

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BOARD OF EDUCATION OF
THE FERNDALE PUBLIC SCHOOLS,

Plaintiff,

vs.

Case No.

Hon.

GARY W. MEIER, an individual,
and EQUITY EDUCATION MANAGEMENT
SOLUTIONS, LLC,

Defendants.

George P. Butler (P43692)
K. Scott Hamilton (P44095)
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COMPLAINT AND JURY DEMAND

**There is no other pending or resolved
civil action arising out of the transaction
or occurrence alleged in the complaint.**

Parties, Jurisdiction and Venue

1. Plaintiff Board of Education of the Ferndale Public Schools (“Plaintiff”) is the governing entity of the Ferndale Public Schools, organized under the laws of the State of Michigan and located in the County of Oakland.

2. Defendant Gary W. Meier (“Meier”) is an individual who, upon information and belief, resides in the County of Oakland, State of Michigan. Meier is the former superintendent of Ferndale Public Schools and held that position from 2000 until his resignation in May, 2014.

3. Defendant Equity Education Management Solutions, LLC (“EQUITY”) is a Michigan limited liability corporation whose resident agent is located at 31700 Middlebelt Road, Suite 126, Farmington Hills, Michigan.

4. The amount in controversy is in excess of \$25,000.00 and is within the subject-matter jurisdiction of this Court.

5. Venue is proper in Oakland County Circuit Court.

General Allegations

6. On or about August 21, 2000 Plaintiff appointed and employed Meier as Superintendent of Schools. Meier’s employment as superintendent was governed by a contract between Meier and Plaintiff. The contract was amended from time to time, culminating in the Third Amended and Restated Superintendent’s Contract (“the Third Amended Contract”) (attached as Exhibit A). The Third Amended Contract governed Meier’s role as superintendent from July 1, 2011 until June 30, 2016.

7. Among other things, the Third Amended Contract in relevant part obligated Meier to perform the following duties:

I. DUTIES

(A) The SUPERINTENDENT agrees to perform the duties of Superintendent of Schools of the DISTRICT as those duties are set forth in the statutes of the State of Michigan and in accordance with the job description for the SUPERINTENDENT as it may now exist, and as it may be adopted as modified during the term of this Contract by

the BOARD; and in accordance with the By-Laws and Policies, Rules and Regulations of the DISTRICT, as such may exist or as such may from time to time during the term of this Contract be adopted and/or modified by the BOARD.

(B) The SUPERINTENDENT agrees to devote his full time and effort to the job of Superintendent of Schools. The SUPERINTENDENT agrees to perform the duties of SUPERINTENDENT in a competent and professional manner in accordance with the established policies and regulations of the Board of Education and laws of the State. The SUPERINTENDENT shall serve as Chief Executive Officer and Chief Administrative Officer of the BOARD....

* * *

15. FULL TIME RESPONSIBILITY

(A) The SUPERINTENDENT shall devote his full time and attention to the responsibilities of his office.

(B) Notwithstanding the provisions of Paragraph (A) of this section, the SUPERINTENDENT, with notice to the BOARD, may undertake educational consultative work, speaking engagements, writing, lecturing or other professional activities. Any fees received by the SUPERINTENDENT for such consultative work shall belong to the SUPERINTENDENT unless otherwise required by law.

8. In or about May, 2014, while Meier was employed as Ferndale School District superintendent, Plaintiff learned that Meier, along with other Ferndale School District employees, was involved in forming, managing and operating an entity known as Equity Education Management Solutions LLC ("EQUITY").

9. Upon information and belief, EQUITY is an educational consultant service provider for which Meier is, and was while employed as superintendent of Ferndale Public Schools, a principal, officer or employee.

10. Upon information and belief, under Meier's direction and leadership while he was employed as superintendent of Ferndale Public Schools, EQUITY worked to form a charter school known as Schools for the Future of Detroit, which charter school was to be located in the City of Detroit and authorized through Ferris State University.

11. Upon information and belief, Meier, by and through EQUITY, had dedicated extensive preparation before May, 2014 to open the charter school, while at the same time he was employed as superintendent of Ferndale Public Schools.

12. Meier did not provide Plaintiff notice that he was undertaking any consultative services for or on behalf of EQUITY. Plaintiff was unaware that Meier was in fact involved in those efforts until Plaintiff discovered them in May, 2014.

13. Meier decided to immediately resign and retire as superintendent of Ferndale Public Schools in May, 2014 to avoid any further investigation of his involvement with EQUITY.

14. While Meier was employed as superintendent of Ferndale Public Schools, Meier used and/or diverted resources of the district, including his own time and that of other district employees, dedicating that time and those resources to activities involving EQUITY and, upon information and belief, other entities.

COUNT I
BREACH OF CONTRACT

15. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-14 as though fully restated herein.

16. Meier's actions as set out above constitute material and substantial breaches of the Third Amended Contract.

17. Plaintiff has been damaged by Meier's breach of the Third Amended Contract in an amount exceeding \$25,000.00.

COUNT II
UNJUST ENRICHMENT

18. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-17 as though fully restated herein.

19. By the actions as set out above, Defendants were enriched through the diversion and use of Plaintiff's resources, personnel, time, infrastructure and other valuable material and assets that Defendants were able to access as Meier, and other inferior employees of Plaintiff under his direct supervision, laid the groundwork for establishing multiple charter schools for his own benefit, and with no benefit or remuneration to Plaintiff.

20. Under the circumstances set out above, it would be inequitable and unjust for Defendants to retain and not to compensate Plaintiff for the value of the resources that were diverted and used while Meier served as superintendent in his efforts to establish the various charter schools that he is now involved in operating.

COUNT III
TORTIOUS INTERFERENCE

21. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-20 as though fully restated herein.

22. The Third Amended Contract existed between Plaintiff and Meier, the term of which did not expire until June 30, 2016.

23. EQUITY was aware of the contract between Plaintiff and Meier.

24. EQUITY tortiously interfered with the Third Amended Contract by causing Meier to terminate and/or breach the contract before the end of its term, depriving Plaintiff of the benefits derived from that contract with no reasonable business justification.

WHEREFORE, Plaintiff requests that judgment be entered in its favor, and against Defendants, and that Plaintiff be awarded any and all other relief, whether legal or equitable, to which it is deemed entitled.

JURY DEMAND

Plaintiff Board of Education of the Ferndale Public Schools hereby demands a jury for all claims triable by jury.

DICKINSON WRIGHT PLLC

By: /s/ K. Scott Hamilton
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Dated: January 13, 2015

EXHIBIT A

**THIRD AMENDED AND RESTATED
SUPERINTENDENT'S CONTRACT**

THIS AGREEMENT entered into by and between the **BOARD OF EDUCATION OF THE FERNDALE PUBLIC SCHOOLS**, hereinafter called the **BOARD**, and **MR. GARY W. MEIER**, hereinafter called the **SUPERINTENDENT**.

WHEREAS, pursuant to **SUPERINTENDENT'S** Contract between the **BOARD** and the **SUPERINTENDENT** dated August 7, 2000, (the "Contract"), the **BOARD** appointed and employed **MR. GARY W. MEIER** as Superintendent of Schools commencing on the 21st day of August, 2000; and

WHEREAS, the **BOARD** and the **SUPERINTENDENT** thereafter entered into an Amended Superintendent's Contract effective July 1, 2002, a Second Amended Superintendent's Contract effective July 1, 2005, Employment Contract Addenda dated as of August 15, 2005 and January 22, 2007, an Amended Restated Superintendent's Contract as of July 2, 2007, an Employment Contract Addendum dated August 11, 2008, an Addendum to Superintendent's Contract dated May 13, 2009, and a Second Amended and Restated Superintendent's Contract dated as of July 1, 2009, (collectively the "Amended Contract"); and

WHEREAS, the **BOARD** and the **SUPERINTENDENT** now desire to extend and amend the Superintendent's Amended Contract, and to replace the Amended Contract with this Third Amended and Restated Superintendent's Contract; and

WHEREAS, the parties agree that the **SUPERINTENDENT** shall continue to perform the duties of the Superintendent of Schools in and for the public schools in the Ferndale Public Schools, hereinafter called the "**DISTRICT**", as prescribed by the provisions of this Contract, the rules and policies of the **BOARD**, and the statutes of the State of Michigan; and

WHEREAS, the **SUPERINTENDENT** is agreeable to a reduction in his total annual compensation under this Contract in the amount of five (5%) percent of his base annual salary, the said reduction to be accomplished by a reduction in the Universal Buy-In paid for by the Board in years two through five (2-5) of this Contract.

In consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. **DUTIES:**

(A) The **SUPERINTENDENT** agrees to perform the duties of Superintendent of Schools of the **DISTRICT** as those duties are set forth in the statutes of the State of Michigan and in accordance with the job description for the **SUPERINTENDENT** as it may now exist, or as it may be adopted or modified during the term of this Contract by the **BOARD**; and in accordance with the By-Laws and Policies, Rules and Regulations of the **DISTRICT**, as such

may now exist or as such may from time to time during the term of this Contract be adopted and/or modified by the **BOARD**.

(B) The **SUPERINTENDENT** agrees to devote his full time and effort to the job of Superintendent of Schools. The **SUPERINTENDENT** agrees to perform the duties of **SUPERINTENDENT** in a competent and professional manner in accordance with the established policies and regulations of the Board of Education and laws of the State. The **SUPERINTENDENT** shall serve as Chief Executive Officer and Chief Administrative Officer of the **BOARD**. The **SUPERINTENDENT** shall be free to organize, reorganize and arrange the administrative and supervisory staff, including business affairs, in any way which in his judgment best serves the **DISTRICT**. The **SUPERINTENDENT** shall have the authority and responsibility for the selection, hiring, placement and transfer of personnel, and to approve resignations, retirements, and leaves of absence for all **DISTRICT** employees, except that for the initial employment of all administrators and certified teaching staff, the **SUPERINTENDENT'S** recommendations shall be subject to approval by the **BOARD**. The reemployment of all central administrative staff shall be by Board resolution upon the recommendation of the **SUPERINTENDENT**. The **BOARD**, individually and collectively, shall refer all criticisms, complaints, and suggestions called to its attention to the **SUPERINTENDENT** for study and recommendation.

2. **TERM OF CONTRACT:**

The term of this Third Amended and Restated Superintendent's Contract shall commence on July 1, 2011 and shall continue through the 30th day of June, 2016, unless this Contract is otherwise earlier terminated or suspended as provided by law or is otherwise extended.

The **BOARD** shall endeavor to review this Contract with the **SUPERINTENDENT** annually but shall, on or before March 30, 2016, take official action determining whether or not it is terminated or renewed and extended and notify the **SUPERINTENDENT** of its action in writing.

3. **COMPENSATION:**

(A) The **SUPERINTENDENT'S** base annual salary for the 2011-2012 school year shall remain at One Hundred Forty Thousand (\$140,000.00) Dollars, subject to being increased by the same percentage as the percentage increase agreed to by the Board of Education and the Association of Ferndale School Administrators for other administrators for such school year, if any. That base annual salary shall be increased for each school year thereafter by no less than the percentage increase as is agreed to by the Board of Education and the Association of Ferndale School Administrators for other administrators for each such school year, if any. The **SUPERINTENDENT'S** salary shall be paid in twenty-six equal bi-weekly installments.

(B) The **BOARD** hereby retains the right to increase the base annual salary of the **SUPERINTENDENT** at any time or for any school year during the term of this Contract. Any salary once set by the **BOARD** shall not later be reduced during the term of this Contract.

(C) The BOARD will review the salary and fringe benefits provisions of this Contract annually in order to determine, in the exercise of its sole discretion, annual salary and fringe benefits for the ensuing school year. If any adjustment in salary and/or fringe benefits is made by the BOARD, all other provisions of this Contract shall be unaffected by such changes.

4. FRINGE BENEFITS:

The SUPERINTENDENT shall be entitled to and the BOARD shall pay the full premium for group term life insurance in the amount of One Hundred Eighty-Five Thousand (\$185,000) Dollars.

The BOARD shall pay 80% of the cost of the MESSA Choices insurance premium and the SUPERINTENDENT shall pay the remaining 20% on a bi-weekly basis through payroll deduction, which the SUPERINTENDENT expressly authorizes by signing this Contract. The health insurance benefits may be changed by the BOARD to take advantage of cost savings by changing carriers and/or health insurance benefits provided to the SUPERINTENDENT. The SUPERINTENDENT shall receive the following insurance:

MESSA Choices II

- In-Network Deductible: \$200 single/\$400 family
- Out-Of-Network Deductible: \$400 single/\$800 family
- Copay Amounts: \$20 Office Visit/\$25 Urgent Care/\$50 ER
 - w/Adult Immunizations
- Rx Copay: \$10 generic/\$20 brand name
- Dent80/80/80: 800/2000 2
- VSP 3
- Neg LTD 60% Max \$6,500
- 1.5X Salary PAK Life*
- 1.5X Salary PAK AD&D
- Basic Term Life w/Med \$5,000

*Total life insurance benefits equal \$360,000 (\$175,000 max with MESSA & \$185,000 per first paragraph, above)

5. RETIREMENT SYSTEM FEES:

(A) Compensation of the SUPERINTENDENT during the term of this Contract shall also include payment by the BOARD of the full cost of the MIP Retirement Program, and the SUPERINTENDENT'S share of FICA and Medicare payments.

(B) Compensation of the SUPERINTENDENT during the term of this Contract shall also include an annual payment by the BOARD of an amount equal to fifteen percent (15%) of the SUPERINTENDENT'S base annual salary toward the purchase of an annuity contract for the SUPERINTENDENT, such payment to be made to the insurance provider

selected by the **SUPERINTENDENT**; provided, however, that the **SUPERINTENDENT** shall have the option of electing to receive monies payable toward the purchase of such annuity contract in the form of a cash payout, less applicable withholding.

(C) The **BOARD** shall pay an additional amount for the purchase of universal buy-in (UBI) service for the **SUPERINTENDENT** from the Michigan Public School Employees Retirement System. In 2011-2012, the amount payable pursuant to this provision shall be Thirty-Five Thousand (\$35,000.00) Dollars, increased by the same percentage by which the base annual salary of the **SUPERINTENDENT** is increased for such school year. Thereafter, the amount shall increase each year by the same percentage by which the base annual salary of the **SUPERINTENDENT** increases, but then be reduced by \$9,375 per year in each of years 2 through 5 of this Contract. The intent of this provision is to reduce payment to the **SUPERINTENDENT** by a total of \$37,500 over the term of this Contract. **SUPERINTENDENT** shall have the option of electing to receive monies payable toward the purchase of such UBI service in the form of a cash payout, less applicable withholding.

(D) Upon receipt of notification from the **SUPERINTENDENT** during the term of this Contract of his intent to retire, the **BOARD** shall provide **SUPERINTENDENT** with an employee severance plan not less than that offered AFSA or FEA at the time of the **SUPERINTENDENT'S** retirement.

6. ACCESSIBILITY:

(A) The **SUPERINTENDENT** shall make himself available and accessible to the members of the **BOARD**, the members of the administrative staff of the **DISTRICT**, and citizens of the **DISTRICT**. In determining "availability" and "accessibility," consideration shall be given to the **SUPERINTENDENT'S** role as the chief executive officer of the **DISTRICT** and the propriety of delegating functions to his staff.

(B) The **SUPERINTENDENT** shall be expected to be regular in attendance at the following types of meetings:

(1) **BOARD** meetings, including executive sessions, as directed by the **BOARD**; and

(2) Committee meetings of Ad Hoc Committees or other committees appointed by the **BOARD** or the **SUPERINTENDENT** on which the **SUPERINTENDENT** is required to participate by the **BOARD**.

7. PROFESSIONAL CERTIFICATION:

The **SUPERINTENDENT** will furnish, throughout the life of this Contract valid and appropriate proof of his qualifications to serve as a **SUPERINTENDENT** of a School District in the State of Michigan as required by the applicable provisions of Michigan law or administrative regulations adopted pursuant thereto.

(5) In the event the **SUPERINTENDENT** leaves the employment of the **BOARD**, he shall be paid for earned but unused vacation time then accrued to him and unused during the current school year. In the event of his death, such shall be paid to his estate, as provided by law.

(B) **Holidays**

(1) The **SUPERINTENDENT** shall be entitled to all **BOARD** approved holidays for administrators which currently include the following thirteen (13) holidays: Independence Day (2), Labor Day, Thanksgiving Day, Thanksgiving Friday, Christmas Eve, Christmas Day, New Years Eve, New Years Day, Martin Luther King, Jr. Day, Good Friday, Easter Monday, and Memorial Day.

10. **PROFESSIONAL GROWTH:** The **SUPERINTENDENT** shall be encouraged to attend those professional meetings that improve the management practices of the **DISTRICT**. The actual and necessary expenses of said attendance shall be paid by the **DISTRICT** to the extent authorized by the **BOARD** in the Appropriation Budget. The **SUPERINTENDENT** is encouraged to join and participate in professional organizations related to the duties of the office. The dues and meeting attendance expenses for the following organizations shall be paid by the **BOARD**:

(A) American Association of School Administrators (AASA)

(B) Michigan Association of School Administrators (MASA)

(C) Either the Rotary Club, the Optimist Club or other civic/service club in Ferndale, Michigan, as selected by the **SUPERINTENDENT**.

11. **TAX DEFERRED ANNUITY:** Upon request of the **SUPERINTENDENT**, the **BOARD** shall withhold and transfer a portion of the **SUPERINTENDENT'S** salary to a tax-deferred annuity program of the **SUPERINTENDENT'S** choosing.

12. **SICK LEAVE AND OTHER LEAVES:**

(A) In addition to the number of days of sick leave currently accumulated, the **SUPERINTENDENT** shall earn and be credited with sick leave at the rate of one (1) day per month. Upon the **SUPERINTENDENT** attaining eligibility to retire and receive a pension from the Michigan Public School Employee's Retirement System, the **SUPERINTENDENT** shall, upon such retirement, receive payment for unused sick days, at the **SUPERINTENDENT'S** then-applicable per diem rate, up to a maximum of one hundred twenty-five (125) days. In the event of the **SUPERINTENDENT'S** death, such shall be paid to his estate.

(B) **Other Leaves.** All other forms of leave shall be in accordance with Michigan law and **BOARD** policy.

13. **PERFORMANCE EVALUATION:** The **BOARD** shall provide the **SUPERINTENDENT** with periodic opportunities to discuss **SUPERINTENDENT** and **BOARD** relationships. At least once annually, prior to March 30th, the **BOARD** shall endeavor to present the **SUPERINTENDENT** with a written evaluation of his performance completed according to any **BOARD** policy and applicable law, including any inadequacies as perceived by **BOARD** members.

14. **INDEMNIFICATION:** The **BOARD** agrees 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**, provided the incident giving rise to such demand, claim, suit, action or other legal proceedings arose while the **SUPERINTENDENT** was acting within the scope of his employment (including criminal litigation, in which case reimbursement of the cost of defense shall follow a judgment of acquittal or other dismissal of charges). In no case will individual **BOARD** members be considered personally liable for indemnifying the **SUPERINTENDENT** against such demands, claims, suits, actions, and legal proceedings.

15. **FULL TIME RESPONSIBILITY:**

(A) The **SUPERINTENDENT** shall devote his full time and attention to the responsibilities of his office.

(B) Notwithstanding the provisions of Paragraph (A) of this section, the **SUPERINTENDENT**, with notice to the **BOARD**, may undertake educational consultative work, speaking engagements, writing, lecturing on other professional activities. Any fees received by the **SUPERINTENDENT** for such consultative work shall belong to the **SUPERINTENDENT** unless otherwise required by law.

16. **CONTRACT TERMINATION:**

(A) This employment Contract may be terminated by: (a) mutual agreement of the parties; (b) retirement, permanent total disability, or death of the **SUPERINTENDENT**; or (c) termination by the **BOARD** in accordance with the laws of the State of Michigan.

(B) The **SUPERINTENDENT** shall not be deemed to be granted continuing tenure in any administrative position by virtue of this Contract.

17. The **BOARD** and the **SUPERINTENDENT** shall fulfill all aspects of this Contract, any exception thereto being only by mutual consent expressed in writing by the **BOARD** and the **SUPERINTENDENT**.

18. This Contract shall supersede and replace all prior contracts between the BOARD and the SUPERINTENDENT effective as of July 1, 2011.

Dated this 20th day of June, 2011.

**BOARD OF EDUCATION,
FERNDALE PUBLIC SCHOOLS**

By: W. Charles Moeser
W. Charles Moeser, President
Board of Education

and

By: Keith Warnick
Keith Warnick, Vice-President
Board of Education

**SUPERINTENDENT
GARY W. MEIER**

By: Gary W. Meier
Gary W. Meier