

## School Board Attorney Employment Agreement

THIS EMPLOYMENT AGREEMENT is made this 19<sup>th</sup> day of July, 2022, by and between THE SCHOOL BOARD OF FLAGLER COUNTY, FLORIDA (hereinafter the "BOARD") and KRISTY J. GAVIN (hereinafter the "ATTORNEY").

WHEREAS, BOARD desires to hire ATTORNEY as its School Board Attorney on the terms and conditions provided herein; and

WHEREAS, ATTORNEY has agreed to be employed by the BOARD in the capacity of School Board Attorney on the terms and conditions provided herein, and in compliance with the Rules regulating The Florida Bar;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein, the BOARD and ATTORNEY hereby agree as follows:

### 1. EMPLOYMENT AND TERMS:

This Agreement replaces the Agreement between the BOARD and the ATTORNEY dated June 18, 2019, which is of no further force or effect. ATTORNEY is employed as BOARD's School Board Attorney for a term beginning July 1, 2022, and ending June 30, 2025, unless sooner terminated as hereinafter provided.

### 2. DUTIES:

A. The ATTORNEY shall be responsible for the handling of the legal matters of the School District, as further described in this position's job description, a copy of which is attached hereto as Exhibit "A". To accomplish these duties, ATTORNEY shall have the discretion to operate her office in the manner she determines to be most efficient and effective, and in the best interests of the BOARD. These duties and the job description may change as mutually agreed to in the future.

B. Insofar as the School District demands for legal services exceed the capacity of the ATTORNEY and ATTORNEY'S staff, the ATTORNEY shall have the non-exclusive right to refer specific cases, types of cases, or items of legal business to outside counsel to handle; provided, however, that outside counsel have been approved by the BOARD. The ATTORNEY may recommend the hiring of an additional in-house attorney and support staff, as may be necessary for the proper handling of the legal work of the BOARD, to the BOARD for approval. ATTORNEY shall be responsible for supervising and evaluating such additional personnel.

C. Within budgetary limitations, the BOARD will furnish the ATTORNEY with clerical services, any and all office equipment and supplies reasonably necessary to run the office effectively, and adequate office space in the District Administration Building to maintain and properly staff the Office of School Board Attorney as those needs shall from time to time be required and authorize reasonable and necessary out-of-county travel for the ATTORNEY. The

**ATTORNEY shall be authorized to travel on business within the State of Florida without the need of TDE form approval, provided that she notify the BOARD office in advance of her travel plans and the purpose therefor.**

**D. The ATTORNEY agrees to devote full time and effort to the performance of her duties and responsibilities as School Board Attorney and shall not engage in the practice of law on behalf of any client other than the School Board, unless the ATTORNEY takes personal days or vacation to do so. Work for any client other than the School Board shall not interfere with the ATTORNEY'S duties as School Board Attorney. ATTORNEY may perform up to ten (10) hours annually of pro bono legal services, so long as such services do not conflict with her duties.**

**1. ATTORNEY represents the District as an entity through its constituents (e.g., the BOARD, Superintendent, and administrators), and reports to the BOARD.**

**2. The ATTORNEY shall not knowingly be placed in a position that may interfere with the full discharge of the ATTORNEY'S duties to the BOARD. The ATTORNEY shall not represent a BOARD member or a member of the Administration in his/her individual capacity. If a conflict of interest occurs between the ATTORNEY and the BOARD, the ATTORNEY may recommend with approval of the BOARD an independent attorney to be retained by the BOARD.**

**3. While performing duties within the course and scope of ATTORNEY'S employment as School Board Attorney, ATTORNEY shall be indemnified to the fullest extent permitted by law for judgments and claims and provided a competent and appropriate legal defense by legal counsel selected by ATTORNEY and approved by the BOARD, and covered by the BOARD through self-insurance and/or its insurance policies, if any. ATTORNEY shall not be liable or responsible for the work of other attorneys where ATTORNEY has not supervised the work.**

**E. Handling requests for legal services from the Superintendent and Individual BOARD Members.**

**1. Legal services shall be provided to the Superintendent and staff by the ATTORNEY, as needed, and may be directed through the Superintendent or designee. All Administrators of the District are authorized to contact the Office of School Board Attorney in the event of an emergency that requires legal assistance.**

**2. Individual BOARD Members may ask the ATTORNEY for legal advice and counsel as they deem necessary in the fulfillment of their official duties. If the ATTORNEY believes that it will take a substantial amount of time to respond to the request, the ATTORNEY will work with the Member in an effort to narrow the scope of inquiry. Should that fail, the ATTORNEY shall take no action without the direction of the BOARD, unless the ATTORNEY deems it necessary in the best interests of the BOARD.**

3. Consistent with BOARD policies, the ATTORNEY shall provide all BOARD members with copies of any legal opinion that affects the operation of the BOARD or when a BOARD Member requests a copy of a specific legal opinion.

F. The ATTORNEY, as a representative of the BOARD, shall work collaboratively with the Superintendent and staff for the benefit of the District and the students it serves.

### 3. COMPENSATION.

A. The ATTORNEY's compensation beginning July 1, 2022 shall be set out according to the School District's twelve month annual base scale administrative salary schedule AYZ, Step 14 less appropriate deductions for standard items such as employment taxes (e.g., Social Security tax) income tax withholding, retirement contributions that are required by law, and voluntary deferred compensation. Throughout the term of this Contract the ATTORNEY shall receive the same increase in compensation received by other administrative personnel arising from any and all future increases in administrative personnel compensation. ATTORNEY may elect to direct a portion of her salary to one or more deferred compensation plans as permitted by law.

B. Retirement. In addition to the salary provided in paragraph A above, the ATTORNEY shall participate in the Florida Retirement System (Senior Management Service Class) and the BOARD shall make its contributions on ATTORNEY'S behalf to the Florida Retirement System accordingly.

C. Expenses. Within budgetary limitations, the BOARD shall pay or reimburse the ATTORNEY for reasonable and necessary expenses incurred in the performance of ATTORNEY'S duties hereunder in accordance with applicable state law and BOARD policies. Without limiting the generality of the foregoing, the BOARD shall pay or reimburse the ATTORNEY for travel and attend professional meetings, seminars, continuing legal education programs, and other meetings and functions that the ATTORNEY deems relevant to the performance of her duties. The BOARD agrees to pay reasonable professional membership dues of the ATTORNEY, including those of the Flagler Bar, the Florida School Board Association, the Florida Bar and up to three sections thereof, the Council of School Attorneys, and the Education Law Association. The ATTORNEY and ATTORNEY'S legal staff may hold offices or accept responsibilities in such professional organizations and associations, provided that such responsibilities do not materially interfere with the performance of their duties to the BOARD. It is expressly understood that the ATTORNEY shall continue to maintain all essential qualifications necessary to satisfy the requirements of this position.

D. The ATTORNEY shall be eligible for mileage and reasonable access to motor pool (fleet) vehicles for business reasons, as per District policies for administrative employees.

**E. Employee Benefits.** For each year of this Employment Agreement, the BOARD shall provide health, life insurance and other flexible benefits offered to other district level management employees, which the ATTORNEY elects, according to the terms and from the BOARD'S standard benefit program available to all administrative employees.

**F. Holidays and Vacation, Personal and Sick Leave.** ATTORNEY shall be entitled to observe the same legal holidays as those observed by other 12-month administrative employees of the BOARD. ATTORNEY shall earn and accrue vacation, personal and sick leave pursuant to BOARD'S policies regarding the same. The ATTORNEY shall be entitled to 5 discretionary days each fiscal year. These discretionary days shall not be counted as or deducted from the ATTORNEY'S available sick leave or vacation leave.

**G. Terminal Pay.** Upon the last day of employment, the ATTORNEY shall receive terminal pay on the same basis as other 12-month administrative employees of the BOARD, including payment for accrued vacation and sick leave pursuant to BOARD policy. This payment shall be in addition to any other amounts payable to the ATTORNEY upon termination of employment under this Employment Agreement and applicable law.

#### **4. ANNUAL EVALUATION.**

The BOARD and ATTORNEY will agree on an evaluation instrument no later than May 1, 2023. On or before July 1, 2022 for the 2022-2023 and 2023-2024 school year while this Employment agreement is in force, the BOARD shall evaluate the ATTORNEY'S performance of her duties. During the third year, renewal year (the 2024-2025 school year), the BOARD shall evaluate the ATTORNEY'S performance of her duties on or before October 1, 2024. Each BOARD member may meet individually, subject to any Sunshine law requirements, with the ATTORNEY to review ATTORNEY'S performance. Following such meetings, the BOARD, at a retreat, workshop or public meeting, may discuss the ATTORNEY'S performance and evaluation.

#### **5. RENEWAL.**

The BOARD agrees to vote no later than six (6) months prior to the expiration of the term of this Agreement on whether or not to extend the term for an additional three (3) year period. ATTORNEY will provide the BOARD with at least thirty (30) days advance written notice of the required vote.

#### **6. TERMINATION.**

**A.** This Employment Agreement may be terminated by mutual agreement of the parties or by death or extended disability of ATTORNEY, and throughout the term of this Agreement, ATTORNEY shall be subject to discharge only for just cause. Just cause shall be defined as dereliction of duty, failure to report to work, misconduct in office or violation of criminal law.

B. Should the BOARD terminate this Agreement by action taken at a duly noticed regular or special meeting of the BOARD, the Chairperson shall give written notice of termination to ATTORNEY. ATTORNEY'S employment with the BOARD shall terminate upon receipt of such notice, and such termination shall be final.

C. The ATTORNEY may challenge the just cause finding by timely filing a petition with the BOARD pursuant to the Uniform Rules of Procedure. The petition shall be referred to the Division of Administrative Hearings for the appointment of an Administrative Law Judge ("ALJ"). The administrative proceeding shall constitute an employment dispute within the meaning of Section 215.425 F.S. Should the ALJ determine that just cause did not exist, or if the parties agree to settle the matter at any time before or after a hearing, ATTORNEY shall be paid 12 weeks of base salary without benefits computed as of the date of termination of employment, as well as accrued sick and annual leave as set forth in 3 G. above. The payment of which shall be in full satisfaction of any and all claims and causes of action ATTORNEY has or may have arising out of or relating to this Agreement and the parties' acts and/or omissions hereunder, and the payment of which the parties agree is made pursuant to Section 215.425(4)(a), F.S. (2011). Should the ALJ determine that just cause did exist, then no payment shall be due or paid. Notwithstanding any provision contained herein to the contrary, no severance pay shall be due or paid if ATTORNEY was terminated for an act of misconduct, as that term is defined in Section 443.036, F.S. (2011). See Section 215.325(4)(a)2, F.S. (2011).

D. ATTORNEY acknowledges that BOARD members may have voted in favor of termination of employment. Nevertheless, ATTORNEY agrees not to seek to have such member or members recused at any stage in the administrative proceeding, including consideration of the ALJ's recommended order and issuance of a final order, or in any related proceeding.

E. The ATTORNEY may resign during the term of this Employment Agreement without the consent of the BOARD upon sixty (60) days advance written notice.

#### 7. ENTIRE AGREEMENT.

This Employment Agreement contains the entire agreement concerning employment arrangements between the BOARD and the ATTORNEY. This Employment Agreement may not be changed, except by a writing signed by the party against whom the enforcement of any waiver, change, extension, modification or discharge is sought.

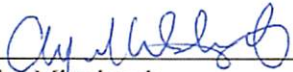
#### 8. NOTICES.

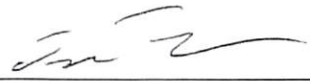
Any notice required or permitted to be given under this Agreement shall be sufficient if one party sends it in writing and by registered or certified U.S. Mail to the other at the address of record, or to such other address as either party may specify to the other in writing.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on  
the 19<sup>th</sup> day of July, 2022.

ATTEST:

THE SCHOOL BOARD OF FLAGLER COUNTY FLORIDA

  
\_\_\_\_\_  
Cathy Mittelstadt  
Superintendent of Schools

By:   
\_\_\_\_\_  
Trevor Tucker, Chair

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Kristy J. Gavin