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**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education
From Marion McWilliams, General Counsel
Board Meeting Date January 11, 2017
Subject Employment Agreement for Services of District Interim Superintendent

Action Requested Approval by the Board of Education of the Employment Agreement for Services of the District Interim Superintendent

Discussion Devin Dillon, Ph.D., is currently employed by the District as Deputy Superintendent. In light of Superintendent Wilson's resignation effective January 31, 2017, this Employment Agreement provides for Dr. Dillon working in a transitional role effective January 12, 2017 through January 31, 2017. The Employment Agreement provides that she will assume the responsibilities of Superintendent under Education Code section 35035, as Interim Superintendent, beginning February 1, 2017 through June 30, 2017. The annualized base salary for the services is \$250,000, which is prorated to \$117,628.07 for the January 12, 2017 to June 30, 2017 period, plus stipends and health and welfare benefits at their current levels.

Recommendation Approval by the Board of Education of the Employment Agreement for Services of the District Interim Superintendent

Fiscal Impact Funding resource name General Fund \$117,628.07 for base salary, plus applicable stipends and health and welfare benefits

Attachments

- Employment Agreement

**OAKLAND UNIFIED SCHOOL DISTRICT
EMPLOYMENT AGREEMENT
FOR SERVICES OF DISTRICT INTERIM SUPERINTENDENT**

This Employment Agreement for Services of District Interim Superintendent ("Agreement") is effective the twelfth day of January 2017 and is made and entered into between the GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT (the "Board"), on behalf of the OAKLAND UNIFIED SCHOOL DISTRICT (the "District"), and DR. DEVIN DILLON (the "Interim Superintendent" or "Dr. Dillon").

WHEREAS, the Board desires to employ Dr. Dillon as Interim Superintendent for the District and desires to provide Dr. Dillon with a written contract in order to enhance the administrative stability within the schools, which the Board believes generally improves the quality of the District's overall educational program; and

WHEREAS, the Board and the Interim Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the District.

NOW, THEREFORE, the Board and the Interim Superintendent, for consideration herein, agree as follows:

1. TERM. The Board offers, and Dr. Dillon accepts, employment as the Interim Superintendent of Schools for the District, for the period from January 12, 2017 to June 30, 2017, subject to the terms and conditions set forth herein.

2. DUTIES AND RESPONSIBILITIES

During the period from January 12, 2017 to January 31, 2017, Dr. Dillon will work with Superintendent Wilson, the Board and senior staff of the District to support the transition of Superintendent Wilson. During the transition period Dr. Dillon will, among other things, meet and confer with Superintendent Wilson, the senior staff, the Board and key District stakeholders in preparation for successfully performing all duties of an Interim Superintendent beginning February 1, 2017. During the transition period between January 12, 2017 and January 31, 2017, Superintendent Wilson shall retain all rights, duties and responsibilities of Superintendent of the District as provided in Section 35035 of the Education Code.

Commencing February 1, 2017, the Interim Superintendent shall have charge of the administration of the District in accordance with all applicable state and federal laws and regulations and the directives, rules, regulations and policies of the Board.

Commencing February 1, 2017, the Interim Superintendent shall serve as the District's Chief Executive Officer, in charge of all educational and financial matters pertaining to the administration and operation of the District, except as limited by the Board through reporting structures. Although the Board retains ultimate power and authority over decisions affecting the District, the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Interim Superintendent, but the Board retains the right to question, approve, or disapprove in its discretion, as it deems appropriate, the recommendations and decisions that the Interim Superintendent makes.

Commencing February 1, 2017, the Interim Superintendent shall perform the duties and exercise the powers prescribed for a Superintendent by Section 35035 of the California Education Code. The

Interim Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions with the understanding that all personnel are subject to the approval of the Board; hire, terminate, assign and direct employees of the District except as limited by the Board through reporting structures.

Commencing January 12, 2017, the Interim Superintendent shall give her exclusive professional services to the District during the period of this Employment Contract and she shall attend all regular and special meetings of the Board, including Closed Session where no conflict of interest exists, unless otherwise excused by the Board. She shall faithfully and diligently perform the duties and responsibilities regularly performed by Superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state. For her services to the District she shall accept as full payment the compensation provided in this Agreement.

This Agreement shall not be assigned by Dr. Dillon to any other person or position, except in cases of disability (as described in this Agreement), or at the discretion of the Board.

The Interim Superintendent shall render services in accordance with the District's standard work year for confidential administrators and she shall be entitled to the same holidays as are other non-represented managers of the District.

3. SALARY & BENEFITS.

For the period January 12, 2017 through June 30, 2017, Dr. Dillon shall be paid the total base salary of \$117,628.07 for services provided under this Agreement, payable monthly in the same manner as other confidential administrators, at the rate of \$961.53 per day. Dr. Dillon shall continue to earn, at the current rates, all cell phone, travel, and education stipends that she currently receives in her position as Deputy Superintendent. Employer shall fund Employer's portion of STRS retirement based upon the base salary.

Interim Superintendent and her dependents, if any, shall be entitled to paid coverage under the District's health, vision, and dental insurance plans, except that the Interim Superintendent shall pay all co-pays required by health care providers. The District shall not require the Interim Superintendent to contribute to insurance premium costs, except to the extent required for other confidential administrators.

The District shall pay the Interim Superintendent's membership dues and reasonable related expenses to belong to a reasonable number of relevant professional organizations, including the Association of California School Administrators. Any such expenses in excess of \$5,000 shall be approved by the Board.

The District shall provide the interim Superintendent with the same life insurance benefits as it does for all other confidential administrators.

4. VACATION & LEAVE.

The Interim Superintendent may retain all accrued but unused leave balances that she currently has with the District as of January 12, 2017. During the term of this Agreement, Interim Superintendent shall be entitled to ten (10) non-duty days with pay. The Interim Superintendent is encouraged to take all non-duty days during the year in which such days are earned. The Interim Superintendent shall

provide the Board with reasonable advance notice of any travel, including any planned use of non-duty days, before any such non-duty days are taken.

The Interim Superintendent shall be entitled to accrue paid sick leave at the rate of 1.0 days per month. If the Interim Superintendent does not utilize the total amount of accrued sick leave authorized during any year, she may carry over the unused time to sick leave in the subsequent year.

5. EXPENSES. The Interim Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing her professional responsibilities for the District, including reasonable expenses for travel outside the District. Any such request for reimbursement shall comply fully with all District rules and requirements relating to expense reimbursements; and shall be presented to the Board President for review and approval.

6. PROFESSIONAL ACTIVITIES. The Interim Superintendent may engage in outside activities such as consulting and speaking, provided that such activities do not interfere and are compatible with the Interim Superintendent's performance of her duties and responsibilities. Such outside activities are subject to the following approval and notification requirements: (1) if the activity requires no more than two (2) days of the Interim Superintendent's time, she shall provide reasonable advance notice to the Board of her participation in such activity; (2) if the activity requires more than two (2) days of the Interim Superintendent's time, she shall first receive prior approval from the Board President to participate in such activity and, if such approval is given, she must provide reasonable advance notice to the Board. The Interim Superintendent further understands and agrees that any outside employment which may be allowed by this Agreement must be at all times subservient to her duties as Interim Superintendent, and must be performed on non-duty or leave days which have been authorized or approved by the Board.

7. TERMINATION. This Agreement may be terminated by the following:

A. Death of the Interim Superintendent.

B. Disability. The Board may terminate this Agreement due to the disability of the Interim Superintendent, as defined below, after expiration of sick leave entitlement as provided by this Agreement, statute, and policies.

Disability shall mean that the Interim Superintendent is unable to perform the essential duties of the Interim Superintendent position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a physician selected by the Board and who is licensed to serve in the State of California.

In the event the Interim Superintendent is disabled and said disability would prevent her from reassuming her duties for a period of thirty (30) days or more, the Board may appoint an alternative Administrator to fulfill the duties and responsibilities of the Interim Superintendent under this Agreement.

In the event the Interim Superintendent is disabled and unable to perform her duties under this Agreement, and such disability continues for more than ninety (90) days, the Board may terminate this Agreement. The Board's decision and termination based on the disability of the Interim Superintendent shall be final and shall be based on the written opinion of a licensed medical doctor as set forth above.

C. By the Board without cause.

The Board may elect to terminate this Agreement, without cause, upon thirty (30) days written notice to the Interim Superintendent. Prior to exercising this option, the Board shall provide the Interim

Superintendent with an opportunity to meet with the Board to discuss its intentions. However, no cause need be alleged or demonstrated by the Board. In the event that this Agreement is terminated by the Board without cause, Dr. Dillon shall be allowed to return to her former position as Deputy Superintendent upon request, for any unexpired term of the contract of employment for that position and subject to the terms and conditions including the termination provisions of that contract.

D. By the Board for cause.

The Board may elect to terminate this Agreement for cause upon thirty (30) days written notice to the Interim Superintendent. Cause shall constitute conduct, which the Board decides is seriously prejudicial to the District, including, but not limited to, the grounds enumerated in Section 44932 of the California Education Code and specifically including the following: (a) the Interim Superintendent's 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 the sole opinion of the Board cause embarrassment to the District; (b) the Interim Superintendent engages in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Interim Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Interim Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (d) the Interim Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Interim Superintendent's material breach of any material term of this Agreement or her willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within 30 days after written notice of such noncompliance has been given to the Interim Superintendent by the Board; and (f) the Interim Superintendent's persistent 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 of Education or by the Board, or any other cause listed in the California Education Code.

Cause shall also constitute unsatisfactory performance provided the Board complies with all of the following conditions: (a) the Board shall be responsible for specifically identifying the material deficiencies and advising the Interim Superintendent with specificity of what she would need to do to remediate said material deficiencies; (b) a majority of the Board determines that the performance of the Interim Superintendent continues to be materially unsatisfactory even after receiving notice of material deficiencies; and (c) the Board provides the Interim Superintendent with written notice of the termination at least forty-five (45) days prior to the effective day of termination.

Dismissal for cause shall be effective upon action taken by the Board, and all salary and benefits provided for in this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to said action shall be paid to the Interim Superintendent within thirty (30) days of said action.

Timely notice of discharge for cause shall be given in writing and the Interim Superintendent shall be entitled to appear before the Board to discuss such charges. If the Interim Superintendent chooses to be accompanied by legal counsel at such meeting, she shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Interim Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Interim Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

E. By the Interim Superintendent at any time during this Agreement by providing the Board with thirty (30) days written notice.

F. By mutual agreement between the Board and the Interim Superintendent at any time.

G. By expiration of the term of this Agreement on June 30, 2017. No further notice is required for this Agreement to terminate at the end of its term. Upon expiration of the term of this Agreement, Dr. Dillon shall be allowed to return to her former position as Deputy Superintendent upon request, for any unexpired term of the contract of employment for that position and subject to the terms and conditions including the termination provisions of that contract.

8. APPLICABLE LAWS. This Agreement is subject to all applicable laws and regulations of the State of California, to the rules and regulations of the State Board of Education, and to the rules, regulations and policies of the District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein.

9. MEDIATION. Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

10. ENTIRE AGREEMENT. It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

11. SAVINGS CLAUSE. If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in full force and effect.

12. NOTICES. Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite his or her name below, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

If at any time during the term of this Agreement the Interim Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow herself to be considered, for such a position, the Interim Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate. If the

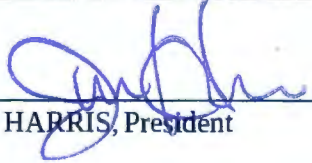

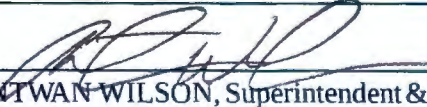

Interim Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement, and the Board may then terminate this Agreement for cause and in accordance with this Agreement.

13. INDEMNIFICATION OF INTERIM SUPERINTENDENT. In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Interim Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Interim Superintendent in her individual capacity, or in her official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Interim Superintendent was acting within the scope and course of her employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after her employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Interim Superintendent against such demands, claims, suits, actions and legal proceedings.

If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Interim Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent Interim Superintendent, then Interim Superintendent may engage separate legal counsel for which the District shall indemnify Interim Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Interim Superintendent under any other insurance or professional association membership.

14. WAIVERS. No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

IN WITNESS WHEREOF, the parties hereto, affix their signatures to this Agreement in Oakland, California.

GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT:	DR. DEVIN DILLON
By  JAMES HARRIS, President	 DR. DEVIN DILLON, Interim Superintendent
By  ANTWAN WILSON, Superintendent & Secretary	 Marion McWilliams, General Counsel Approved As To Form

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