

EMPLOYMENT CONTRACT
BETWEEN BERKELEY UNIFIED SCHOOL DISTRICT
AND SAMANTHA TOBIAS-ESPINOSA

This Employment Contract ("Contract") is by and between Samantha Tobias-Espinosa ("Assistant Superintendent") and the Governing Board ("Board") of the Berkeley Unified School District ("District").

NOW, THEREFORE, the Board offers, and Assistant Superintendent accepts, employment as Assistant Superintendent.

FURTHERMORE, in consideration of the foregoing and of the terms and conditions set forth herein, the Board and Assistant Superintendent hereto agree as follows:

Section A. Contract Term

1. The Board employs Assistant Superintendent commencing on July 1, 2021 and ending on June 30, 2023, unless such employment is terminated earlier pursuant to the provisions of this contract or extended as otherwise provided herein or by law.

Section B. Work Year and Hours of Work

2. Assistant Superintendent shall render twelve (12) months of full and regular service to the District each school year, prorated if starting after July 1, 2021, with the exception of vacations, District approved holidays, and approved leaves as set forth in this Contract. It is understood that the demands of the position of Assistant Superintendent will require more than eight (8) hours a day and/or forty (40) hours per work week. Assistant Superintendent is an exempt employee and is not entitled to overtime compensation. The Assistant Superintendent's work year shall be two hundred twenty-five (225) workdays (226 in a leap-year).

Section C. Compensation

3. Assistant Superintendent is employed as a full-time employee of the District with an annual salary of \$176,034. The annual base salary shall be payable on the last day of each month in installments of one-twelfth (1/12) of the annual base salary for services rendered during the preceding month, with proration for a period of less than a full year of service.
4. Beginning with the 2021-2022 school year, should other certificated management employees receive a general salary increase, whether in the form of a permanent adjustment to their base salary, or bonus, the Board will convene no later than three (3) months after the general salary increase to determine whether Assistant Superintendent and other unrepresented managers should also be provided a salary increase.
5. The annual salary and/or fringe benefits may be increased at the sole discretion of the Board and will be considered annually at a regularly scheduled Board meeting. Any increase in salary shall be discussed and approved in open session at a regular Board

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meeting pursuant to Government Code Section 54956, subdivision (b). A change in salary during the term of the Contract shall not constitute the creation of a new contract or extend the termination date of the Contract.

Section D. Fringe Benefits

6. During his/her employment under the Contract, Assistant Superintendent may select any medical, dental, and vision plan available to other certificated management employees within the District. Assistant Superintendent shall be responsible for any employee contribution of the plan selected.
7. The Assistant Superintendent is responsible for his/her employee share of contributions to CalSTRS.

Section F. Work Related Expenses

8. The District shall reimburse Assistant Superintendent for all documented ordinary and necessary expenses, including mileage reimbursement, incurred in performance of the duties as the Assistant Superintendent, and consistent with Board policies, regulations, and guidelines applicable to other certificated management employees.
9. Unless otherwise addressed in the Contract, if the Assistant Superintendent seeks to be reimbursed for expense incurred outside of the District, such as for attending an out-of-district conference, the Assistant Superintendent shall obtain written approval from the Superintendent.
10. With approval of the Superintendent, the District shall pay the Assistant Superintendent's expenses and dues for membership in professional organizations including the Association of California School Administrators (ACSA), California Association of School Business Officials (CASBO), and such other professional associations as the Assistant Superintendent may participate in.
11. The District shall reimburse the Assistant Superintendent for all reasonable expenses incurred by him/her in connection with District business with proper documentation and/or receipts. Such reimbursement shall include dues and other expenses associated with membership in a service club to be selected by the Assistant Superintendent. The District shall also pay, on behalf of the Assistant Superintendent, expenses incurred in attendance for regional, state or national conferences, seminars, hearings or meetings which are devoted to matters that in the Assistant Superintendent's and Superintendent's judgment relate to the benefit and welfare of the District, provided such attendance does not interfere with Assistant Superintendent's responsibilities to the District.

Section G. Leaves

12. Assistant Superintendent shall accrue illness leave at the rate of one (1) day per month.
13. Accrued unused illness leave shall not be compensable upon separation.

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14. Assistant Superintendent shall accrue paid vacation at the rate of two (2) days per month, exclusive of the paid holidays provided by law or policy to 12-month certificated management employees. All vacation must be scheduled in advance and approved by the Superintendent. Assistant Superintendent may not accrue more than twenty-four (24) days of vacation at any time. Once this maximum accrual level is reached, Assistant Superintendent will cease accruing additional vacation until his or her balance falls below this level. Assistant Superintendent shall limit the number of vacation days taken on student attendance days to no more than three (3) per academic calendar year. Additional vacation days taken on student attendance days can be approved by the Superintendent.
15. Assistant Superintendent shall be entitled to all other personal necessity, bereavement, or other leaves provided to the District's certificated management employees.
16. Assistant Superintendent shall report, in the same manner as other certificated management, her usage of the leaves provided in this contract and shall notice the Superintendent if he or she will be out of the District for a day or more.

Section H. Professional Development

17. If requested by the Superintendent, the District shall provide a reasonable amount of paid release time and related expenses for Assistant Superintendent to participate in programs and other activities conducted or sponsored by local, state or national school administrator and/or school board associations, not to exceed more than 10% of the Assistant Superintendents work days without Board approval. If Assistant Superintendent participates in any such activity, he or she shall provide a timely report to the Superintendent.

Section I. General Duties

18. Assistant Superintendent shall perform, at the highest level of competence, all services, duties, and obligations required by (i) the Contract, (ii) the Assistant Superintendent job description, (iii) applicable laws and regulations, (iv) Board rules, regulations, and policies, and (v) as otherwise directed by the Board. The Superintendent may delegate his or her duties to the Assistant Superintendent's discretion unless otherwise stated in applicable laws, Board rules, regulations, and policies, or prohibited by the Board.
19. Assistant Superintendent shall have primary responsibility for the management of all Human Resources affairs. In carrying out his or her duties, Assistant Superintendent shall provide educational leadership to the District and make student learning and student success the highest priorities. Assistant Superintendent shall endeavor to maintain and improve her professional competence by all available means, including subscription to and reading of appropriate periodicals and membership in appropriate associations.
20. For any time period during which at least one Human Resources office is open and Assistant Superintendent is unavailable, Assistant Superintendent shall appoint a

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responsible, competent District employee to temporarily fulfill Assistant Superintendent's duties and, when doing so, shall notify the Superintendent.

Section J. Administrative and Board-Related Duties

21. Assistant Superintendent shall establish and maintain positive community, staff, and Board relations. The Superintendent shall provide the Assistant Superintendent with periodic opportunities to discuss Superintendent-Assistant Superintendent relations. The Superintendent will bring to the attention of the Assistant Superintendent any significant criticism, complaints, or suggestions pertaining to the Assistant Superintendent or staff brought to the attention of the Board.
22. Assistant Superintendent shall attend every Board meeting and Board committee meeting unless excused in writing by the Superintendent. This duty may not be delegated unless permitted in writing by the Superintendent.
23. With the Superintendent, the Assistant Superintendent shall have primary responsibility for the execution of Board policies, although primary responsibility for the formulation of Board policies is retained by Board. Assistant Superintendent will review all policies adopted by Board and make appropriate recommendations to Board for addition, deletion, or modification.
24. Assistant Superintendent shall be responsible for the development and execution of administrative regulations required or necessary for the implementation of Board policies and shall place any new or modified administrative regulation on the agenda of a Board meeting.
25. As permitted by any applicable law including, but not limited to, the Brown Act, Assistant Superintendent shall, in advance of Board meetings, work with the approval of the Superintendent to keep all Board members advised of emerging issues that could have a material impact on the Board or District.
26. With the final approval of the Superintendent, Assistant Superintendent shall enter into contracts for and on behalf of District, subject to Board approval or ratification as required by law.
27. Assistant Superintendent shall have such other duties properly delegated to her by the Superintendent.
28. Assistant Superintendent shall carry out all lawful activities as directed by the Board from time to time.

Section K. Personnel Duties

29. Assistant Superintendent shall serve on a cabinet of senior District administrators to advise the Superintendent.

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30. The Assistant Superintendent shall evaluate Human Resources administrators pursuant to their contracts as well as Board policies and regulations, and ensure that all evaluations within the department are completed in a timely and thorough manner.
31. Assistant Superintendent shall have primary responsibility for making timely and appropriate recommendations to the Superintendent and Board of Education regarding personnel matters in the District, including the employment of personnel and any release, non-reelection, or termination of an employee, and provide periodic reports of resignations and retirements.
32. Assistant Superintendent shall provide leadership and direction in negotiations with all labor groups in matters related to all matters.

Section L. External Relation Duties

33. Assistant Superintendent shall represent the District before the public and shall maintain such a program of public relations as may serve to improve understanding and to keep the public informed about District activities, needs, and results.
34. Acting as the Superintendent's designee, Assistant Superintendent will act as the liaison with the local, state, and federal agencies and elected representatives.
35. With the approval of the Superintendent, Assistant Superintendent is encouraged to attend appropriate local community meetings. Reasonable expenses thereby incurred shall be reimbursed in accordance with Paragraphs 8 and 9 of the Contract.

Section M. Additional Requirements

36. Assistant Superintendent is required to maintain a valid California Driver's License and have a vehicle available at all times to perform the duties of the position.

Section N. Evaluation

37. The Superintendent shall evaluate Assistant Superintendent in each year, utilizing the process set forth in Paragraphs 37 through 44, inclusive.
38. By October 15 of each year, Superintendent shall, in writing, provide Assistant Superintendent with the evaluation instrument the Superintendent will use to assess Assistant Superintendent's performance based on the objectives for that school year, which will be based on the duties and responsibilities set forth in the Contract, the District's strategic planning priorities, and any other criteria chosen by Superintendent, including, if deemed advisable by the Superintendent, feedback from Assistant Superintendent's direct reports and key stakeholders.
39. Assistant Superintendent shall provide the Superintendent with a mid-year progress report summarizing her progress toward meeting the priority goals and tasks developed

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pursuant to this article. The Superintendent shall conduct a formal progress assessment of the Assistant Superintendent on or before January 31 of each year.

40. Prior to April 1 of each year, Assistant Superintendent shall remind the Superintendent in writing of the Board's evaluation obligations under the Contract, and Assistant Superintendent and the Superintendent shall agree on dates for Assistant Superintendent's evaluation and the other steps of the evaluation process as described herein.
41. Prior to June 1 of each year, Assistant Superintendent shall present the Superintendent with a written self-evaluation. The self-evaluation shall mirror the form of the written evaluation instrument.
42. Prior to June 30 of each year, the Superintendent will prepare a single, evaluative document that communicates the Superintendent's feedback and expectations.
43. The evaluation of Assistant Superintendent by the Superintendent will be in writing and placed in a sealed envelope in Assistant Superintendent's personnel file marked as: "Confidential. Only to be opened upon authorization of the Superintendent." A copy of the evaluation will be provided to Assistant Superintendent.
44. Failure of the Superintendent to complete the evaluation process does not constitute a material breach of the Contract and shall not result in the amendment or extension of the Contract. Failure of the Superintendent to evaluate Assistant Superintendent shall not preclude the Board from giving notice of termination or nonrenewal in accordance with Paragraphs 46 through 53, inclusive.

Section O. Contract Extension

45. With approval from the Board of Education, this contract may be extended by the Superintendent for one (1) additional year. If the Contract is extended, this extension shall be approved publicly by the Board at the next regular Board meeting subsequent to this extension. If this Contract is extended by operation of this paragraph 45, this provision continues to apply to the Contract as extended to the extent allowed by law.

Section P. Non-Renewal of Employment Contract

46. Should the Superintendent determine that he/she does not wish to re-employ Assistant Superintendent under any successor contract, the Board shall give written notice of this decision to Assistant Superintendent pursuant to Education Code section 35031 at least three (3) months (rather than the statutory forty-five (45) days) prior to the end of this Contract, or any successor Contract. Failure to give such notification will make the Agreement automatically renew for one (1) year upon the same terms and conditions.

Section Q. Termination of Employment Contract

47. Notwithstanding Paragraph 1, this Contract may be terminated prior to its normal expiration by:

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- (a) Failure by Assistant Superintendent to maintain a valid California Administrative Credential.
- (b) Mutual written agreement of the parties.
- (c) Retirement of Assistant Superintendent.
- (d) Termination by the Assistant Superintendent.
- (e) Physical or mental inability of Assistant Superintendent to perform his or her duties.
- (f) Termination for Cause.
- (g) Termination for No-Cause.

48. Cause, as used in this provision means conduct which is seriously prejudicial to District. This shall include, by way of illustration and not limitation:

- (a) any cause set forth in Education Code section 44932;
- (b) any act of unprofessional conduct not otherwise set forth in Education Code section 44932;
- (c) any act in bad faith that causes detriment to the District;
- (d) incompetency;
- (e) neglect of duty;
- (f) failure or refusal to follow Board directions (subject to any right to reasonable accommodation as set forth under State or federal law); or
- (g) material breach of this Contract.

In applying this provision, the parties acknowledge that Assistant Superintendent is one of the District's most visible representatives and is expected to maintain high standards of personal conduct and to avoid situations that might reflect negatively on the District. Determination of whether cause exists shall be in the sole discretion of the Superintendent.

49. Should the Superintendent elect to terminate this Contract for cause prior to its expiration pursuant to Paragraph 47(f), the Superintendent shall notify Assistant Superintendent in writing. Upon request, the Superintendent shall serve upon Assistant Superintendent a reasonably detailed statement of the facts upon which the Superintendent has determined that cause exists. Assistant Superintendent shall be afforded an opportunity for a meeting which shall include the right to be represented by counsel and the right to call witnesses. If Assistant Superintendent chooses to be accompanied by legal counsel at such meeting, Assistant Superintendent shall bear any costs therein. Such meeting shall be conducted in private (unless otherwise required by law to be held in open session). Assistant Superintendent shall be provided a written decision describing the results of the meeting.

50. Notwithstanding any other provision of this Contract, the Superintendent shall have the sole right to terminate this Contract for no-cause during its term as set forth in this section. The parties mutually acknowledge that pursuant to California Government Code section 53260(a), the maximum cash settlement that Assistant Superintendent may receive shall be an amount equal to the monthly salary of Assistant Superintendent multiplied by the number of months left on the unexpired term of the Contract or up to a maximum of three (3) months, whichever is less. The three (3) month payment period shall commence on the date of written notification of the Board's decision to terminate

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this contract. Assistant Superintendent shall also be entitled to District-paid health benefits during this payment period. However, if Assistant Superintendent is gainfully employed, or commences drawing retirement benefits from a retirement system during any portion of the time he or she is being compensated, such earnings shall reduce, on a dollar-for-dollar basis. For each affected month during the period of time Assistant Superintendent is to be compensated by the District pursuant this paragraph, the Assistant Superintendent shall provide the District with a statement of earnings, if any, which shall become a pro-rated dollar-for-dollar offset against the District's monthly obligation under this paragraph for the following month.

51. The compensation set forth in Paragraph 50 above shall be the only compensation of any kind which shall be due to Assistant Superintendent if this Contract is terminated by the Superintendent for no-cause.
52. The Assistant Superintendent may unilaterally terminate the Agreement provided that, unless otherwise waived by the Superintendent, the Assistant Superintendent shall provide at least ninety (90) calendar days advance written notice. The Assistant Superintendent and Superintendent may mutually agree in writing to a termination date of fewer than ninety (90) calendar days.
53. In the event of an incapacity by illness or disability, the Superintendent may terminate this agreement by written notice to the Assistant Superintendent at any time that the Assistant Superintendent has exhausted all accumulated sick leave and one-hundred (100) days of extended personal illness, and accumulated non-duty days, and has been absent from employment for whatever cause for an additional continuous period of three (3) months (unpaid)

Section R. Other Employment Opportunities

54. Assistant Superintendent shall notify the Superintendent in advance of any interview for another employment opportunity, regardless of the type of opportunity.

Section S. Termination by Death

55. The Contract shall terminate immediately upon the death of Assistant Superintendent and all rights and obligations of the Parties under the Contract shall be deemed fully satisfied.

Section T. Liability for Taxes

56. Notwithstanding any other provision of the Contract, the District shall not be liable (except in cases of District errors or omissions) for any state or federal tax consequences to Assistant Superintendent, signed beneficiary hereunder, or the heirs, administrators, executors, successors, and assigns of Assistant Superintendent. Assistant Superintendent shall assume sole liability for any state or federal tax consequences of the Contract or any related contract and agrees to indemnify and hold District harmless from such tax consequences.

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Section U. Assistant Superintendent Indemnification

57. The District shall include Assistant Superintendent as a named insured in its liability and errors and omissions insurance policies.
58. District shall, to the full extent permitted by law, defend, hold harmless, and indemnify Assistant Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against him or his in her or her personal capacity or in his or her official capacity as an agent and/or employee of District, provided that the incident arose while Assistant Superintendent was acting on matters related to his or her employment with the District, or acting within the course and scope of her employment.
59. In no event will any individual Board member be personally liable for indemnifying Assistant Superintendent.

Section V. General Provisions

60. The Contract is the full and complete contract between the Parties. It can be changed or modified only in writing signed by Assistant Superintendent and the Superintendent.
61. The Contract contains the entire understanding between the Parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in the Contract. The Contract is intended by the Parties to be the sole instrument governing the relationship between the Parties unless a provision of law, now or hereinafter enacted, is specifically applicable to the Contract or to the relationship between Board, Superintendent, and Assistant Superintendent.
62. This Contract is subject to all applicable laws of the State of California, the rules and regulations of the State Board of Education, and Board rules, regulations, and policies. These laws, rules, regulations, and policies referenced herein are a part of the terms and conditions of the Contract as though fully set forth herein, except as they are expressly modified in this Contract.
63. The Contract will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of the Contract, it is understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting hereof and no such contract term shall be construed or resolved against either party based on any rule of construction.
64. All notices permitted or required under the Contract shall be given to Assistant Superintendent at the following address: 2020 Bonar Street, Berkeley, California, 94702.
65. Such notices shall be deemed received when personally delivered or when deposited in the U.S. Mail. However, actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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66. The headings of sections of the Contract have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of the Contract.
67. In the event of any action or proceeding to enforce or construe any of the provisions of the Contract, Assistant Superintendent and the District shall each bear the cost of their own attorney's fees and costs regardless of the outcome of the action or proceeding.
68. If any portion of the Contract is declared invalid or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforceability of the remaining provisions of the Contract.
69. The Parties agree that all of the services provided under this Contract shall be performed in Alameda County and in the event of litigation, venue shall be the proper state or federal court serving Alameda County, State of California.
70. Assistant Superintendent may not assign or transfer any rights granted or obligations assumed in the Contract.
71. In the event of a conflict between the terms of the Contract, or any amendments thereto, and the terms of Board-adopted policies, the terms of the Contract shall prevail.

Section W. Abuse of Office

72. If Assistant Superintendent is convicted of a crime involving abuse of his or her office, Assistant Superintendent shall reimburse District for all applicable costs pursuant to Article 2.6 (commencing with Section 53243) of Chapter 2 of Part 1 of Division 2 of the Government Code.
73. Pursuant to Government Code Section 53243.2, any funds received by Assistant Superintendent from District resulting from Board's decision to terminate Assistant Superintendent without cause shall be fully reimbursed to District if Assistant Superintendent is convicted of a crime involving the abuse of his or her powers of office. If the District funds the criminal defense of Assistant Superintendent against charges involving the abuse of his or her office or position, and Assistant Superintendent is then convicted of those charges, Assistant Superintendent shall fully reimburse District for all District funds paid for Assistant Superintendent's criminal defense.

Section X. Board Approval

74. The Board approved this Contract at its regularly scheduled meeting on April 21, 2021, and authorizes its Superintendent to execute this Contract on behalf of the Board.

IN WITNESS THEREOF, we affix our signatures to the Contract as the full and complete understanding of the relationships between the parties.

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On Behalf of the GOVERNING BOARD OF THE BERKELEY UNIFIED SCHOOL DISTRICT:

Brent Stephens, Ed. D.

Date

I, Samantha Tobias-Espinosa, accept Board's offer of employment and agree to comply with the Contract and fulfill all of the duties required herein as Assistant Superintendent of the Berkeley Unified School District.

Date