

**EMPLOYMENT AGREEMENT
FOR SUPERINTENDENT SERVICES
Alameda Unified School District
and Sean McPhetridge, Ed.D.**

This Employment Agreement ("Agreement") is made by and between the Governing Board of the Alameda Unified School District, a public school district of the State of California ("District"), and Sean McPhetridge, an individual (referred to as "Superintendent").

WHEREAS, the District's Governing Board of Education ("Board") desires to employ the Superintendent as the Superintendent of the District, and the Superintendent desires to accept employment as the Superintendent of District upon the terms and conditions that are now hereinafter set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties hereto agree as follows:

1. Term of Employment

The term of this Agreement shall commence on February 11, 2015, and shall terminate on June 30, 2018, unless terminated earlier pursuant to the provisions of this Agreement or unless extended as provided herein or as provided by law.

The Board shall provide the Superintendent with at least 45 days written notice prior to the expiration of this Agreement of the Board's intention not to renew the Agreement.

2. Employment Duties and Obligations

The Superintendent shall lead and supervise efforts prescribed by law and Board Policy, including: ensuring District is in compliance with all federal, state and local laws and regulations; attending meetings of the School Board while serving as Secretary of the Board; serving as liaison between the Board and staff while facilitating communications and representing Board positions and decisions; fiscally managing the school system through supervising and providing oversight of its annual budget to help reflect the budgetary priorities required to provide a quality instructional program; reporting to the Board to provide facts and explanations as necessary to help assist the Board in exercising its decisions; establishing and maintaining positive relationships with the community, including parents, employees and local organizations; demonstrating fairness, objectivity and knowledge of Human Resources practices in supervision of all personnel relations and decisions; and overseeing the District's instructional program within the framework of California Education Code, its related regulations and goals and policies of the Board.

Board hereby employs Superintendent as the Superintendent of District, and Superintendent accepts employment as the Superintendent of District. In said capacity, Superintendent shall lead and supervise all services and activities necessary or advisable to manage and conduct the business of the District. Without limiting the foregoing, the Superintendent (or the Superintendent's designee) shall perform the following duties:

2.1 Responsibility for Personnel

Subject to approval by the Board of the Superintendent's recommendations, Superintendent shall have responsibility of arranging and organizing administrative and supervisory staff to help realize the Superintendent's authority and judgment of what would best serve District. Superintendent will determine all personnel matters, including, without implied limitation, selection, assignment and transfer of employees. Superintendent will be solely responsible to supervise the Chief Human Resource Officer to help the organization achieve the goals of the District.

2.2 Goal and Policy Setting

Superintendent and the Board will work together to review and revise goals for the district as is needed and deemed necessary by the Board. Superintendent and the Board will work together to review all Board Policies under consideration by the Board and make appropriate recommendations to the Board for policy revision and creation.

2.3 Professional Growth

To work most effectively and remain current in professional best practices, Superintendent will endeavor to maintain and improve his professional competence by a variety of means, including, without implied limitation, subscription to and reading of appropriate periodicals, attendance of relevant professional conferences, and joining and participating in appropriate professional associations and their activities as fitting to achieving the goals of the District.

2.4 Credentials/Licenses

The Superintendent will obtain and maintain all required licenses, credentials, certificates, permits and approvals of whatever nature as is legally required to best fulfill the Superintendent's professional obligations as the Superintendent of the District.

2.5 Attendance at Board and Committee Meetings

The Superintendent shall be entitled to attend all regular, special and closed session meetings of the Board. The Superintendent shall also serve as an ex officio member on any and all District committees and subcommittees, and he shall be entitled to submit recommendations on any items of business considered by the Board or any committee/subcommittee of District.

2.6 Board Referral of Complaints

The Board, individually and collectively, shall promptly refer all criticisms, complaints and suggestions called to its/their attention to the Superintendent for study and recommendation, and in adherence to their role, the Board shall refrain from individual interference with the Superintendent's administration of school policies, except through specific Board action.

2.7 Board/Superintendent Facilitation

In addition to directing any complaints/criticisms/suggestions concerning the District or any of its personnel directly to Superintendent as set forth above, Board commits that it shall provide the Superintendent with opportunities to discuss Board/Superintendent relationships.

2.8 Assignment of Duties

This is an agreement for the performance of professional services as the Superintendent of the District. In recognition of purposes of this Agreement, the Superintendent shall not be assigned to any other position or have Superintendent's duties assigned to others without Superintendent's consent. No policy or bylaw of the District shall diminish Superintendent's statutory authority. All duties assigned to the Superintendent by the Board shall be appropriate to and consistent with the professional role and responsibility of the Superintendent. The Superintendent shall be provided with such facilities, equipment, supplies and clerical assistance as appropriate to the Superintendent's position and necessary for the adequate performance of the Superintendent's duties. The Superintendent will be provided with the appropriate technology to assist the Superintendent in the performance of the Superintendent's job duties and responsibilities. These are to include, by way of example but not by way of limitation, an iPad (or similar tablet device), a laptop computer and internet access. The Superintendent shall be entitled to any stipends related to communication devices on the same basis as other District management employees.

3. Obligations of District

The District shall provide the Superintendent with the compensation, incentives, benefits and business expense reimbursements specified in this Agreement.

3.1 Salary

District shall pay Superintendent an annual salary of \$220,000.

The Superintendent's salary shall be increased by any generally applied compensation increase provided to any members of the certificated employee unit within the District in a percentage amount equal to the greatest amount of any such increase, which for this purpose shall be computed as a percentage increase to the existing salary schedule for the members of any such employee unit.

Any adjustment in salary made during the term of this Agreement shall be in the form of an amendment and shall become a part of this Agreement, but any failure to attach the adjusted salary amount as an amendment shall not affect the validity or the amount of any such adjustment. Unless agreed to by the parties in writing, the Superintendent's salary shall not at any time be reduced below the initial salary stated in this Agreement or any subsequent increase to such salary. Notwithstanding the previous sentence, no written agreement shall be needed for the Board to reduce Superintendent's work days and pay through furlough if the work days and pay of certificated unit members are equivalently reduced through furlough.

3.2 Work Year

The Superintendent is required to render full-time regular service to the District for the term of this Agreement, exclusive of vacation, recognized holidays, sick leaves or other leaves. The Superintendent shall earn vacation days and sick leave on the same terms as other management employees. Superintendent shall accrue paid sick leave at rate credited to other management employees. Earned sick leave shall be cumulative. District shall not compensate Superintendent for unused or accrued sick leave at the time of termination of this agreement.

Earned vacation days left unused at the end of each fiscal year shall be rolled forward or paid out as compensation in same manner and on same terms as done for other District management employees.

3.3 Health and Retirement Benefits

The Superintendent may participate in the District's medical, dental, vision and disability insurance programs, as well any other benefit programs offered by the District, to same extent and on same terms as all other District management employees. Similarly, the District shall make pension contributions to CALPERS on behalf of the Superintendent to same extent and on same terms as it does for other CALPERS-enrolled District management employees.

3.4 Professional Association Dues / Service Club Expenses

The District shall pay the Superintendent's expenses and dues for membership in professional organizations, including the Association of California School Administrators (ACSA), the American Association of School Administrators (AASA) and one other professional association the Superintendent may participate in. District shall reimburse Superintendent for reasonable expenses incurred by Superintendent in connection with District business in the same manner and on the same terms as other District employees. Subject to Board approval, the District shall also pay on behalf of the Superintendent expenses incurred in attendance at up to two regional, state or national conferences, seminars, hearings or other appropriate meetings per year that are appropriate and pertinent to matters that in the Superintendent's judgment relate to the benefit and welfare of the District.

3.5 Master's/Doctoral Increment

The Superintendent shall be entitled to a stipend for his advanced degrees, in same amount paid to other District management employees for degrees of the same type.

4. Professional Growth of Superintendent

The Board supports the concept of supporting lifelong learners and encourages the continuing professional growth of the Superintendent through his/her participation in ACSA activities. The District is willing to support the Superintendent's professional growth and will be responsible for reasonable expenses involved in such ongoing professional development activities.

5. Evaluation of Superintendent

On an annual basis no earlier than May 1 and no later than June 1, Board and Superintendent shall meet and decide objectives for evaluation for the succeeding school year. If Superintendent and Board are unable to agree, the Board shall set goals and objectives.

5.1 Scheduled Board Meeting

The Board shall devote a portion of at least one meeting annually for the discussion and evaluation of the performance and the working relationship between the Superintendent and the Board. Every effort will be made to conduct this meeting by a date to be determined by the Board and the Superintendent. Such meeting shall be conducted in closed session unless mutually agreed otherwise. Evaluations shall be based upon the mutually developed and agreed upon performance goals and objectives for that year's evaluation. In addition thereto,

the Board and the Superintendent shall assess the quality and effectiveness of their working relationship. After reviewing the performance of the Superintendent based upon the agreed upon goals and objectives previously established for the school year and the job responsibilities set forth in this Agreement, the Board shall notify the Superintendent in writing whether the Superintendent has performed, in the Board's judgment, satisfactorily or unsatisfactorily.

5.2 Satisfactory Evaluation

If the Board concludes that the Superintendent's performance is satisfactory, this Agreement shall automatically be renewed for an additional year, not to exceed a term of four (4) years. Within thirty (30) days of issuing a satisfactory evaluation for the Superintendent, the Board shall approve a contract amendment to extend the contract for one year at a regularly scheduled board meeting.

5.3 Unsatisfactory Evaluation

If the Board concludes that the Superintendent's performance is unsatisfactory, the Board shall identify in writing areas where improvement is required and provide written recommendations for improvement. Such written recommendations and specifications for improvement shall be provided within 30 days of the date of the evaluation.

5.4 Majority of Board

An evaluation shall be deemed to be "satisfactory" if the written evaluation approved by a majority of Board members have rated the Superintendent's performance as satisfactory.

5.5 Mutually Agreed Format

The Board and the Superintendent shall agree upon a written evaluation format that shall be used for each evaluation cycle. Such format shall be agreed to at the same meeting identified in section 5. If Superintendent and Board are unable to agree on a format, the Board shall select a format.

5.6 Confidentiality

The Board shall maintain confidentiality concerning the contents of any evaluation unless otherwise agreed to in writing with the Superintendent, required by law or court order, or deemed necessary by the Board to defend the District in litigation, mediation, or administrative proceeding initiated by or on behalf of Superintendent.

6. Outside Professional Activities

The Superintendent may serve as consultant to other districts or educational agencies, engage in professional activities and speaking engagements, and lecture and engage in related activities of a short-term duration, subject to Board approval and on the same terms as other District management employees.

7. Medical Examination

The Superintendent agrees to undergo a comprehensive medical examination at least every other year during employment with the District. Said medical examination shall be made by a

licensed physician selected by the Superintendent. A statement regarding the Superintendent's physical ability to perform the Superintendent's regular duties shall be obtained from the selected physician and provided to the Board, and the Board shall keep confidential the information therein. The costs of said medical examination and report shall be paid by the District. Nothing herein shall be deemed to waive the physician/patient privilege that the Superintendent shall have with any physician with whom the Superintendent consults for the purposes of this paragraph and this Agreement.

8. Termination

8.1 The Superintendent may terminate the Superintendent's obligations under this Agreement by giving the District at least forty-five (45) days written notice.

8.2 This Agreement shall terminate upon the occurrence of any of the following events.

8.2.1 Whenever the Superintendent and District mutually agree to termination in writing.

8.2.2 Upon the death of the Superintendent.

8.2.3 Termination for Cause

a. **Serious Misconduct**

District may terminate this Agreement unilaterally for cause for serious misconduct following a lawful vote of the Governing Board. Before terminating the Agreement for cause pursuant to this subsection, the District shall provide Superintendent reasonable notice of the Board's intention to terminate, along with a written statement of the misconduct the Board believes provides grounds for termination. Before the Board takes action to terminate pursuant to this subsection, Superintendent shall be entitled to a conference with the Board at which time he shall be given a reasonable opportunity to address alleged misconduct. Superintendent shall have the right to have a representative of his choice at the conference with the Board.

"Serious misconduct" includes, but is not limited to, the following: (1) conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in opinion of the Board, cause embarrassment to the District; (2) engaging in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (3) willful malfeasance or gross negligence in the performance of Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (4) commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (5) material breach of any material term of this Agreement or willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within a reasonable time after written notice of such noncompliance

has been given to the Superintendent by the Board; (6) persistent or serious violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board or Department of Education or by the Board.

b. **Unsatisfactory Performance**

The Board may also unilaterally terminate this Agreement for cause based on the Superintendent's unsatisfactory performance. Before terminating the Agreement based on this subsection, the Board shall specifically identify the areas of unsatisfactory performance as part of the formal evaluation process and advise the Superintendent with specificity of what he would need to do to remediate the unsatisfactory performance. If the performance of the Superintendent continues to be unsatisfactory after 90 days, the Board may terminate this Agreement. Before the Board takes action to terminate pursuant to this subsection, Superintendent shall be entitled to a conference with the Board at which time he shall be given a reasonable opportunity to address his performance. Superintendent shall have the right to have a representative of his choice at the conference with the Board.

8.2.4 Termination if Physically Unable to Perform Duties

Should the Superintendent prove unable to perform all or substantially all of the Superintendent's duties due to illness or other disability for a period of three (3) consecutive months, and if it is medically determined that the Superintendent is permanently disabled from performing all or substantially of the duties of the Superintendent. The determination that the Superintendent is permanently disabled shall be supported by a medical opinion. In making this determination and in order to assist the Board, the Board may, at any time the Board determines that a question exists as to the Superintendent's ability to perform, require that the Superintendent undergo a comprehensive medical examination in accordance with the provisions of Section 7 of this Agreement. Such examination shall occur within two (2) weeks of the date that written notice is given to the Superintendent that the Board is exercising its right to an examination as provided in this section. If the Superintendent wishes to do so, the Superintendent may, within one (1) month of said examination, submit a separate report made by a physician chosen by Superintendent concerning all or part of the matters covered in said comprehensive medical examination.

8.3 Termination Without Cause/Buyout

Notwithstanding any other provision of this Agreement, the Board, without cause, in its sole discretion, shall have the option to unilaterally terminate this Agreement upon the provision of written notice of such termination to the Superintendent. If the Board elects the option to terminate the Agreement without cause, then the Superintendent shall receive his regular salary for the remainder of the term of this Agreement or twelve (12) months, whichever is less. Such termination payments shall be paid on the same installment basis as the Superintendent's current salary unless both parties have mutually agreed to another form of compensation. Additionally, the District shall maintain its contribution to the health insurance benefits that the Superintendent has elected for the same period of time.

The payment for salary and health benefits for the period prescribed is in consideration for the District's right to terminate this Agreement without cause.

8.4 Abuse of Office – AB 1344

Pursuant to Government Code 53243.2, any funds received by the Superintendent from the District as a buyout, resulting from Board's decision to terminate Superintendent without cause, shall be fully reimbursed to the District if Superintendent is convicted of a crime involving the abuse of powers of office. If the District funds criminal defense of the Superintendent against charges involving the abuse of his or her office or position, and if the Superintendent is convicted of those charges, the Superintendent shall fully reimburse the District for all District funds paid for the Superintendent's criminal defense.

9. Delivery of Notices

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

SUPERINTENDENT:

Alameda Unified School District
2060 Challenger Drive
Alameda, California 94501

DISTRICT:

Alameda Unified School District
2060 Challenger Drive
Alameda, California 94501

Such notice shall be deemed received when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepared and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10. Conflict of Laws

This Agreement shall be governed by the laws of the State of California.

11. Integration

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. Neither of the parties has relied upon any oral or written representation or written information given to the party by any representative of the other party.

12. Severability

If one or more of the provisions of this Agreement are hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, then the parties hereto agree that the invalidity or unenforceability of any of the provisions shall not in any way affect the validity or enforceability of any other provisions of this

Agreement.

13. Modification

No change or modification of the terms or provisions of this Agreement shall be deemed valid unless set forth in writing and signed by both parties.

14. Construction of Agreement

This Agreement will be liberally construed to effectuate the intention of the parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the parties have participated equally or have had equal opportunity to participate in the drafting hereof.

15. Waiver

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

16. Headings

The headings of sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.

17. Attorneys' Fees

In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to attorneys' fees and costs.

18. Further Assurances

Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

19. Assignment

Since this Agreement is for the employment of Superintendent and Superintendent's specific knowledge and talents, both parties acknowledge that neither party shall assign this

Agreement or any interest therein. Any such attempt to assign this Agreement is null, void and of no effect.

20. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

21. Indemnity

The District shall defend the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Superintendent in Superintendent's individual capacity or official capacity as an agent and employee of the District to the extent required by the Government Code and/or Board policy.

To the extent required by the Government Code and/or Board policy, upon retirement or separation from the district, Superintendent will continue to be indemnified for any actions taken against him related to his role as the Superintendent.

22. Safety

In the event of public controversy or threats, if the Board or the Superintendent deems it necessary, the Board will at District expense provide appropriate security measures for the safety of the Superintendent and the Superintendent's family.

IN WITNESS WHEREOF, this Agreement has been executed this ____ day of _____, 2015.

Sean McPhetridge, Ed.D.

Date

On Behalf of the Governing Board of the Alameda Unified School District:

Barbara Kahn, President

Date