

SEVERANCE AGREEMENT AND GENERAL RELEASE

This Severance Agreement and General Release ("Agreement") is made and entered into by and between Jon Gundry, for himself and his heirs, successors and assigns (hereinafter "Superintendent"), and the Santa Clara County Board of Education (hereinafter referred to as "Board") (collectively, the "Parties"), and shall become effective as provided in section 21 below (the Effective Date).

WHEREAS, Superintendent has been employed by the Board pursuant to an employment agreement between the Parties dated July 16, 2014, as amended July 15, 2015 and July 20, 2016 (the "Employment Agreement");

WHEREAS, the Parties have agreed that Superintendent's employment shall end on November 15, 2017 (the "Final Date"), before the expiration of the current term of his Employment Agreement;

WHEREAS, Superintendent will continue to devote his full time energy, time and attention to his duties as Superintendent through the Final Date, and will take appropriate steps during such time, in consultation with the Board, for a smooth transition;

WHEREAS, the Parties desire to resolve all matters between them; to settle, fully and finally any and all claims or disputes between them in any way related to Superintendent's employment by the Board and otherwise; and to finalize their working relationship as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. **Payment to Superintendent.** Within ten (10) days of the Effective Date, the Board shall issue to Superintendent a check in the amount of One Hundred Fifty Thousand Eight Hundred Ninety-Three Dollars (\$150,893.00) gross, less applicable deductions and withholdings, made payable to Superintendent (the "Payment"). The Board will issue applicable W-2 form(s) for this payment. The parties acknowledge that such payment is given in consideration for this Agreement and is not otherwise owing or payable to Superintendent.

2. **Continuation of Medical Insurance Benefits.** The cost of Superintendent's medical, dental and vision benefits under COBRA, if elected by him, shall be covered by the Board through July 31, 2018, or until such earlier time as Superintendent receives medical benefits through a subsequent employer.

3. **Acknowledgement of Wages Paid and No Other Amounts Due.** Superintendent acknowledges that he has been paid any and all salary, bonuses, incentives, automobile allowances, reimbursements, professional dues, electronic communications expenses, relocation benefits, deferred compensation for 2016 and earlier, and other amounts due from

Releasees, and that no other amounts are due to Superintendent from Releasees, except for the Payment and medical insurance benefits provided for herein.

4. Termination of Employment Agreement

a. The Employment Agreement shall be deemed terminated as of the Final Date, except as to sections 12 and 13 of the Employment Agreement, respecting indemnification and tax / retirement issues, which shall continue to apply.

b. All Superintendent's rights and benefits of employment under the Employment Agreement, including but not limited to base salary, termination amounts, health and welfare benefits, life insurance, expense reimbursements, automobile allowance, performance incentives, professional dues, relocation expenses, notice periods, and retirement benefits, shall end on the Final Date, and the Board has no further obligations to Superintendent as of that date, except as provided herein.

c. Superintendent acknowledges that no contributions or credits relating to retirement plans are owing by the Board for his account. The parties further acknowledge and agree that Superintendent will not be deemed eligible for the July 1, 2017 deferred compensation payment under the Employment Agreement and no such deferred compensation is due or owing.

5. Non-Defamation. The Parties acknowledge and agree that they will not make any libelous, slanderous or defamatory statements directly or indirectly concerning the other Party or the Releasees, as defined below, to any person or entity. Superintendent shall direct all reference requests for potential employers to the president of the Board, who will provide the title of the position held by Superintendent and the dates of employment, and no other information. The Parties will prepare a brief and mutually agreeable press release, addressing Superintendent's departure and the cessation of the employment relationship.

6. Reimbursement of Cash Settlement. The cash severance amount related to the termination of the Employment Agreement, that is, the Payment made hereunder to Superintendent, shall be fully reimbursed to the Board by Superintendent in the event Superintendent is convicted of a crime involving an abuse of his office or position. "An abuse of office" means either an abuse of public authority, including but not limited to waste, fraud and violation of the law under color of authority, or a crime against public justice, including but not limited to a crime described in Title 7 of the California Penal Code starting with section 92 *et seq.*

7. Release. Superintendent hereby releases and forever discharges the Board, the Santa Clara County Office of Education, and all of their affiliates, related entities, predecessors, successors, and past and present Board members, officers, directors, employees, agents, attorneys, benefit plans, insurers, and representatives, and Superintendent's employees, hereinafter "Releasees") from any and all claims of whatever nature, whether known or unknown, which exist or may exist on Superintendent's behalf against Releasees or any of them as of the Effective Date of this Agreement, including but not limited to any and all tort claims, contract claims, equitable claims, breach of fiduciary duty claims, ERISA claims, wrongful

termination claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, claims for attorney fees, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance covering discrimination in employment, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, including discrimination based on race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, harassment, or retaliation, and other legally protected categories.

This release does not extend to any obligations incurred under this Agreement nor to any claim for Workers Compensation benefits. The Parties agree that this release of claims shall not apply to any rights or claims that cannot be released by Superintendent as a matter of law. Superintendent is not releasing any rights he may have to be indemnified as a former employee of the Board, arising under the Employment Agreement and under applicable law. Nothing in this Agreement shall prevent him from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing, or any other state fair employment agency, except that he hereby acknowledges and agrees that he shall not recover any monetary benefits in connection with any such proceeding with regard to any claim released in this Agreement.

Superintendent acknowledges and agrees that any breach of this Section 7, where he is found to be in breach by the competent authority with jurisdiction over the case, shall entitle the Board immediately to recover the Payment. Superintendent shall also be responsible to the Board for all costs, attorneys' fees and any and all damages incurred by the Board in (a) enforcing this obligation, including the bringing of any suit or arbitration proceeding to recover the monetary consideration, and (b) defending against a claim or suit or arbitration proceeding improvidently brought or pursued by Superintendent under this provision.

8. No Filing of Claims. Superintendent represents and warrants that he does not presently have on file nor does he intend to file any claims, charges, grievances, actions, appeals or complaints against Releasees or any of them with any administrative, state, federal or governmental entity, agency, board or court, or before any other tribunal or arbitrator(s), public or private, based upon any actions occurring prior to the Effective Date of this Agreement.

9. Waiver of Unknown Claims. Superintendent hereby expressly waives and relinquishes any and all claims, rights or benefits that he may have under California Civil Code Section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.”

In connection with such waiver and relinquishment, Superintendent acknowledges that he may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but that he expressly agrees to fully, finally and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may

exist on his behalf against Releasees at the time of execution of this Agreement. The Parties further acknowledge, understand and agree that this representation and commitment is essential to each Party and that this Agreement would not have been entered into were it not for this representation and commitment.

10. Non-Admission of Liability. The Parties acknowledge that they each deny any wrongdoing whatsoever in connection with one another and that the promises made pursuant to this Agreement are made solely for the purpose of compromising disputed claims and avoiding the time, expense and uncertainty of litigation. It is expressly understood and agreed that nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of either party.

11. No Precedent. This Agreement shall not establish or set a precedent for settlements with employees in the future. This settlement is unique to the circumstances and facts in this instance.

12. Public Record. The Parties recognize that, once final, this Agreement is a public record and must be made available to the public upon request, or as otherwise required by law.

13. Acknowledgment of Waiver of Claims under ADEA and Right to Revoke. Superintendent acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 (“ADEA”), and that this waiver and release is knowing and voluntary. Superintendent agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Superintendent acknowledges that the consideration given for this waiver and release is in addition to anything of value to which he was already entitled.

Superintendent further acknowledges that he has been advised by this writing that:

- (a) he should consult with an attorney prior to executing this Agreement;
- (b) he has twenty-one (21) days within which to consider this Agreement;
- (c) he has seven (7) days following his execution of this Agreement to revoke this Agreement;
- (d) this Agreement shall not be effective until after the revocation period has expired; and
- (e) nothing in this Agreement prevents or precludes Superintendent from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law.

In the event Superintendent signs this Agreement and returns it to the Board in less than the 21-day period identified above, he hereby acknowledges that he has freely and voluntarily chosen to waive the time period allotted for considering this Agreement.

If Superintendent signs this Agreement and chooses to revoke within the seven day period following execution of the Agreement, he may send written notice of revocation to:

Dr. Michael Chang
Board President
Santa Clara County Office of Education
1290 Ridder Park Drive
San Jose, CA 95131

This Agreement will become effective on the eighth day after its execution if not revoked.

14. Construction. The Parties agree that this Agreement shall be construed without regard to the drafter of the same and shall be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.

15. Arbitration. The Parties agree to resolve by arbitration all claims or disputes arising out of this Agreement or Superintendent's employment or termination (the "Claims"), except workers compensation claims, that either party may have against the other, including all the Releasees, as follows:

- (a) Arbitration shall be with the American Arbitration Association ("AAA") in accord with its then current National Rules for the Resolution of Employment Disputes (the "Rules"), a copy of which is available to Superintendent on request or through AAA's website, www.adr.org. The Arbitration shall be before a single arbitrator, taking place in Santa Clara County. Each party shall have the right to take written discovery and depositions as provided under the California Code of Civil Procedure. The arbitrator's decision shall be a reasoned decision and shall be final and binding upon the parties.
- (b) If a claimant alleges violation of a statute, including, without limitation, the California Fair Employment and Housing Act, the 1964 Civil Rights Act, the Age Discrimination in Employment Act, or the Americans with Disabilities Act, Employer will advance all costs of arbitration that would not be incurred if the dispute were litigated in court, including the fees of the arbitrator and any arbitration administrative fees.
- (c) Except as set forth above, or as otherwise provided by statute, each party shall pay its own costs and attorneys' fees. Additionally, should either party attempt to resolve a Claim by any method other than arbitration, the prevailing party in any court motion to compel arbitration will be entitled to recover from the other party all costs and attorneys' fees incurred as a result of that motion to compel.

THE PARTIES UNDERSTAND THAT, BY THIS AGREEMENT, THEY ARE WAIVING THEIR RIGHT TO HAVE A CLAIM ADJUDICATED BY A COURT OR JURY.

THE PARTIES FURTHER UNDERSTAND AND AGREE THAT THEY ARE WAIVING THEIR RIGHT TO BE A PARTY OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING ALLEGING ANY CLAIMS.

16. **Entire Agreement.** This Agreement constitutes a single, integrated, written contract, expressing the entire agreement between the Parties. It supersedes all prior agreements between the Parties, except as provided herein. The Parties represent and warrant that they are not relying on any promises or representations that do not appear written herein. The Parties further understand and agree that this Agreement can be amended or modified only by a written agreement, signed by the Parties hereto.

17. **Severability.** If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

18. **Counterparts.** This Agreement may be executed in separate counterparts and each such counterpart shall be deemed an original with the same effect as if both Parties had signed the same document.

19. **Authority to Enter Into Agreement.** This Agreement is contingent upon approval by the Board as required by law.

Each party represents and warrants that, as of the date of the execution of this Agreement, he or it has the right and authority to execute this Agreement, and he or it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims or demands relating to any right surrendered by virtue of this Agreement. Each of the Parties and his or its signatory represents that the signatory is fully authorized to execute this Agreement on behalf of the party for whom such person is signing.

20. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of California.

This Agreement shall be deemed to have been entered into in San Jose, California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Agreement, such action shall be brought in the State of California.

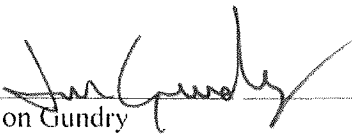
21. **Effective Date.** Pursuant to the provisions of ADEA, Superintendent has seven (7) days after signing this Agreement to revoke it as provided herein. This Agreement will become effective on the eighth (8th) day after Superintendent signed this Agreement, so long as it has been signed by the parties and has not been revoked before that date (the "Effective Date").

22. **Voluntary Execution of Agreement.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

- (a) they have had a reasonable time within which to consider whether to sign this Agreement;
- (b) they have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice;
- (c) they have read and understand the terms and consequences of this Agreement and of the releases it contains;
- (d) they are fully aware of the legal and binding effect of this Agreement and fully aware that the settlement and compromise stated herein is final and conclusive; and
- (e) they have freely consented to and authorized this Agreement.

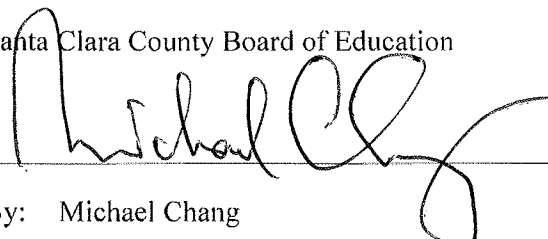
Superintendent

DATED: 10/31/2017



Jon Gundry

DATED: 11/8/2017

Santa Clara County Board of Education


By: Michael Chang
Its: President