

**AGREEMENT OF EMPLOYMENT
BETWEEN
KATHLEEN JOHNSTON
AND
THE BETHLEHEM CENTRAL SCHOOL DISTRICT**

THIS IS AN AGREEMENT OF EMPLOYMENT, made and entered into this 19 day of May, 2011 by and between the **BETHLEHEM CENTRAL SCHOOL DISTRICT**, a municipal corporation having its principal office at 90 Adams Place in Delmar, New York, acting by and through its Board of Education, (“**DISTRICT**,” or the “**BOARD**,”) and **KATHLEEN JOHNSTON** presently residing in [REDACTED] (“**EMPLOYEE**”), both parties collectively referred to as the “**PARTIES**.”

RECITALS

It is the mutual desire of the **PARTIES** to reduce to writing in a single document the basis and objectives of said **EMPLOYEE**’s continued employment as well as the terms and conditions of the **EMPLOYEE**’s employment.

AGREEMENT

In consideration of this agreement and mutual promises herein made and other good and valuable consideration, the **PARTIES** agree as follows:

1. **TERM**: At the meeting of the Board of Education held on May 18, 2011, the **EMPLOYEE** was appointed to the position of Director of Special Education and Student Services, pursuant to a three (3) year probationary appointment effective July 1, 2011 and terminating June 30, 2014.

The term of this agreement is three (3) years, commencing July 1, 2011 and ending June 30, 2014. However, the term and nature of the appointment and employment of the **EMPLOYEE** is controlled by and subject to the New York State Education Law and the Rules

and Regulations of the Commissioner of Education, and is not established by this Agreement or the District's resolution. During the term of her employment the EMPLOYEE is subject to termination in accordance to the Education Law and the Rules and Regulations of the Commissioner of Education.

2. **COMPENSATION:** The District shall pay to the EMPLOYEE, for the 2011-2012 school year, the annual salary of One Hundred Fifteen Thousand (\$115,000) Dollars. Such salary shall be payable in twenty six (26) bi-weekly installments. The PARTIES agree that it may be necessary during a particular year to vary such pay schedule by one more or one less installment or pay period. The work year shall be twelve (12) months.

In addition to the above salary, the EMPLOYEE's annual income for a particular year during the term hereof may be increased in accordance with an annual goal setting process designed to provide an opportunity for the EMPLOYEE and the Superintendent to mutually develop a planned professional growth program with a targeted outcome, subject to Board approval.

Such salary shall be determined by the BOARD and EMPLOYEE annually. In no event shall the salary be lower than EMPLOYEE's salary for the prior year.

3. **CERTIFICATION AND DUTIES OF DIRECTOR OF SPECIAL EDUCATION AND STUDENT SERVICES:** Kathleen Johnston shall hold and maintain all certification required by the Department of Education of the State of New York necessary for the position of Director of Special Education and Student Services and shall be responsible for the duties and responsibilities of the position as now or hereafter defined by the BOARD, under the direction of the Board of Education and the policies promulgated by the BOARD pursuant to the laws of the State of New York and the rules and regulations of the Commissioner of Education.

4. **OUTSIDE ACTIVITIES:** EMPLOYEE shall devote her full-time and energy to the business of the School District. However, EMPLOYEE may on occasion serve as a paid consultant, writer or speaker, provided any consultative services entered into shall not interfere with EMPLOYEE's professional responsibilities and shall be considered to constitute either personal leave time or vacation time, if with the prior written permission of the Superintendent of Schools, such services are rendered during the usual school work day or work year of the EMPLOYEE.

5. **BENEFITS:** The EMPLOYEE shall receive the following benefits:

(a) Life Insurance: The DISTRICT shall pay the annual cost of a whole life insurance policy upon the life of the EMPLOYEE in the face amount of One Hundred Thousand and no/100 Dollars, (\$100,000.00).

(b) Health, Dental and Prescription Drug Insurance Plans: The EMPLOYEE shall be eligible to participate in any health insurance, dental insurance and prescription drug plan (except as otherwise provided herein) currently available pursuant to any group coverage offered through the DISTRICT.

EMPLOYEE may participate in either Par Plus, Secure Blue Preferred or the Capital District Physicians Health Plan. The District's contribution for individual health insurance coverage shall be 90%. The DISTRICT's contribution for two persons, family or domestic partners shall be 80%. Any indemnity or out-of-network benefit plan made available through the District will include a \$250/500 annual deductible with an out-of-pocket limit of \$2,500.00 per individual and \$5,000.00 per family, per year.

EMPLOYEE agrees to select the separate drug program under a pharmacy benefit management company and to be responsible for payment of any contribution required by such

plan for the purchase of generic or name-brand drugs pursuant thereto. If a co-pay option for office visits or such other services of \$20 or more becomes available under the District health plan in which the EMPLOYEE participates, then such co-pay shall apply to the EMPLOYEE.

The DISTRICT agrees to contribute the sum of One Hundred Eighty and no/100 Dollars (\$180.00) per year toward the premium for individual dental coverage for EMPLOYEE or Three Hundred Forty and no/100 Dollars (\$340.00) for family dental coverage should EMPLOYEE elect to procure same, PROVIDED, HOWEVER, that in no event shall the amount contributed by the DISTRICT for such coverage exceed the amount required to be contributed by said EMPLOYEE.

(c) Retirement Benefits:

i) Health Insurance: If, after ten (10) years of service as an employee in the District, EMPLOYEE shall retire from active service in the DISTRICT pursuant to EMPLOYEE rights under the New York State Teachers' Retirement System, the cost of coverage afforded in sub-paragraph (b) shall continue to be borne by the DISTRICT at the percentage level such were borne by the DISTRICT for retired tenured employees immediately prior to such retirement, for the duration of the life of said EMPLOYEE.

ii) Employer Non-Elective Contribution to 403(b) Plan: In the event EMPLOYEE should retire from employment in the DISTRICT pursuant to the rules and regulations of the New York State Teachers' Retirement System after having completed at least ten (10) years of service to the DISTRICT, employee shall be eligible for an Employers Non-elective contribution described herein.

iii) No Cash Option: The employee may not receive cash in lieu of or as an alternative to any of the Employer's Non-elective Contribution(s).

iv) Employer Non-Elective Contribution: The Employer agrees to make an Employer Non-Elective Contribution to the 403(b) account for an eligible employee calculated as follows:

A benefit equal to \$65 for each accumulated sick day, provided, however, that in no event shall such benefit exceed \$25,000.

v) Contribution Limitations: In any applicable year, the maximum Employer Contribution shall not cause an employee's 403(b) account to exceed the applicable contribution limit under Section 415(c)(1) of the Code, as adjusted for cost-of-living increases. In the event that the calculation of the Employer Non-elective Contribution referenced in the preceding paragraph exceeds the applicable Contribution Limit, the Employer shall first make an Employer Non-elective Contribution up to the Contribution Limit of the Internal Revenue Code and then pay any excess amount as compensation directly to the Employee. In no instance shall the Employee have any rights to, including the ability to receive, any excess amount as compensation unless and until the Contribution Limit of the Internal Revenue Code are fully met through payment of the Employer's Non-Elective Contribution.

vi) Tier I Adjustments: For Tier I members with membership dates prior to June 17, 1971, an Employer Non-elective Contribution hereunder will be reported as non-regular compensation to the New York State Teachers' Retirement System.

vii) 403(b) Accounts: Employer contributions shall be deposited into the 403(b) account selected by employee to receive Employer contributions, provided such account will accept Employer Non-elective Contributions. If the employee 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 the endorsed 403(b) program.

viii) This contribution program shall be subject to IRS regulations and rulings. Should any portion be declared contrary to law, then such portion shall not be deemed valid and subsisting, but all other portions shall continue in full force and effect. As to those portions declared contrary to law, the Employee and Employer shall promptly meet and alter those portions in order to provide the same or similar benefit(s) which conform, as close as possible, to the original intent of the parties.

ix) This contribution program shall further be subject to the approval of the 403(b) Provider, which shall review the plan solely as a matter of form and as the provider of investment products designed to meet the requirements of Section 403(b) of the Internal Revenue Code. Upon request, the 403(b) Provider shall provide the Employer with a standard hold harmless agreement as the provider of 403(b) accounts for receipt of Employer Non-elective Contributions.

Payment shall be made on the first payday following the effective date of retirement. If the District elects to implement any New York State provided early retirement incentive plan, the EMPLOYEE may select either the State incentive or the accumulated sick leave benefits provided for herein.

(d) Flex Plan: The EMPLOYEE shall be able to participate in the District-provided cafeteria flex plan under IRC 125.

(e) Leaves of Absence: The EMPLOYEE shall be entitled to the following leaves of absence at full pay unless otherwise provided herein:

(i) Personal Sick Leave: Sixteen (16) days per year, which days may be accumulated from year to year if not used.

(ii) Family Sick Leave: In addition to the personal sick leave, the EMPLOYEE shall be entitled to six (6) days per year for illness in the immediate family which days shall not be cumulative. "Immediate family" for purposes hereof, shall include the EMPLOYEE'S spouse, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, grandfather, grandmother, grandfather-in-law, grandmother-in-law, grandchild or any other relative, by marriage or otherwise, living as a member of said EMPLOYEE'S household.

(iii) Death In The Immediate Family: In addition to personal sick leave, the EMPLOYEE shall be entitled to five (5) days per year to be used in the event of the death of an immediate family member as that term is defined in subparagraph "(ii)" immediately hereinabove and such leave shall not be cumulative from year to year.

(iv) Personal Leave: In addition to personal sick leave, the EMPLOYEE shall be entitled to three (3) days of personal leave per contract year to be used as the employee shall see fit and without the need of submitting any reason for same. Except in the case of emergency, notice of intent to use such leave shall be given to the Superintendent at least five (5) days prior to taking such leave. Such leave will not be cumulative from year to year but will, if not used, be added to the EMPLOYEE's cumulative sick leave.

(v) Jury Duty and Court Appearances: Attendance at Court or other legal proceeding as the result of being required to serve as a member of a jury panel or as the result of a subpoena or written request of a lawyer will be deemed an authorized court leave by the DISTRICT.

(vi) Professional Responsibilities: The EMPLOYEE, with prior approval of the BOARD, which approval will not be unreasonably withheld, may be granted leave to attend conferences, meetings of professional groups and organizations, or for purposes of fulfilling obligations as an officer or director of a professional group or organization, PROVIDED HOWEVER, that attendance at such shall not be at the DISTRICT'S cost and expense unless otherwise provided herein or unless otherwise authorized by the Superintendent upon application of EMPLOYEE.

(f) Vacation: The EMPLOYEE shall receive twenty-one (20) days of vacation annually, exclusive of the District published holiday schedule. All vacation must be taken within the fiscal year during which it is earned or within three (3) months thereafter. At the time of retirement, the EMPLOYEE may cash in up to ten (10) days of unused vacation leave at her then current daily rate of pay (1/260th).

(g) Holidays: The Chief Business and Financial Officer shall be entitled to paid holiday leave on the following days, provided that school is not in session:

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| Independence Day (July 4 th) | New Year's Day (2 days) |
| Labor Day | Martin Luther King Day |
| Columbus Day | Presidents' Day |
| Veterans' Day | Good Friday |
| Thanksgiving Day and the day after | Memorial Day |
| Christmas Day and either the day before or the day after | |

6. **AUTOMOBILE EXPENSES**: The DISTRICT will reimburse the EMPLOYEE for use of a personal automobile for District business in accordance with Board policy at the mileage reimbursement rate established from time to time by the DISTRICT for District employees, or in the event such rate should not be established, then at the rate established by the Internal Revenue Service.

7. **PROFESSIONAL LIABILITY:** The DISTRICT agrees that it will, to the extent allowed by law, defend, hold harmless and indemnify the EMPLOYEE from any and all demands, claims, suits, actions or legal proceedings including administrative proceedings brought against employee in his individual or official capacity with the DISTRICT, provided the incident arose while said EMPLOYEE was acting within the scope of his employment. Provided, however, that nothing contained herein shall be construed as rendering the individual members of the Board of Education personally liable to said EMPLOYEE for such indemnification or other obligations. The DISTRICT shall have the right to select the legal counsel to be retained to represent EMPLOYEE, provided however that such provision shall not apply where such legal counsel is provided pursuant to insurance coverage unless coverage expressly allows selection or approval.

8. **MEDICAL EXAMINATION:** The DISTRICT may, at its expense, require a medical examination, including a psychiatric examination, of the EMPLOYEE at any time it deems appropriate and said EMPLOYEE covenants and agrees that in such event he/she will cooperate in all respects in such examination and authorize the release of all medical or psychiatric findings and reports including test results, to the DISTRICT.

9. **EVALUATION:** The Superintendent of Schools, utilizing to the extent possible, a format mutually acceptable to the PARTIES, shall meet with, evaluate and assess in writing the performance of the EMPLOYEE at least once during each school year, provided however that such evaluation and assessment shall in no event be later than the 30th day of June of the then current school year.

10. **TERMINATION:** Except as set forth herein, expressly or otherwise, or unless otherwise provided by law, this contract be deemed terminated upon the death, retirement, resignation or termination of the EMPLOYEE.

11. **GOVERNING LAW:** The contract shall be construed and governed in all respects in accordance with the laws of the State of New York.

12. **MODIFICATION, AMENDMENT OR WAIVER:** If a modification, amendment or waiver of any of the provisions of the contract shall be held contrary to or invalid under any federal, state or local law or statute, such illegality or invalidity shall not affect in any way any other provision hereof and all other provisions of this contract shall remain binding and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Employment in duplicate the day and year first above written.

Dated: May 19, 2011

BETHLEHEM CENTRAL SCHOOL DISTRICT

By:


James Dering, President, Board of Education


Kathleen Johnston