

SCHOOL BOARD ACTION REPORT



DATE: December 7, 2016
FROM: Leslie Harris, Board Member, leslie.harris@seattleschools.org
Stephan Blanford, Board Member, stephan.blanford@seattleschools.org
As appointed by the School Board

1. TITLE

Superintendent's Employment Agreement: **For Introduction:** Dec. 7, 2016
Employment Agreement Duration and Salary **For Action:** Dec. 7, 2016

2. PURPOSE

Dr. Larry Nyland ("Superintendent") is the Superintendent for Seattle School District No. 1 ("District"). The Board is responsible under the Superintendent's Employment Agreement ("Employment Agreement") to annually review his salary and determine whether his annual salary should be increased.

3. RECOMMENDED MOTION

We move that the Board approve the amendment to the Superintendent's Employment Agreement to increase the Superintendent's base salary by the COLA amount, 1.8%, as set forth in the attachment to the Board Action Report ("BAR").

4. BACKGROUND INFORMATION

- a. **Background:** In January 2015, the Board hired Dr. Nyland as Superintendent. In November 2015, the Board voted to extend Dr. Nyland's contract and provide him a raise. An employment contract was signed with Dr. Nyland with an effective date of November 18, 2015 and an end date of June 30, 2018. The Superintendent's employment contract requires the Board to determine whether to increase his salary for this fiscal year no later than the first Board legislative meeting in December. The Superintendent's current Employment Agreement provides for a base salary of \$289,878.75.

On November 16, 2016, the Board approved a BAR delegating the contract discussions with the Superintendent to Director Harris and Director Blanford. On November 21, 2016, in an executive session, Directors Harris and Blanford obtained information from all Board members on the contract discussions. On December 5, 2016, Directors Harris and Blanford met with the Superintendent to discuss his contract. The Superintendent, recognizing that the District is facing budgetary difficulties, has asked for only a Cost of Living Adjustment ("COLA") increase, which is being given to all staff.

The Board benchmarked the Superintendent's salary with salaries for other superintendents in Washington State and with peer school districts, such as Boston, San Francisco, and Los Angeles. The Board also considered the 1.8% COLA allocated to the District by the State and the other salary increases being provided to both District employees represented by bargaining units and non-represented staff.

By mutual agreement, the Superintendent should be given the 1.8% COLA adjustment. The Superintendent has also agreed to an optional extension of his contract of up to six months, should it be necessary or requested, in order to make the transition to the new Superintendent as smooth as possible for the District and its students. The Board has the sole discretion to determine whether an extension will be sought and agrees to provide notice of its intent to exercise the option no later than April 30, 2018.

- b. **Alternatives:** Not provide a COLA, or provide a raise above the COLA. Not providing the COLA is not recommended as the Board wants to keep its compensation package competitive now and for future superintendents, and the Board recognizes the Superintendent's service to the District. This notwithstanding, with the budgetary situation currently facing the District, any raise above COLA would be unwise and cut into the vital work that the District is performing for students.

Automatically extend the Superintendent's contract beyond the June 30, 2018 end date. The Superintendent has served the District for four years, and the end of his term coincides with the completion of the District's Strategic Plan. This is a natural transition point for the District, and the Board would like to take advantage of that fact.

c. **Research:**

- Data regarding superintendent salaries from Washington State and other major cities
- COLA and other negotiated wage increases for District staff

5. FISCAL IMPACT/REVENUE SOURCE

The Superintendent's salary and benefits are currently part of the District's overall budget. Any proposed salary increase would be paid out of the General Fund.

Expenditure: One-time Annual Multi-Year N/A

Revenue: One-time Annual Multi-Year N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

Not applicable

Tier 1: Inform

Tier 2: Consult/Involve

Tier 3: Collaborate

7. EQUITY ANALYSIS

N/A

8. STUDENT BENEFIT

N/A

9. WHY BOARD ACTION IS NECESSARY

- Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- Adopting, amending, or repealing a Board policy
- Formally accepting the completion of a public works project and closing out the contract
- Legal requirement for the School Board to take action on this matter
- Board Policy No. _____, [TITLE], provides the Board shall approve this item
- Other: Required as per Superintendent Contract

10. POLICY IMPLICATION

Under Policy Nos. 1630, Evaluation of the Superintendent, and 1010, Board Oversight of Management, the Board is responsible for setting the Superintendent's salary and determining the length of his employment contract. In addition, the Superintendent's employment contract requires the Board to vote on whether to raise his salary at the first legislative session in December.

11. BOARD COMMITTEE RECOMMENDATION

N/A

12. TIMELINE FOR IMPLEMENTATION

Upon approval of this motion, the Employment Agreement Amendment reflecting the increased base salary will be signed and the salary increase will be implemented.

13. ATTACHMENTS

- Superintendent Nyland's November 18, 2015 employment contract and Amendment 1
- Agreement Amendment No. 3

SEATTLE SCHOOL DISTRICT NO. 1
SUPERINTENDENT'S EMPLOYMENT AGREEMENT

AMENDMENT No. 1

THIS Amendment No. 1 ("Amendment") is entered into by and between the Board of Directors ("Board") of Seattle School District No. 1 ("District"), and Dr. Larry Nyland ("Superintendent"), amending the Superintendent's Employment Agreement that commenced on February 1, 2015 (the "Agreement") employing Dr. Larry Nyland as Superintendent for the District.

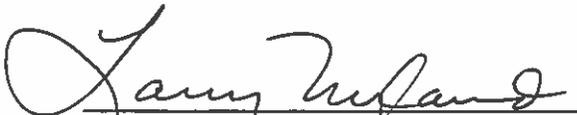
NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Board and Superintendent ("Parties") agree as follows:

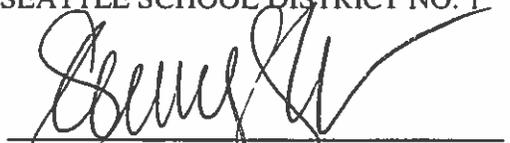
- A. Paragraph I.A of the Agreement shall be modified to read as follows: "This Agreement shall be effective upon executive of both Parties and shall expire on June 30, 2018, unless extended by mutual written agreement."
- B. Paragraph III.A of the Agreement shall be modified to read as follows: "Commencing September 1, 2015 through August 31, 2016, the Superintendent shall receive an annual salary of \$289,878.75." All other terms in Paragraph III.A are unchanged.
- C. All other terms of the Agreement not expressly modified by this Amendment shall remain in full force and effect.

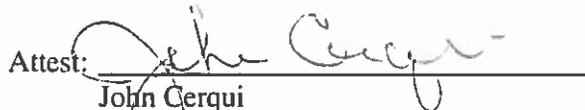
BY SIGNING BELOW, the Parties agree to modify the Agreement based on the terms contained in this Amendment.

LARRY NYLAND

SEATTLE SCHOOL DISTRICT NO. 1


Larry Nyland, Superintendent
Date: 11-18-15


Sherry Carr, President Board of Directors
Date: 11/18/15

Attest: 
John Cerqui
Acting General Counsel
Date: 11/18/15

SEATTLE SCHOOL DISTRICT NO. 1

SUPERINTENDENT'S EMPLOYMENT AGREEMENT

This Superintendent's Employment Agreement ("Agreement") is entered into by and between the Board of Directors ("Board") of Seattle School District No. 1 ("District") and Larry Nyland ("Superintendent"). In accordance with the Board's action of January 7, 2015, the District hereby employs the Superintendent as the Superintendent of Schools for the District. This Agreement replaces the Interim Superintendent's Employment Agreement, effective July 22, 2014. The Agreement shall be effective February 1, 2015.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Board and Superintendent (collectively referred to as the "Parties") agree as follows:

I. TERM

- A. This Agreement shall be effective upon execution of both Parties and shall expire on June 30, 2017, unless extended by mutual written agreement.

II. POWERS AND DUTIES

- A. In accordance with state law, including RCW 28A.400.010 and RCW 28A.400.030 and the rules, policies and procedures as established by the Board, including School Board Policy 1640, the Superintendent shall serve on a full time basis and have charge of the administration of the schools; shall be the chief executive officer and chief administrative officer of the District and official secretary for the Board; shall direct and assign teachers, principals, and other employees of the schools under the Superintendent's supervision; shall organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the District; shall select, place, and transfer personnel; shall implement and from time to time suggest and recommend the adoption or amendment of policy or procedure deemed necessary for the well ordering of the District; and, in general, the Superintendent shall perform all duties incident to the Office of the Superintendent and carry out such other duties and directives as may be prescribed by the Board from time to time; all subject to the approval of the Board to the extent required by law.
- B. The Superintendent shall devote his or her entire work time, attention, and energy to the business of the District and related professional activities. Nothing herein shall prohibit the Superintendent from using earned vacation days pursuant to this Agreement to undertake consulting work, speaking engagements, writing, lecturing, or other professional duties and obligations, provided each undertaking does not interfere with, or create a conflict with his performance of his duties under this Agreement or violate Board Policy No. 5251, "Ethics".

III. EMPLOYMENT PROVISIONS

- A. Commencing February 1, 2015 through August 31, 2015, the Superintendent shall receive an annual salary of \$276,075. For each ensuing year of employment and no later than the first legislative meeting of the School Board in December, the Board following discussions with the Superintendent shall determine whether or not to increase this annual salary, taking into account the compensation paid to the superintendents of similar urban school districts. Because the new rate of pay reflects in significant part performance over the previous school year, the new rate of pay shall be effective the previous September 1. Under no circumstance shall the annual rate be decreased from that of the previous year.
- B. The Superintendent shall receive the medical, dental and vision insurance benefits as provided to other classified supervisory personnel. The Superintendent shall be allowed such sick leave and other leaves and fringe benefits as are provided to other classified supervisory personnel.
- C. The Superintendent shall receive 30 days of vacation annually, exclusive of legal holidays. If the Superintendent's responsibilities materially limit the Superintendent's annual utilization of vacation, the Superintendent may choose for up to 30 days to be carried over to an ensuing year as measured on July 1 of each year for a total maximum of 60 days for any year, or may elect to receive compensation for all such unused vacation based on 218 work days per year. Unused vacation will be compensated upon termination of employment as Superintendent based on 218 work days per year.
- D. The Superintendent will be entitled to the use of a District provided cell phone and laptop computer with Internet connection, all for official business in accordance with law and District policy.
- E. In lieu of expense reimbursement for in-District travel on District business, the Superintendent shall receive \$700 per month for operation of a personal automobile for work-related travel within the school system and community. (Pursuant to RCW 42.24.090, it is the determination of the Board that this means of reimbursement is less costly than providing an automobile to the Superintendent.) Any use of a personal vehicle for travel on District business outside of the District shall be reimbursed in accordance with District policy and regulations for reimbursement.
- F. The District will pay the Superintendent's dues in educational professional associations and for the expenses of attending the meetings and conferences of those professional associations. Any other membership to other organizations shall be subject to the approval of the Board's Executive Committee. The time spent by the Superintendent in attending local, state and national professional organization will be part of the Superintendent's normal business and shall not be considered personal or vacation time. The District also expects the Superintendent to participate in civic and community organizations and thus the District shall pay for the annual dues for the Superintendent to be a member of civic or community organizations, subject to approval of the Board's Executive Committee.

- G. On or before June 30th of each year of this Employment Agreement beginning with the 2014-15 school year, the District shall make a contribution to the Superintendent's 403(b) Tax Sheltered Annuity ("TSA") Plan of his or her choosing in the amount of \$24,000. The contribution made for June 30, 2015 shall be 5/12ths of this amount, This contribution shall be reported to the Washington State Retirement System as salary compensation as may be permitted by the regulations of that agency.
- H. The Superintendent agrees that during and after the Agreement ends that he will participate in any administrative, judicial, or other hearing to defend any decisions made by the Superintendent or the District. The Parties agree that the Superintendent will be paid for such participation at the hourly rate for his salary, with a four hour minimum, plus reasonable travel expenses if necessary.

IV. TERMINATION; SEVERANCE PAY

- A. This Agreement may be terminated by:
1. Mutual agreement;
 2. Retirement, provided the Superintendent gives the Board at least six months' notice of the proposed retirement;
 3. Resignation, provided the Superintendent gives the Board at least six months' notice of the proposed resignation;
 4. A permanent disability that makes the Superintendent unable to perform the duties of superintendent, as described in Article IV.C. below. For the purpose of this Agreement "permanent disability" means a medically determinable physical or mental impairment of the Superintendent, which (1) results from the Superintendent's sickness or injury; (2) requires the regular care of a medical doctor, for which the Board may require a doctor's report as proof; and (3) for a period of four (4) consecutive months prevents the Superintendent from performing the substantial and material duties of superintendent. The existence of a permanent disability shall be based on a medical opinion from a physician acceptable to both the Superintendent and the Board. In the event the Parties are not able to agree on the choice of a physician, each shall select a physician who, in turn, shall select a third physician to render such medical opinion. The District shall pay all costs relating to the determination of whether the Superintendent has incurred a permanent disability. This provision shall not preclude the District and Superintendent from engaging in the interactive process to determine whether a reasonable accommodation could be provided to permit the Superintendent to perform the essential functions of the position.
 5. The Board may terminate without cause the Superintendent's employment with the District at any time prior to the expiration of this Agreement. If the Board exercises this option to terminate, the District shall pay the Superintendent, as severance pay, twelve months compensation. This severance pay shall be paid in twelve separate monthly installments The Superintendent shall be entitled to

COBRA benefits, and the District shall pay the costs of such benefits for a period of 12 months.

6. The Board may terminate the Superintendent's employment if it determines, in its sole discretion, that probable cause exists. Probable cause includes, but is not limited to violation of the conduct, behaviors, or actions listed in the District's Policy on Unprofessional Conduct of Staff (Policy No. 5006) and Staff Disciplinary Action and Discharge (Policy No. 5281).

The Board shall not terminate this Agreement under this Paragraph 6 until a written statement of the cause for termination, including the underlying facts giving rise thereto, has first been delivered to the Superintendent. The Superintendent shall then be entitled to a conference with the Board, at which time the Superintendent shall be given a reasonable opportunity to address the written statement of grounds for termination, including the underlying facts. The Superintendent shall have the right, at his own expense, to have a representative of his choice at the conference with the Board.

The Superintendent may appeal any final decision by the Board to terminate his contract based on probable cause under the terms and conditions contained in RCW 28A.405.300. If the Superintendent does not appeal the termination decision, or if the decision is upheld by the hearing officer, all the Board's compensation obligations contained in this Agreement shall terminate except that the Superintendent shall be entitled to lump sum compensation for accrued vacation earned under the terms of this Agreement, subject to the limitation on vacation accrual set forth in paragraph C of Article III of this Agreement. Any other allowances provided in this Agreement above shall also cease.

If the Superintendent appeals the decision to terminate his contract under RCW 28A.405.300, he shall continue to be paid until the hearing officer renders a decision.

7. Death.
 - B. Additional Circumstances Warranting Severance Pay: If a termination under paragraph A.6 above is determined to lack sufficient cause or if there be a finding that the Superintendent is not disabled as provided in paragraph A.4 of this Article, the District shall pay the Superintendent severance pay as set forth in this paragraph, and shall reimburse him or her for any reasonable attorney's fees and legal costs the Superintendent expended to challenge such actions. Severance under these circumstances shall be equal to twelve (12) months salary, to be paid in equal monthly installments. The Superintendent shall be entitled to COBRA benefits. The District will pay the costs of the benefits for the duration of the period of severance pay.
 - C. By written notice to the Superintendent, the Board may terminate this Agreement at any time after the Superintendent has been absent from performing the duties under this Agreement for whatever cause for a continuous period of four months. All obligations of

the Board shall cease upon such termination, except for the Superintendent's right to remain in inactive employment status and utilize available accrued leave. The Board reserves the right to require the Superintendent to submit to a medical examination, either physical or mental, when the Board reasonably questions the Superintendent's medical fitness for duty. In such case the procedures in Article IV, paragraph A.4 shall be followed.

V. EVALUATION

- A. The Board shall evaluate the Superintendent's performance annually in November of each year, based on annual goals discussed and agreed upon by the Board and Superintendent by January of that year. Any of the timelines and deadlines pertaining to the evaluation of the Superintendent's performance may be adjusted at the request of either party by mutual written agreement of the Board and the Superintendent.

VI. INDEMNIFICATION

- A. As provided in School Board Policy 6530 (Insurance) the District shall defend and indemnify the Superintendent against claims or actions against him arising out of an act or omission occurring within the scope of his employment.

VII. MISCELLANEOUS

- A. If any provision of this Agreement should be found contrary to law, the remainder of the Agreement shall continue in effect.
- B. This Agreement constitutes the entire understanding and agreement between the Parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the Parties with respect to the subject matter hereof. There are no additional verbal or written agreements that add to, subtract from or modify the terms thereof. This Agreement may be modified only by written agreement signed by the Parties.
- C. If any dispute, proceeding or lawsuit related to the Superintendent's employment under this Agreement ("Dispute") arises, the Parties shall seek to resolve the Dispute through mediation. Either party may give written notice to the other party. The Parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from JAMS Seattle or another mutually agreeable mediation service if they have been unable to agree upon such appointment within ten working days following submission of the Dispute to mediation. The Parties shall seek in good faith to commence the mediation not later than 60 days after the notice of mediation is delivered.
- D. Any suit or action relating to this Agreement shall be brought exclusively in King County, Washington. In any such action, the substantially prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the other party.

- E. Any notice required to be given under this Agreement shall be deemed sufficient if it is in writing and sent by mail to the residence of the Superintendent or to the President of the Board at District offices or hand delivered to the Superintendent or President, as applicable.
- F. This Agreement may be altered, amended, or terminated on terms arrived at by mutual written consent of the Parties hereto.

SUPERINTENDENT



Superintendent

Date: 1/29/15

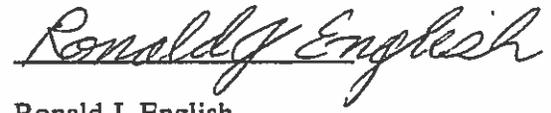
SEATTLE SCHOOL DISTRICT NO. 1



Sherry Carr
President, Board of Directors

Date: 1/29/15

Attest:



Ronald J. English
General Counsel to the
Board of Directors

Date: 2/4/15

SEATTLE SCHOOL DISTRICT NO. 1
SUPERINTENDENT'S EMPLOYMENT AGREEMENT
AMENDMENT NO. 3

THIS Amendment No. 3 ("Amendment") is entered into by and between the Board of Directors ("Board") of Seattle School District No. 1 ("District"), and Dr. Larry Nyland ("Superintendent"), amending the Superintendent's Employment Agreement that commenced on February 1, 2015 ("The Agreement") employing Dr. Larry Nyland as Superintendent for the District.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Board and the Superintendent (collectively referred to as the "Parties") agree as follows:

- A. Paragraph I.A of the Agreement shall be modified to read as follows: "This Agreement shall be effective upon execution of both Parties and shall expire on June 30, 2018. The parties further agree that the School Board shall have, at its sole discretion, the option to extend the Superintendent's contract up to six months, to December 31, 2018, by mutual written consent. Notice of intent to exercise the extension must be given by April 30, 2018, 60 days before the termination of the agreement.
- B. The first sentence of Paragraph III.A of the Agreement shall be modified to read as follows: "Commencing September 1, 2016 through June 30, 2017, the Superintendent shall receive an annual salary of \$295,096.57." The third sentence of Paragraph III.A shall be modified to read as follows: "Because the new rate of pay reflects in significant part performance over the previous school year, the new rate of pay shall be effective the previous July 1." All other terms in Paragraph III.A are unchanged.
- C. All other terms of the Agreement not expressly modified by this Amendment shall remain in full force and effect.

BY SIGNING BELOW, the Parties agree to modify the Agreement based on the terms contained in this Amendment.

LARRY NYLAND

SEATTLE SCHOOL DISTRICT NO. 1

Larry Nyland, Superintendent

Betty Patu, President, Board of Directors

Date: _____

Date: _____