

UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

NICOLE WILLIAMS,

Petitioner,

-against-

Appeal No. 20750

BOARD OF EDUCATION OF THE
POUGHKEEPSIE CITY SCHOOL DISTRICT,
SHEREEN CADER, JOHN SAMMON,
Respondents.

VERIFIED REPLY

From actions of the Board of Education restricting
teacher transfers and rescinding a directive of the
Superintendent regarding transfer of a teacher.

Petitioner, Dr. Nicole Williams, by her attorney, Stanley J. Silverstone, Esq., as and for her
Verified Reply, respectfully states as follows:

1. Respondents' defenses have no merit and are largely irrelevant to the legal issues raised in this appeal, namely (i) whether the Board's July 14, 2017 preemptive moratorium on all teacher transfers in the District for the 2017-18 school year (Resolution 18-0013) violates Education Law §§ 1711 and 2508; and (ii) whether the Board's September 1, 2017 directives instructing three teachers to disregard the Petitioner's transfer orders violated Petitioner's receivership authority under Education Law § 211-f. Both of these questions should be answered in the affirmative.

2. Respondents' first defense asserts that the actions of the Board were lawful and necessary to protect its students and staff. (Affirmative Defenses ¶ 1). However, as stated in the Petition, and above, the Board's moratorium and September 1 directives were not lawful, whether or not the Board believed its actions to be "necessary to protect its students and staff." Neither the Education Law nor other applicable law provides any such exception or recognizes such a defense. In addition, this defense further displays the Board's failure to recognize the limits of its jurisdiction and the parameters of the Superintendent's jurisdiction.

3. Respondents' second defense asserts that Petitioner's actions constituted willful violations of law and lawful Board directives. (Affirmative Defenses ¶ 2). However, as stated in the Petition, the Petitioner took lawful action pursuant to her authority under the Education Law as Superintendent and Receiver of Poughkeepsie Middle School. The Board's moratorium and September 1 directives were not lawful actions pursuant to the Education Law.

4. Petitioner unequivocally denies that her transfers of Respondents Shereen Cader and John Sammon were retaliatory, as alleged in Respondents' third defense. (Affirmative Defenses ¶ 3). *See* Petitioner's accompanying Reply Affidavit.

5. Petitioner denies that she failed to immediately report the transfers to the Board, as alleged in Respondents' fourth defense. (Affirmative Defenses ¶ 4). Petitioner reported the June 15, 2017 transfers to the Board in an Executive Session meeting in June 2017. Petitioner reported the August 28, 2017 transfers to the Board in a memorandum to the Board on August 28, 2017. *See* Petitioner's accompanying Reply Affidavit. In any event, the law does not provide that a preemptive moratorium or a violation of the receivership law is a remedy for a superintendent's failure to immediately report teacher transfers.

6. Respondents' fifth defense asserts that Petitioner acted with willful disregard to the elementary school and middle school students of the schools involved in the transfers by directing the transfers of Cader and Sammon on August 28, 2017. (Affirmative Defenses ¶¶ 5-8). However, the Board's opinion as to the effect of Petitioner's decisions is not relevant to the legal issues raised in this appeal, and Petitioner did not act with "willful disregard." *See* Petitioner's accompanying Reply Affidavit.

7. Respondents' sixth defense asserts that by transferring Cader and Sammon on August 28, 2017, Petitioner acted in willful disregard of the wishes of Cader, Sammon and the respective principals of Warring and Krieger and in willful disregard of the students at both schools

and the parents of those students. (Affirmative Defenses ¶ 9). However, as stated above, the Board's opinion as to whether Petitioner's transfer directives disregarded the wishes of staff, students and parents is not relevant to the legal issues raised in this appeal, and Petitioner did not act with "willful disregard." *See* Petitioner's accompanying Reply Affidavit. This defense also highlights the need for the relief requested in the Petition. This Board seems to believe that the desires of the students, parents and teaching staff are superior to the educational judgment of the Superintendent on matters of day-to-day operation of the District. Such a position merely flaunts the total disregard of law inherent in this Board and the desperate need for corrective action by the Commissioner.

8. Finally, there is no merit to Respondents' catch-all defense of failure to state a cause of action. (Affirmative Defenses ¶ 10). Petitioner has clearly stated a cause of action (i) that the Board's moratorium on teacher transfers violates the Superintendent's transfer authority under Education Law §§ 1711(2)(e) and 2508(5); and (ii) that the Board's September 1, 2017 directives violate Petitioner's receivership authority under Education Law § 211-f, which grants the Petitioner, as Receiver of Poughkeepsie Middle School, "the power to supersede any decision, policy or regulation of the superintendent of schools or chief school officer, or of the board of education or another school officer or the building principal that in the sole judgment of the receiver conflicts with the school intervention plan." Education Law § 211-f(2)(b).

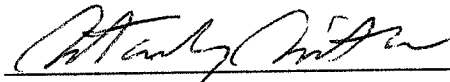
9. In addition to requesting the dismissal of the appeal, the Respondents also seek to punish the Petitioner for filing this appeal. Respondents' request – the removal of Petitioner as Receiver and as Superintendent of Schools, and the suspension or revocation of Petitioner's certification – is blatantly retaliatory and inappropriate, and should be denied. The granting of such a punitive request, which is not authorized by Education Law § 310, would permanently discourage any aggrieved school employee from ever filing an appeal under § 310 for fear of losing his or her job, license, or certification. Respondents' request to remove Petitioner as Superintendent also

violates the Petitioner's employment contract, which provides that termination must be by mutual agreement (Contract ¶ 23(a)), resignation (Contract ¶ 23(b)), or for just cause (Contract ¶ 24). A copy of the Petitioner's current employment contract is attached hereto as Exhibit A. A "just cause" termination under ¶ 24 of the Contract entitles the Petitioner to a fair hearing on charges brought by the Board, full pay and benefits during the pendency of the hearing and any appeals, and costs and attorneys' fees if the charges are not sustained.

10. Therefore, for the reasons stated herein, in the accompanying Reply Affidavit of the Petitioner, and in the Petition and its supporting documents, the Petitioner respectfully submits that she is entitled to the relief requested in the Petition herein.

Dated: November 3, 2017

Respectfully submitted,



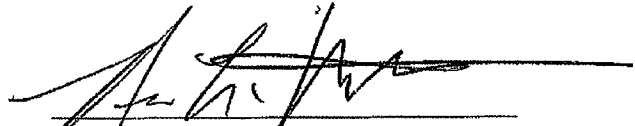
Stanley J. Silverstone
Law Office of Stanley J. Silverstone
10 Esquire Road, Suite 12
New City, NY 10956
Tel. (845) 215-9522
Fax: (845) 215-0131
sjs@sjsilverstone.com

Attorney for Petitioner

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF DUTCHESS)

NICOLE WILLIAMS, being duly sworn, deposes and says that she is the petitioner in this proceeding; that she has read the annexed Reply and knows the contents thereof; that the same is true to the knowledge of deponent except as to matters therein stated to be alleged upon information and belief, and as to those matters she believes them to be true.



NICOLE WILLIAMS

Sworn to before me this
3rd day of November, 2017



NOTARY PUBLIC

Lisa Clark
Notary Public, State of New York
Qualified in Dutchess County
Commission Expires Nov. 24, 2020

EXHIBIT A

EMPLOYMENT PROVISIONS

AGREEMENT made this 21st day of June 2017, by and between the BOARD OF EDUCATION OF THE POUGHKEEPSIE CITY SCHOOL DISTRICT with offices for the transaction of business located at 11 College Avenue, Poughkeepsie, New York (hereinafter referred to as the "BOARD") and DR. NICOLE WILLIAMS (hereinafter referred to as the "SUPERINTENDENT")

WITNESSETH:

WHEREAS, the BOARD is desirous of continuing to employ DR. NICOLE WILLIAMS as its SUPERINTENDENT OF SCHOOLS for the term of employment more particularly set forth herein; and

WHEREAS, the BOARD shall continue the appointment of DR. NICOLE WILLIAMS as SUPERINTENDENT pursuant to the terms and provisions of Section 2508 of the Education Law of the State of New York effective June 21, 2017;

WHEREAS, all previous employment agreements and addendums to such agreements entered into by the Board and the Superintendent are hereby null and void;

NOW, THEREFORE, in consideration of the agreements hereinafter set forth and other good and valuable consideration, it is agreed:

1. Term of Employment

- (a) The SUPERINTENDENT's term of employment pursuant to this contract shall commence on June 21, 2017 and shall continue to and until June 20, 2022.

- (b) No later than June 1, of each year of this agreement, the BOARD and the SUPERINTENDENT shall meet to consider extending the term of the SUPERINTENDENT's employment and to discuss other changes to the employment agreement.

2. SUPERINTENDENT's Duties and Responsibilities.

- (a) DR. WILLIAMS as SUPERINTENDENT OF SCHOOLS shall be the Chief Education and Chief Administrative Officer of the POUGHKEEPSIE CITY SCHOOL DISTRICT and shall have the power and obligation to perform all those duties and to accept all those responsibilities assigned to a Superintendent as are:

- i. set forth in the Education Law of the State of New York, other statutes of the State of New York, or the Rules and Regulations of the Commissioner of Education or BOARD of Regents, including any amendments or successor statutes thereto and relate specifically to Superintendent duties and responsibilities;
- ii. specified in the policy manual of the BOARD, provided however the Superintendent shall not be responsible for ministerial duties within the policy manual nor those functions statutorily prescribed to the Board Clerk and further that the Superintendent shall be entitled to request that the Board prioritize the tasks assigned to her and assign reasonable timelines for completion.

iii. normally associated with the position of SUPERINTENDENT OF SCHOOLS, including, but not limited to, curriculum and instruction, organization of the DISTRICT, assignment and reassignment of instructional and non-instructional staff, budget formulation and administration, business administration, public relations, personnel management and labor relations.

- (b) Pursuant to New York State Education Law § 211-c the SUPERINTENDENT shall cooperate fully with any distinguished educator appointed by the Commissioner of Education.
- (c) The SUPERINTENDENT shall have the right to make recommendations to the BOARD as a prerequisite to the appointment or termination of employment of both instructional and non-instructional employees, including any extensions of a probationary employee's probationary period.
- (d) With respect to their relationships to one another and the determination of their respective powers and duties, the BOARD and the SUPERINTENDENT acknowledge that they are both subject to the laws of the State of New York and the applicable rules and regulations of the BOARD of Regents and the Commissioner of Education of the State of New York.
- (e) The SUPERINTENDENT shall have the sole power to assign her personal secretary and the BOARD hereby agrees that the position of Secretary to the Superintendent shall not be abolished for the duration of this employment

contract. The Board agrees that it will not seek to terminate the employment of the person assigned to serve as the Secretary to the Superintendent without the written recommendation of the Superintendent

- (f) The SUPERINTENDENT shall have the right to attend, all meetings of the BOARD, including executive sessions, except such meetings or parts thereof at which the Superintendent's performance evaluation or compensation is discussed between the Board Members in executive session
- (g) During the term of this Contract, the SUPERINTENDENT shall have the exclusive right to occupy her current office space which she has occupied since becoming Superintendent of Schools in July 2013 located in the District's Jane Bolin Administration Building at 11 College Avenue, Poughkeepsie New York. The Superintendent shall also have the right to direct the use of the conference room adjacent to her offices during her employment with the District. These rights may not be restricted in anyway by the BOARD.

3. BOARD/SUPERINTENDENT Communications

- (a) By August 1, 2017, the BOARD and the SUPERINTENDENT will meet to discuss the process and procedures by which they will communicate. In addition, the BOARD shall provide periodic opportunities for the BOARD and the SUPERINTENDENT to discuss SUPERINTENDENT/BOARD communications and relationships.

- (b) The BOARD and/or individual Board members will promptly, confidentially and discretely refer to the SUPERINTENDENT in writing any criticism, complaint or suggestion within one school day for her study and recommendation regarding the administration of the DISTRICT or the SUPERINTENDENT's performance of her duties. In addition, individual BOARD members shall not give direction to the SUPERINTENDENT or any DISTRICT employee regarding the management of the DISTRICT or the solution of specific problems. Only the BOARD, with support of a majority of BOARD members may direct the Superintendent to take any action within the scope of her duties under law as a SUPERINTENDENT and the BOARD may not direct the SUPERINTENDENT to take any actions that are outside of her scope of duties under law.

4. Certification and Work Ethic.

The SUPERINTENDENT shall furnish throughout the life of this appointment a valid and appropriate certificate as defined in 8 NYCRR Part 80.4 to act as SUPERINTENDENT in the State of New York, as directed by the BOARD, and the SUPERINTENDENT hereby agrees to devote her time, skill, labor and attention to said employment during the term of this appointment;

5. Base Salary and Retirement

- (a) The SUPERINTENDENT's base salary for the period from June 21, 2017 to June 30, 2017 shall be ONE HUNDRED NINETY THOUSAND (\$190,000.00) with such salary prorated for such period.

- (b) For the years July 1, 2017 to June 30, 2018 and each school year thereafter for the term of the contract the SUPERINTENDENT's base salary shall increase at a minimum of two percent (2%) over the prior year's base salary.
- (c) The SUPERINTENDENT's base salary shall not be reduced from the previous year's amount upon annual review and determination and base salary increases, if any, shall be granted retroactively to July 1st of the then current school year.
- (d) At the discretion of the BOARD, the SUPERINTENDENT may be additionally compensated with a non-recurring, one-time, salary payment, in an amount determined by the BOARD, for extraordinary service performance. Notwithstanding the above, the BOARD may decide that in lieu of a non-recurring salary payment, the amount of such additional compensation shall be added to the annual base salary.
- (e) The SUPERINTENDENT shall be paid her base salary in equal installments in accordance with the rules of the BOARD governing payment of the professional staff members of the DISTRICT.
- (f) The DISTRICT shall make employer contributions during the employment of the SUPERINTENDENT to the New York State Teachers Retirement System as required by law.

6. Tax Sheltered Annuity

- (a) The DISTRICT shall make deposits in the amounts listed below, into the IRC

403(b) account selected by the SUPERINTENDENT to receive employer contributions, provided such account will accept employer non-elective contributions. If the SUPERINTENDENT does not designate a 403(b) account to receive Employer's contributions, or if the account designated will not accept employer's non-elective contributions for any reason, then Employer shall deposit contributions, in the name of the employee, into an endorsed/approved 403(b) program.

- i. TWENTY SEVEN THOUSAND DOLLARS (\$27,000) from July 1, 2017 through June 30, 2018 (entitlement to this payment will vest and be made in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS [\$13,500] on November 1st and THIRTEEN THOUSAND FIVE HUNDRED DOLLARS [\$13,500] on June 1st);
- ii. For each school year thereafter for the term of this agreement, the non-elective contribution to the SUPERINTENDENT'S 403(b) plan shall be increased by the same percentage as her base salary increases from the prior year. Half of such non-elective contribution will vest on November 1 of each school year and the other half on June 1 of each school year. Such amount shall not exceed the amount allowable by law.

- (b) In addition to paragraph (a) of this section, the SUPERINTENDENT may elect to have monies withheld from her base salary for the purpose of participating in a tax-deferred annuity program of her choosing, as provided for by state law.

7. Travel Reimbursement

The SUPERINTENDENT shall be required to use her own vehicle in connection with her duties as SUPERINTENDENT. For any travel within the DISTRICT or outside of the DISTRICT, the DISTRICT will reimburse the SUPERINTENDENT the IRS rate for her mileage and any reasonable related costs incurred in association with travel on behalf of the DISTRICT such as parking and tolls.

8. Leave Time

An accounting of the SUPERINTENDENT's use of leave time shall be maintained by the chief personnel administrator for the DISTRICT and said personnel administrator shall be directed by the SUPERINTENDENT to submit an accounting of the SUPERINTENDENT's use of leave time to the BOARD quarterly or as otherwise requested by the BOARD for its review.

9. Vacation

(a) The SUPERINTENDENT shall be entitled to twenty (25) days of paid vacation annually, which shall accrue on a monthly basis. Such vacation days shall be exclusive of legal holidays of the DISTRICT. The SUPERINTENDENT shall not use vacation days during the two-week period immediately before the beginning of the student instructional year and in no event shall the SUPERINTENDENT take more than five consecutive days of vacation when

school is in session. The SUPERINTENDENT shall give the BOARD president at least five (5) days' prior written notice of her intended utilization of vacation days. The SUPERINTENDENT shall be credited with all vacation time already earned through her current service to the district upon signing this agreement.

(b) The SUPERINTENDENT shall be required to utilize a minimum of ten (10) days of vacation time in each year of this Agreement and may carry over up to ten (10) unused vacation days to the next school year. The SUPERINTENDENT may also, in lieu of utilizing the full annual allotment of vacation days, work on up to five (5) of such days and be paid additional compensation, at a per diem rate of $1/240$ of her annual salary in effect at the time of the non-use of such days.

(c) At the time of her departure from the DISTRICT or death, unused accumulated vacation time up to fifty (50) working days shall be converted to cash based on per diem salary ($1/240$) at the time of retirement or death and paid to her.

10. Holidays

The SUPERINTENDENT shall be entitled to paid holidays for the following holidays on the DISTRICT calendar: Independence Day, Labor Day, Columbus Day, Veteran's Day, the day before Thanksgiving Day, Thanksgiving Day, Day following Thanksgiving Day, December 24, Christmas Day, December 26, New Year's Day, Martin Luther King's Jr. Day, Presidents' Day, Good Friday, Memorial Day and up to two additional DISTRICT holidays which may change on the DISTRICT calendar from year to year.

11. Inclement Weather Days

The SUPERINTENDENT shall be required to report to work on days when schools are delayed due to inclement weather.

On days when schools are closed due to inclement weather, the SUPERINTENDENT in consultation with the BOARD President, if she believes that travel to the DISTRICT will be unsafe, will not be required to be present at her office, but shall be expected to perform the duties of her office on such days from home. In such event, there shall be no charge against leave time and the SUPERINTENDENT shall be paid her regular salary for such days.

12. Sick Leave

(a) At the time of the signing of this Contract, the SUPERINTENDENT shall be credited with all of the unused sick days earned and credited to her since the time of her initial employment with the DISTRICT. The SUPERINTENDENT shall accrue twelve (12) days of paid sick leave in each year of this Agreement. Up to five (5) sick days annually may be used by the SUPERINTENDENT to attend to health needs of a spouse, dependent, parents or immediate family member.

(b) At the time of her departure from the DISTRICT or death, unused accumulated sick time, which may be accumulated up to 270 days, shall be converted to a non-elective employer contribution to the SUPERINTENDENT'S 403(b) plan at the rate of fifteen dollars (15) per day at the time of departure or retirement or death and paid to her. If the sum of this amount exceeds the maximum annual contribution to such plan, the District shall pay the remaining amount each January 1 thereafter until the SUPERINTENDENT has been fully compensated.

13. Personal Days

The SUPERINTENDENT shall be entitled to three (3) personal days each year for personal business that requires her presence during the work day. Said days may not be accumulated from year to year.

14. Bereavement Leave

In the event of a death in the SUPERINTENDENT's immediate family (i.e. parent, parent-in-law, grandparent, spouse, child, brother, sister, son-in-law, daughter-in-law, brother-in-law, sister-in-law or other relative who is an actual member of the SUPERINTENDENT's household), the SUPERINTENDENT shall be granted five (5) days of paid leave.

15. Insurance

(a) Health

The SUPERINTENDENT shall be entitled to participate in the Dutchess Alternate Plan or any H.M.O. offered by the DISTRICT for family or individual health insurance coverage, as well as the dental, vision and other welfare benefit plans provided to professional personnel of the DISTRICT. The DISTRICT shall pay eighty-two and one-half (82.5%) percent of the premium costs of such insurance. If, the SUPERINTENDENT retires or is terminated from the DISTRICT by reason of disability during the term of this Agreement, the DISTRICT shall provide her with family or individual health insurance coverage (whichever coverage she is entitled to based on familial status), as well as dental, vision, and other welfare benefits provided to her during active service for her life and shall pay eighty-two and a half (82.5%) percent of the premium cost thereof. Provided further, if after completing eight (8) years of

employment in the DISTRICT, the SUPERINTENDENT retires from the DISTRICT for the purpose of receiving benefits from the New York State Teachers Retirement System, the DISTRICT shall provide her with family or individual health insurance coverage (whichever coverage she is entitled to based on familial status), as well as dental, vision, and other welfare benefits provided to her during active service for her life and shall pay fifty (50%) percent of the premium cost thereof. If the SUPERINTENDENT predeceases her spouse, her spouse shall receive the same insurance benefits pursuant to this paragraph as the SUPERINTENDENT would have received. The District share of the SUPERINTENDENT'S entitlement to insurance in retirement pursuant to this paragraph shall be increased to sixty percent (60%) if she serves nine (9) years, seventy percent (70%) if she serve ten (10) years, eighty percent (80%) if she serves eleven years (11) and eighty-two and a half percent (82.5%) if she serves twelve (12) years. The District shall give the SUPERINTENDENT credit for time already served in the district prior to entering into this Agreement for benefits pursuant to this paragraph.

(b) Disability

The DISTRICT shall provide a disability insurance policy each year of this Agreement for the SUPERINTENDENT that will allow for payment of two-thirds (2/3) her base salary if the individual remains disabled until age 65. A customary six-month "grace" period shall precede the inception of the disability benefits. At the inception of this Agreement, the DISTRICT shall ascertain a fair market price for the disability insurance policy and either provide the insurance policy for the SUPERINTENDENT or

reimburse the SUPERINTENDENT up to that amount upon her purchasing such insurance and producing proof of payment of the policy premium. During the six-month period of ineligibility for disability insurance, any illness beyond accumulated sick leave will be compensated by the DISTRICT at a rate equal to three quarters (3/4) regular salary. A doctor's report shall be required to support any claim of disability. The BOARD shall have the right to have the SUPERINTENDENT examined by the chief doctor of the appropriate specialty at the Westchester Medical Center to determine the extent of the SUPERINTENDENT's disability and to ascertain whether the SUPERINTENDENT should be entitled to three quarters (3/4) of his regular salary as set forth above. The determination of said physician shall be binding on the DISTRICT.

(c) For the 2017-18 school year and thereafter for the remainder of this agreement, the SUPERINTENDENT shall be entitled to receive a \$4,000 stipend in lieu of the disability insurance provided for herein. For all years of her employment in the District, the Superintendent shall have the benefit as described in Paragraph (b) of this Article available to her at her election. Such election shall be made by the Superintendent by July 1st of each subsequent contract year.

(d) Life Insurance

During the term of this Agreement, the DISTRICT will provide the SUPERINTENDENT with a term life insurance policy in the amount of Two Hundred Fifty Thousand Dollars (\$250,000). The DISTRICT shall provide the SUPERINTENDENT a copy of this life insurance benefit policy.

16. Legal Representation

In the unlikely event that the SUPERINTENDENT believes that the Board is acting in derivation of law or in a manner which violates her authority as the Superintendent of Schools, the SUPERINTENDENT shall be entitled, at District expense, to retain separate legal counsel to advise her on the legality of the proposed actions of the BOARD. Such representation will be available up to twenty-five thousand dollars (\$25,000) on a school-year basis and such appropriation shall be budgeted for annually. Prior to retaining legal counsel, the SUPERINTENDENT shall notify the BOARD in writing that she will be exercising her contractual rights pursuant to this paragraph. The Superintendent shall have the exclusive authority to execute a contract for professional legal services in accordance with this paragraph. The Superintendent shall comply with all procurement and other provisions under New York State law when selecting legal counsel pursuant to this paragraph and fees charged by such legal counsel must be customary and reasonable within the geographic area of the school district. The legal counsel retained by the Superintendent shall be compensated for services in the same manner and in accordance with the same procedures as the DISTRICT compensates other legal counsel. The legal counsel retained by the Superintendent, shall serve at the pleasure of the Superintendent.. Under no circumstance shall the SUPERINTENDENT be authorized to use this sum of money to retain counsel relating to her own personal legal representation regarding her employment status. Nothing in this article shall limit the responsibility of the BOARD to indemnify and potentially provide counsel to the SUPERINTENDENT pursuant to the indemnification provisions of Article 25.

17. Jury Duty

If required to serve as a juror, the SUPERINTENDENT shall be paid full salary without loss of sick or other leave during the period of such services. The SUPERINTENDENT shall remit to the DISTRICT the total per diem jury duty fees paid for jury service and travel.

18. Extended Illness or Disability

- (a) Should the SUPERINTENDENT be unable to perform her duties, with or without reasonable accommodations, by reason of illness or other cause and such disability continues for a period in excess of six (6) months, or is permanent or of such a nature as to make the performance of her duties impossible, the BOARD may, at its option, terminate this Agreement, whereupon the respective duties, rights and obligations of the parties hereunder shall cease and terminate, except that termination pursuant to this paragraph shall not affect the SUPERINTENDENT's right to receive disability benefits pursuant to paragraph 16(b) of this Agreement.
- (b) The parties agree that the determination as to whether the SUPERINTENDENT's illness or disability is permanent or of such a nature as to make the performance of her duties impossible as set forth in paragraph (a) above shall be made by the chief physician of the department in the appropriate specialty at the Westchester Medical Center after examination of the SUPERINTENDENT. The DISTRICT shall pay for the expense of the examination of the SUPERINTENDENT and for

the physician's report.

19. Professional and Civic Organizations

- (a) The SUPERINTENDENT shall be entitled to attend appropriate professional meetings at the local, state and national level upon reasonable notice to the BOARD and the reasonable expenses of such attendance shall be paid by the DISTRICT. Attendance at national conferences shall be limited to two (2) national conferences during each year of the Agreement and attendance at state conferences shall be limited to three (3) state conferences in each year of the Agreement unless otherwise approved by the BOARD. The BOARD shall pay the annual dues of membership of the SUPERINTENDENT for membership in up to three professional associations and such any other organizations as the BOARD may approve. The SUPERINTENDENT is authorized to incur reasonable expenses for attendance at conferences and otherwise in the discharge of her duties and shall be reimbursed for such expenses upon presentation of documentation in accordance with BOARD policy. The SUPERINTENDENT with the BOARD president's prior approval, which shall only be necessary if outside the budgeted amount and consistent with BOARD policy may attend in-service and continuing education programs at DISTRICT expense.
- (b) The BOARD also desires and expects that the SUPERINTENDENT will be engaged actively in the community. As a result, the BOARD shall pay the cost of membership and related fees and expenses for the SUPERINTENDENT to

participate in civic, business and service organizations in community where there is a benefit to the DISTRICT of such memberships and/or participation.

20. Business Equipment and Technology

The BOARD will supply the SUPERINTENDENT with the technology and equipment necessary to perform the duties of SUPERINTENDENT. The technology and equipment provided to the SUPERINTENDENT shall be DISTRICT-owned equipment and the SUPERINTENDENT shall return the technology and equipment to the DISTRICT at the end of her employment in the DISTRICT. The technology and equipment shall include but not be limited to an office computer, office printer, office facsimile/scanner machine, smartphone, tablet, laptop computer, and home facsimile/scanner machine. The Superintendent shall be authorized to use this equipment for incidental personal use.

21. Business Expense Reimbursement

It is anticipated and agreed that the SUPERINTENDENT will from time to time incur certain expenses while conducting the official business of the DISTRICT. The BOARD agrees to reimburse the SUPERINTENDENT for reasonable and necessary expenses incurred on behalf of the DISTRICT, in accordance with BOARD policy and subject to the approval of such expenses by the BOARD.

22. Evaluation

- (a) For each year of her employment, on or before September 1 of each subsequent school year, the SUPERINTENDENT shall provide to the BOARD a written statement of the annual goals that the SUPERINTENDENT intends to concentrate

on during the upcoming school year. On or before October 1 of each year of this Agreement, the BOARD and the SUPERINTENDENT shall meet to agree on the annual goals and the form of the evaluation to be used to evaluate the SUPERINTENDENT.

- (b) No later than July 31 of each year of the Agreement, the BOARD shall meet with the SUPERINTENDENT in executive session to conduct an evaluation the SUPERINTENDENT. No later than May 1 of each year of this Agreement, the SUPERINTENDENT shall provide the BOARD with a self-appraisal of her performance for the contract year. The BOARD shall take this self-appraisal into account in conducting the evaluation of the SUPERINTENDENT's performance. The BOARD also shall base its evaluation of the SUPERINTENDENT's on her performance of and progress towards the goals established by the SUPERINTENDENT and the BOARD as set forth above and on general performance of the SUPERINTENDENT in carrying out her required duties and responsibilities pursuant to this Agreement. The SUPERINTENDENT shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the BOARD scheduled to discuss such evaluation.

- (c) Any assessment or performance evaluation prepared pursuant to this paragraph shall be confidential to the extent allowable by law and shall be kept so by the BOARD and individual BOARD members.

23. TERMINATION

(a) Termination by Mutual Agreement.

Upon mutual written agreement by the BOARD and the SUPERINTENDENT, this Agreement may be terminated. If this Agreement is terminated by mutual agreement, the BOARD shall pay the SUPERINTENDENT all accrued remuneration and all accrued benefits and expenses that are unpaid as of the date of the termination of the Agreement.

(b) Termination by Resignation of the SUPERINTENDENT.

The SUPERINTENDENT agrees to provide at least ninety (90) days written notice to the BOARD in the event she unilaterally resigns as SUPERINTENDENT prior to this expiration of this Agreement. In the event that the SUPERINTENDENT terminates this Agreement by resignation, the BOARD shall prorate and pay the SUPERINTENDENT all accrued remuneration and all accrued benefits and expenses that are unpaid as of the date of termination of this Agreement.

24. Termination for Just Cause

The BOARD may terminate the SUPERINTENDENT for just cause. The BOARD may terminate the SUPERINTENDENT for just cause pursuant to the following provisions:

- (a) Charges against the SUPERINTENDENT may only be brought by the BOARD and all such charges shall be in writing. The Superintendent shall be entitled to a fair hearing on said charges, upon at least thirty (30) days notice, before an independent hearing officer who shall be an attorney at law. The Superintendent shall be entitled to her full pay and

benefits during the pendency of the hearing and any appeals. The Parties agree to select arbitrator Margaret Leibowitz. In the event that Margaret Leibowitz is unavailable, the parties agree to select arbitrator Melinda Gordon. The hearing shall be in executive or public session, at the option of the SUPERINTENDENT.

(b) The SUPERINTENDENT shall be entitled to due process protection at such hearing, including but not limited to the right to elect a public private hearing; to be represented by counsel, to present, cross-examine and subpoena witnesses, to subpoena documents, papers, letters or other tangible evidence, to have all testimony given under oath, to receive without cost an accurate written transcript of each day of the proceedings as recorded by a certified court stenographer; and to receive written findings of fact and conclusions of law. The District, at its expense, shall provide a certified shorthand or court reporter who will transcribe all proceedings.

(c) Any criticisms or complaints which have not been previously forwarded to the SUPERINTENDENT in accordance with the provisions of Article 3, paragraph (b) of this Agreement or charges based upon any allegation which was made known in writing to the SUPERINTENDENT by the BOARD more than six months before the charge is filed, shall not be admissible at such a hearing against the Superintendent. The hearing officer shall strike from the written charge or charges any such charge made against the Superintendent.

(d) The hearing officer shall, upon the conclusion of the hearing, prepare and submit a written decision, which decision shall include findings of fact and a disposition of each charge. Both the BOARD and SUPERINTENDENT shall be bound by the decision of the hearing officer. Both parties shall, however, retain their right to appeal the decision of the hearing officer to any forum with jurisdiction

(e) If the charges against the SUPERINTENDENT are not sustained at such hearing or after any appeal therefrom, the BOARD shall reimburse the SUPERINTENDENT for her costs and attorney's fees incurred in defense of the hearing or appeal therefore.

25. Indemnification

In addition to those rights provided by law, the Board agrees to provide legal counsel and to indemnify the SUPERINTENDENT against all uninsured financial loss arising out of any

claim, demand, suit, or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person or damage to the property of any person committed while the Superintendent is acting within the scope of her employment or under the direction of the BOARD. The District agrees, as a further condition of this Agreement, that it shall defend, hold harmless and indemnify the SUPERINTENDENT from any and all demands, claims, suits, actions and legal proceedings brought against the Superintendent in her individual capacity or in her official capacity as agent and employee of the District, provided the incident arose while the SUPERINTENDENT was acting within the scope of her employment or under the direction of the BOARD to the full extent allowable by law.

26. Written Agreement

This Agreement is the sole agreement between the parties concerning the terms and conditions of the SUPERINTENDENT's employment and it shall continue in full force and effect for the term expressed herein, unless otherwise terminated, modified or extended in accordance with the above specified provisions, or by another agreement in writing between the parties.

27. Severability

This Agreement shall be governed by the laws of the State of New York, and the invalidity or unenforceability of any specific provision hereof shall in no way effect the validity or enforceability of any other provision of this Agreement.

28. The Superintendent shall be entitled to prevailing party attorney's fees to be paid by the

District in the event that she prevails in a litigation or court proceeding to enforce her contractual and/or legal rights pursuant to the provisions of this Agreement.

29. Impairment of Duties

The BOARD shall not, without the Superintendent's written consent, adopt a policy, by-law, or regulation which impairs or reduces the overall status and authority of the SUPERINTENDENT as Superintendent of Schools of the District.

Dated: June 21, 2017

BOARD OF EDUCATION OF THE POUGHKEEPSIE CITY
SCHOOL DISTRICT
By: Ralph Coates 6/30/17
MR. RALPH COATES
BOARD OF EDUCATION PRESIDENT

Dated: June 21, 2017

By: Nicole Williams 6/24/17
DR. NICOLE WILLIAMS