agreement") is entered into on the Effective Date of September 5, 2024 by and between Swing Education, Inc. ("Swing Education," "we" or "us") and the School(s) listed on the signature page ("School" "or "District" or "you"). Swing Education agrees to provide you with access to the Swing Education Platform & Services ("Platform"), which allows the School and School representatives to post and manage Requests for substitute teachers and related professionals ("SwingSubs") on the Swing Education Website at www.swingeducation.com ("Website"). This Agreement will apply regarding the obligations and relationships between School, Swing Education and each SwingSub (though SwingSubs are not party to this Agreement). Each SwingSub will be a W-2 employee as a prerequisite to being able to see and fill your Requests on the Platform.

1. Services. Swing Education agrees to provide you with:

(a) **Access to the Services**, which allows authorized School users to post Requests for SwingSubs ("Requests") on the Platform, track and manage those Requests, and view information about the SwingSubs.

(b) **Access to Our Verification Services - California**

i. **Teaching Credentials.** Swing Education verifies whether a SwingSub teaching professional holds a substitute teaching permit or standard professional teaching credential, by having the SwingSub upload or submit such document to the Platform. Swing Education marks such SwingSubs as credentialed (or similar language) on the Platform. Swing Education also tracks the expiration date (if one exists) of such document. If such document expires, Swing Education will shortly thereafter label the SwingSub as non-credentialed (or similar language). Note that School is responsible for ensuring accuracy of SwingSub Requests where a permit or credential is or is not required.

ii. **CA DOJ Live Scan Fingerprint Background Check**. Swing Education verifies that a SwingSub working in California is eligible to work as a teacher before the SwingSub is allowed to fill Requests on the Website. Swing Education does this by reviewing the results of the individual's completed Live Scan check issued by the State of California Department of Justice (DOJ) using California Education Code guidelines. Subsequent changes to the SwingSub's status are sent from the DOJ to Swing Education. Swing Education prevents a SwingSub from filling Requests and/or removes the SwingSub from the Platform if changes render the SwingSub ineligible to teach, shortly after receiving notice of such changes.

iii. **TB Test**. Swing Education determines whether a SwingSub has obtained required TB tests before allowing a SwingSub to fill Requests on the Website (according to this form, www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/TBCB-CA-School-Staff-Volunteer-TB-Risk-Assessment.pdf).

iv. **Child Abuse Reporting - Mandated Reporter.** Swing Education will make all SwingSubs aware of their child and dependent adult abuse reporting obligations. Swing Education will also require all SwingSubs to confirm that they have undergone CA state Mandated Reporter Training within 6 weeks of completion of their first assignment through the Platform and annually thereafter, by signing a Suspected Child Abuse Reporting Acknowledgement Form. A copy of each signed form will be kept on file with Swing Education.

(c) **Verification Process**. Swing Education reserves the right to change any of the verification processes described above if such process become impossible or impractical to carry out as described.

(d) **Limitations**. Swing Education provides the Services as a venue for connecting Schools and SwingSubs. Swing Education does not provide any education training, equipment, curriculum for teaching classes or students at any School, nor any other education services to either Schools or SwingSub, other than that specified below. Swing Education does not participate in, and the Services expressly do not include, the relationship or interaction between Schools and SwingSubs, except to provide a Website for Schools to post requests and for SwingSubs to review and accept those Requests.

(e) **Relationship with SwingSubs**. Swing Education withholds and pays payroll taxes with regard to SwingSub wages but does not exercise any control over their schedules. School issues work Requests for SwingSubs to fill. School works with SwingSubs on-site and in person and thus has direct feedback and information on the actions and performance of SwingSubs. Swing Education makes no warranty or representation as to the effectiveness, competence, skill, background, record, or behavior of the SwingSubs beyond what is covered by the Verification Services above.

2. Acceptance of Related Terms. By signing this Agreement, you agree to any Appendix, Schedule, or Exhibit included with this Agreement. You also agree to the Website Master Terms of Service and Privacy Policy (the "Website Terms") (www.swingeducation.com/tc) available on the Swing Education website. In the event of conflict of any terms, the terms of this Agreement shall control.

3. Payments. Payments will be made to Swing Education according to the following:

(a) **Work Requests & Daily Wage.** School shall fill out work Requests for SwingSubs, specifying the work stop and start times for each work day of the Request. The School works with Swing Education to designate a "Daily Wage" or Wages for the SwingSubs, via the Website and/or by separate communication with Swing Education, and/or as listed below. The "Half Daily Wage" is 50% of the Daily Rate. The Daily Wage applies to any Day over four (4) and no more than eight (8) hours ("Full Day") and the Half Wage Rate applies to any Day of four (4) hours or less ("Half Day"). A "Short-Term" Request is a Request up to and including 21 days, and a "Long-Term" Request is a Request that exceeds 21 days. For a Long-Term Request, the minimum Daily Wage is $200 for a SwingSub with a Teaching Credential and $171 without a Teaching Credential.

(b) **Service Fee & Amounts Due.** School will also pay Swing Education a Service Fee, which is a designated surcharge percentage of the Daily Wage. The "Estimated Daily Amount" is based on the Daily Wage or Half Daily Wage, plus the Service Fee, for each Day of the Request. Swing Education will adjust each Estimated Daily Amount with relevant surcharges for overtime or if the SwingSubs is not given legally-required meal or rest breaks to arrive at "a Daily Adjusted Amount" for each Day of the Request, for which Swing Education will invoice School.

(c) **Cancellation**. Request(s) accepted by a SwingSub, then canceled outside of 24 hrs of the initial work time, are not subject to any fees. If a Request is canceled less than 24 hrs from the initial work time, then the Amount Due will be subject to the Preliminary Amount Due for the first Day of the Request.

(d) **Invoicing.** Payment for the services of a SwingSub will be made to Swing Education according to the following. Swing Education charges and invoices, according to one of these options: Option A - Deposit Model, which includes an initial balance, and Option B - Pay As You Go, as outlined in Exhibit A: Payment Options.

(e) **Deviations from Request.** While SwingSubs will be instructed to track their actual time worked, School must also inform Swing Education of any Work Deviations (from School's point of view) between the work times in a Request and actual time worked (including Work Deviations from mandated breaks) by 11:59pm on Friday of the same week of the relevant day for such Work Deviations to be reflected on an invoice, via the appropriate interface on the Platform.

SwingSubs shall also have the right to submit such Work Deviations, and the actual invoice will be reconciled using all known facts about the actual time worked.

(f) **Invoice Disputes.** School must identify any invoice item Dispute to Swing Education within 14 days of the invoice by emailing support@swingeducation, in order to Dispute such invoice item. All known facts about the actual time worked shall be used in amending such invoice items.

4. Recruitment & Off-Platform Use. If you wish to hire or contract directly with a SwingSub, you agree to pay Swing Education a $2,500 finder's fee. This recruitment fee does not apply to SwingSubs who previously worked directly for the School. School shall not issue off-Platform Requests to SwingSubs, including by communicating directly with a SwingSub. Making such an off-platform request is grounds for Termination for Cause. If School wishes to provide an additional (bonus) wage to a SwingSub, School will make prior arrangements with Swing Education by emailing support@swingeducation.com or via other means as directed by Swing Education. Swing Education will invoice School for such additional (bonus) wages. For additional (bonus) wages made through means other than those outlined above, Swing Education will invoice School for such additional (bonus) wage(s) plus an additional 100% handling fee.

5. Term, Termination, Rollover.
Term. This Agreement shall be in effect for one year from the Effective Date, thereafter this Agreement shall automatically renew at the anniversary date of the Effective Date unless provided 30 days prior written notice of the intent to terminate this Agreement by either party.
Effect of Termination. Termination does not extinguish obligations to pay or rights to seek payment for Invoices outstanding under this Agreement. Upon termination, Swing Education shall have 30 days to reconcile all payments due, and return any remaining Account Balance. All or any portion of the Account Balance may be used by Swing Education to (i) cure School's default in payment of invoices and (ii) pay services completed at the School in advance of the Amount Due being collected from the School.

6. Disclaimer of Warranties. The Services are provided "as is" without any warranty and Swing Education expressly disclaims any and all warranties, express, implied or statutory, including warranties of title, noninfringement, merchantability, and fitness for a particular purpose. Except as expressly set forth herein, Swing Education expressly disclaims, and you expressly release Swing Education from, any and all liability whatsoever for any damages, suits, claims and/or controversies that have arisen or may arise from and/or in any way relate to any acts or omissions of users on or off the Platform, including without limitation the provision of any services by any SwingSub. Furthermore, beyond the Verification set forth above, Swing Education makes no warranty, representation or condition as to the effectiveness, competence, skill, background, record, or behavior of the SwingSubs. You hereby release Swing Education from any and all liability whatsoever for any damages, suits, claims, and/or controversies that have arisen or may arise from and/or in any way relate to any acts or omissions of the SwingSubs while they are engaged by you, on your premises, and/or performing the duties for which you engage with them.

7. Insurance. Swing Education shall, at its own cost and expense, acquire and maintain at all times while Swing Education is providing services to School, sufficient insurance to adequately protect the respective interests of the parties, including:

(a) **Commercial General Liability** insurance, including Product Completed Operations, Personal Injury and Advertising Injury insurance of $1M per occurrence, $2M aggregate
(b) **Umbrella Liability** insurance of $2M Each Occurrence and in the Aggregate
(c) **Professional (Errors and Omissions) Liability** insurance covering Swing Education's legal liability for damages arising out of Swing Education's performance of the services of $2M per claim
(d) **Sexual Abuse & Molestation** insurance of $1M per occurrence and $2M in the aggregate

(e) **Workers' Compensation** insurance

8. Limitation of Liability. Swing Education takes its verification responsibilities seriously. Our verification responsibilities are limited to those specifically outlined in Section 1, and we cannot ensure the accuracy of the results we receive from any third party. Each party to this Agreement shall defend, indemnify and hold harmless the other party, including affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all claims of third parties, to the extent arising out of (a) that party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by that party of any of its representations, warranties, or covenants under this Agreement, unless in either (a) or (b) the claim is proximately caused by the gross negligence or willfulness misconduct of the other party. Except as required by law, neither party will be liable to the other for more than the amount received by Swing Education from you in the twelve-month period preceding the date a claim is first asserted.

9. Federal & Other Mandated Obligations to SwingSubs.

(a) While Swing Education will be the employer of SwingSubs, because School determines the schedules of SwingSubs and directs them as to the manner and means of work on a daily basis, School agrees to treat SwingSubs similar to employees with respect to all relevant federal and other laws protecting the rights of employees.

(b) School shall provide a safe, clean work environment that complies with all applicable local, state and federal laws, including but not limited to, federal OSHA and equivalent state agency requirements. School agrees to treat SwingSubs in a manner similar to its own employees with respect to any situation which Swing Education cannot address due to the nature of the working relationship of the parties (e.g., Swing Education has no presence on or control of work sites). School Requests will include and incorporate any required training time so that SwingSubs will be compensated for such training. School shall indemnify and hold Swing Education harmless against and from any claims made or brought by a SwingSub or a third party as a result of School's breach of these obligations except in case of a workers' compensation claim finding.

10. Third Parties and Subsidiaries. School understands that Swing Education may use third parties, such as its own subsidiaries, as well as administrative organizations ("ASOs"), and professional employer organizations ("PEOs"), to carry out its obligations under this Agreement.

11. Entire Agreement. This Agreement constitutes the sole and entire agreement with respect to the subject matter contained herein, and supersedes all others, both written and oral, except as otherwise explicitly provided above. This Agreement is valid only if signed by School within 60 days of the Effective Date listed above.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

SWING EDUCATION, INC.



Asha Visweswaran
CEO

Date: September 5, 2024

Email:
customersuccess@swingeducation.com

Address:
2041 East St PMB 884, Concord California, 94520, US

SCHOOL:
Cabrillo Unified School District

x_____

Name: Bianca Forrester

Title: Associate Superintendent of Human Resources

Date: September 5, 2024

Email: forresterb@cabrillo.k12.ca.us

Address: 498 Kelly Ave. Half Moon Bay, CA 94109

Exhibit A: Payment Options

Swing Education charges a Service Fee or Fees set as a percentage of the Hourly Wage or Wages, according to one of the below options. Swing Education will invoice school on a periodic basis.

☒ Option B - Pay As You Go. Under Option B, Swing Education will invoice the School for each Request filled on a regular basis, but no more than 30 days after each Request. School shall pay all amounts due under each invoice within 30 days of the invoice date. Under Option B, upon execution of this contract, Swing Education will not charge an initial deposit. However, if both parties in the future agree to Option A, Swing Education will then invoice the School a deposit as described under Option A above. Swing Education will charge a 44% Service Fee based on the Daily Pay Rate, for each Request Filled. If an invoice is not paid within 30 days, Swing Education reserves the right to immediately suspend or terminate all services, with notice. These rates are indicated in the below chart for easy reference.

Late Payments. Any invoice not paid within 30 days will be considered late. Late payments shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, from due date until paid, plus Swing Education's reasonable cost of collection. If any invoice is not paid within 90 days, Swing Education also reserves the right to immediately suspend or terminate School from the Platform, or switch the School to an alternate payment plan, with notice.

Appendix A: Standard Service Terms - Version January 15, 2021

The below terms, in addition to any terms in a signed Agreement between a School and Swing Education, Inc. ("Swing Education"), apply. In the event of conflict, the terms of that signed Agreement will control.

1. Termination, Late Payments, Recruitment.

(a) **Termination for Cause**. Either party may seek Termination for Cause of this Agreement due to breach of obligations under this Agreement. Upon timely written notice of such breach, the breaching party has 30 days to cure such breach to the reasonable satisfaction of both Parties. Failure to cure the breach after 30 days will allow the aggrieved Party to terminate the Agreement immediately upon receipt of such written notice by the aggrieved Party.

(b) **General Termination**. This Agreement may terminate by election of either party in accordance with the above, or shall terminate naturally if School fails to seek Engagement of any SwingSub for a period of more than 9 months.

(c) **Effect of Termination.** Termination does not extinguish obligations to pay or rights to seek payment for Invoices outstanding under this Agreement. Upon termination, Swing Education shall have 30 days to reconcile all payments due, and return any remaining Account Balance. All or any portion of the Account Balance may be used by Swing Education to (i) cure School's default in payment of invoices and (ii) pay services completed at the School in advance of the Amount Due being collected from the School.

(d) **Late Payments**. Late payments shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per month from the due date until paid, plus Swing Education's reasonable cost of collection.

(e) **Recruitment.** If you want to hire or contract directly with a SwingSub, you agree to pay Swing Education a $2,500 finder's fee to cover costs associated with finding, screening and onboarding the SwingSub, and anticipated loss of revenue.

2. FERPA Compliance. The Family Educational Rights and Privacy Act ("FERPA") requires that U.S. Schools that receive certain federal funds obtain prior written consent from a parent or guardian of a minor student ("Parent") before disclosing any educational records regarding such student ("Educational Records") to third parties. While Swing Education does not anticipate any disclosure of records, if you are a School and FERPA applies to you, you hereby agree to the following:

(a) You shall designate your selected SwingSub as an "other school official" under FERPA, who has a "legitimate educational interest" in using and accessing such Educational Records, and you hereby represent and warrant that (a) you have obtained all consents necessary in connection with disclosing any Educational Records directly or indirectly to Swing Education, Users, or otherwise in connection with the Services, and (b) Your disclosures described in (a) are not and will not be a violation of FERPA; and you shall not disclose to Swing Education any information protected by FERPA, and that you shall indemnify and hold harmless Swing Education for any disclosures, inadvertent or otherwise, from you, your authorized users, administrators, teachers, staff, students, or other persons who have access to such information.

3. Dispute Resolution. *This section contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

(a) **Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of any product or service provided by Swing Education, that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Swing Education, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under this Agreement.

(b) **Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written notice of dispute ("Notice") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Swing Education must be sent to: Michael Teng, CEO, Swing Education, Inc., 548 Market Street #88403 San Francisco, CA 94104-5401 and mike@swingeducation.com. After the Notice is received, you and Swing Education may attempt to resolve the claim or dispute informally. If you and Swing Education do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) **Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association ("AAA"), an established alternative dispute resolution provider ("ADR Provider") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider ("Arbitration Rules") shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with this Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US $10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US $10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) **Additional Rules for Non-Appearance Based Arbitration.** If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions and the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(e) **Time Limits.** If you or Swing Education pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the Arbitration Rules for the pertinent claim.

(f) **Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Swing Education, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the Arbitration Rules, and this Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Swing Education.

(g) **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Swing Education in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND SWING EDUCATION WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) **Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(i) **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(j) **Right to Waive.** Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(k) **Survival.** This Arbitration Agreement will survive the termination of your relationship with Swing Education.

(l) **Small Claims Court.** Notwithstanding the foregoing, either you or Swing Education may bring an individual action in small claims court.

(m) **Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(n) **Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(o) **Courts**. In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within San Mateo County, California, for such purpose.

4. General Provisions.

(a) **Attorneys' Fees**. The prevailing party in any suit, action or proceeding, including arbitration, arising out of or relating to this Agreement shall be entitled to receive in addition to all other damages, the costs incurred by such party, including reasonable attorneys' fees and expenses and court costs.

(b) **Notices**. All notices, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the designated email for Notice of a party. A Notice is effective only upon receipt by the receiving party, as designated below and as on the signature page, should they differ.

i. Michael Teng, CEO, Swing Education, Inc., 548 Market Street #88403 San Francisco, CA 94104-5401, mike@swingeducation.com
ii. School: As on signature page of signed Agreement.

(c) **Severability**. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(d) **Waiver**. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall be construed as a waiver of any failure, breach or default not expressly identified by such written waiver. No failure to exercise, or delay in exercising, or any single or partial exercise of any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.

(e) **Assignment**. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

(f) **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(g) **Governing Law**. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

(h) **Non-Discrimination.** Swing Education represents that it will exercise equal opportunity in the registration and assignment of all SwingSubs and acknowledges that it shall not subject any person to unlawful discrimination based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement. Swing Education agrees not to discriminate on any of these bases in its practices and policies.

(i) **Confidentiality.** Both parties may receive information that is proprietary and/or confidential to the other party, or to its affiliated companies and their clients. Both parties agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than performing under this agreement or as required by law. No knowledge, possession or use of School's confidential information will be imputed to Swing Education as a result of a SwingSub's access to such information.

(j) **Employer For Wages.** Swing Education shall be the employer (similar to a professional employer organization) of SwingSubs for purposes of wages/payroll taxes and workers' compensation. Swing Education may also, in its discretion, provide health or other benefits to SwingSubs, even if not required by law.