

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the STATE BOARD OF EDUCATION, a Nebraska public body corporate (hereinafter, the “State Board”) and BRIAN L. MAHER, Ed.D., an individual (“Dr. Maher” or “Employee”), effective as of the 1st day of July, 2023 (“Effective Date”).

RECITALS

A. The State Board is established by art. VII, § 2 of the Nebraska Constitution and operates subject to and in accordance with the Constitution and the Revised Statutes of Nebraska.

B. The Commissioner of Education is established under art. VII, § 4 of the Nebraska Constitution and serves as the executive officer of the State Board and the administrative head of the State Department of Education (“Department”).

C. Under express provisions in Neb. Rev. Stat. § 79-315 (2014), the State Board is authorized to appoint and contract for a Commissioner of Education, whose appointment may be for a period of three years.

D. Subject to and in accordance with the terms and conditions hereof and the Constitution and the Revised Statutes of Nebraska, the State Board wishes to employ Dr. Maher, and Dr. Maher wishes to be employed by the State Board as the Commissioner of Education for the State of Nebraska.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants hereof, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Term of Agreement. Unless otherwise extended by written agreement duly executed by the parties, the term of this Agreement and Dr. Maher’s employment hereunder shall commence on the Effective Date and shall terminate at 11:59 p.m. on the 30th day of June, 2026 (“Term”).

Section 2. Duties of the Commissioner of Education.

(a) The State Board hereby employs Dr. Maher and Dr. Maher hereby accepts employment as Commissioner of Education (“Commissioner”) as of the Effective Date. In this capacity, Dr. Maher shall be responsible for performance of those duties generally described herein or as are otherwise assigned to Dr. Maher by the State Board from time to time. Dr. Maher shall faithfully utilize his best efforts on a full-time basis to perform the responsibilities and duties of his position. Dr. Maher shall report directly to and take direction from the State Board. Dr. Maher shall faithfully adhere to, execute, and fulfill all policies and directives of the State Board as are communicated to him, as

such policies and directives may be established or changed from time to time by the State Board.

(b) Dr. Maher shall perform the duties prescribed for the Commissioner as set forth in the Revised Statutes of Nebraska and the Nebraska Administrative Code, as they now exist or as they may be changed from time to time, which duties are incorporated by reference into this Agreement as if fully set forth herein.

(c) Subject to the other provisions of this Section 2, Dr. Maher may undertake speaking engagements, writing, lecturing, or other professional activities which do not interfere with the performance of his duties hereunder. Dr. Maher may not receive remuneration for any speaking engagements, writing, lecturing, or other professional activities which are part of his duties as Commissioner, or receive any remuneration which violates the laws and regulations of the Nebraska Accountability and Disclosure Commission or any other provision of law. In the event that Dr. Maher wishes to accept remuneration for any activities during the Term hereof, he shall notify the President of the State Board in each instance and obtain written approval of same in advance.

Section 3. Compensation. For the performance of all duties and responsibilities in his capacity as Commissioner, Dr. Maher shall be compensated as follows during the Term hereof:

(a) Salary. On the Effective Date of this Agreement, Dr. Maher shall be paid a full-time annual salary in the gross amount of \$300,000.00 (Three Hundred Thousand Dollars and No Cents), which shall be paid pro rata at normal payroll intervals and shall be subject to normal payroll deductions. The State Board retains the option to adjust Dr. Maher's salary during the Term hereof.

(b) Benefits. Dr. Maher shall receive vacation leave and sick leave as set forth in Neb. Rev. Stat. §§ 81-1320 through 81-1328, respectively, as those statutes currently exist or as they may be amended in the future. Dr. Maher shall otherwise be eligible to receive all benefits made available to permanent full-time employees of the Department.

(c) Expenses. Dr. Maher shall be reimbursed for expenses in accordance with applicable policies, regulations and directives of the State of Nebraska and the State Board. Eligible professional travel outside the city limits shall be reimbursed at the state-approved rate.

Section 4. Annual Report to the State Board. No later than April 15 of each year in the Term hereof, Dr. Maher shall prepare and provide to each member of the State Board a written report setting forth in detail evidence of accomplishments, progress, and impediments with respect to the performance standards and target goals established by the State Board. For the first year of employment, the evaluation period will be July 1 through March 31, and for each subsequent year, the evaluation period shall be April 1 through March 31 ("Evaluation Period").

Section 5. Annual Evaluation of Performance. During the first year of the Term, Dr. Maher will participate in an informal performance assessment with the State Board. The assessment shall take place no later than six months from the Effective Date. Thereafter, on or before June 15 of each year of the Term, the State Board shall communicate to Dr. Maher the State Board's annual evaluation of his performance during the Evaluation Period. The State Board shall conduct the performance evaluation utilizing an appraisal instrument, a copy of which shall be provided to Dr. Maher on the Effective Date. In the event the State Board modifies the appraisal instrument during the Term, Dr. Maher shall receive a copy of the revised instrument as soon as reasonably practicable. The results of the evaluations and any documents prepared and used in the evaluation process shall be kept confidential unless the parties mutually agree to their disclosure.

Section 6. Termination of Employment. Notwithstanding the Term hereof, this Agreement and Dr. Maher's employment may be terminated sooner as follows:

(i) *For Cause.* Pursuant to Neb. Rev. Stat. § 79-318(2) (Cum. Supp. 2022), the State Board shall "[r]emove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board[.]"

(ii) *Death.* In the event of Employee's death, this Agreement and Employee's employment by the State Board shall immediately and automatically terminate.

(iii) *Disability.* Should Employee be unable to perform any or all of the essential functions of Commissioner by reason of disability for a continuous period in excess of ninety (90) calendar days, or for an aggregate total of sixty (60) business days (whether continuous or consecutive) during any period of ninety (90) consecutive business days, or if such disability is permanent, irreparable, or of such nature as to make the performance by Employee of his essential duties as Commissioner impossible, the State Board may at its option terminate this Agreement. On such termination, the respective duties, rights and obligations of the parties shall terminate. Nothing herein is intended to interfere with or limit Employee's entitlement to workers' compensation benefits or benefits under any disability insurance coverage provided in whole or in part by the Nebraska State Insurance Program.

(iv) *No Appropriation.* The State Board may terminate this Agreement in accordance with the provisions of Section 10 hereinafter.

Section 7. Professional Development; Expenses. Dr. Maher may attend appropriate professional conferences and meetings at the local, state, and national levels, and participate in professional activities related to the duties and responsibilities of the Commissioner, provided that such attendance does not interfere with Dr. Maher's

performance of his duties under this Agreement. Dr. Maher will be reimbursed for actual and necessary travel and business expenses related to the performance of his official duties in accordance with applicable state law and policies and State Board policies.

Section 8. No Penalty for Release or Resignation. In the event that Dr. Maher desires to resign his employment hereunder and be released from the terms of this Agreement, the terms for release or resignation by Dr. Maher from this Agreement shall be subject to the mutual agreement of the parties hereto. In the event such mutual agreement is reached, there shall be no financial penalty assessed as a condition for release or resignation.

Section 9. Compensation Upon Termination and Credit for Accrued Vacation. Upon termination of this Agreement for any reason, Dr. Maher shall receive only the salary accrued as of the date of termination or the date that Dr. Maher ceases to perform his duties under this Agreement, whichever occurs first. Any portion of the salary paid but not earned prior to the date of termination of this Agreement shall be refunded by Dr. Maher. Upon termination or expiration of this Agreement, Dr. Maher shall be entitled to compensation for all unused accrued vacation and sick leave, if any, in accordance with state law.

Section 10. Agreement Funding. The Department's obligation to pay compensation and benefits provided under this Agreement that come due in fiscal years beyond the fiscal year in which this Agreement is executed by the State Board is contingent upon legislative appropriation of funds for the Agreement. In the event that funds are not appropriated in future fiscal years for the payment of the obligations under this Agreement, or that the appropriation of funds is not approved by the Governor, the State Board may terminate the Agreement effective on the last date for which previously appropriated funds are available. The State Board will give Dr. Maher as much written notice as is practicable prior to the effective date of any termination under this Section. All obligations of the State Board to make payments for compensation or benefits or expenses after the termination date will cease. Dr. Maher shall not be entitled to any loss of anticipated financial benefit under this Agreement in the event of the termination of this Agreement and Dr. Maher's employment under this Section.

Section 11. Notices. Whenever any notice is required or permitted hereunder, it shall be given in writing addressed to each party as follows:

To State Board: President
Nebraska State Board of Education
P.O. Box 94987
Lincoln, NE 68509-4987

To Dr. Maher: Brian L. Maher, Ed.D.
1936 Connor Street
Lincoln, NE 68505

Notice shall be deemed given and effective on the earlier of three (3) days after the deposit in the U.S. mail of a writing addressed as above and sent first class mail either certified with return receipt requested or with delivery notification requested; or when actually received by means of hand delivery, delivery by Federal Express or other courier service; or upon facsimile transmission when such transmission has been verified as successful by sender's transmission mechanism. Either party may change the address for notice by notifying the other party of such change in accordance with this Section 11.

Section 12. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

Section 13. Amendment. This Agreement may be amended at any time in writing upon the agreement of both parties.

Section 14. Waiver. No party hereto shall be deemed to waive any rights or remedies under this Agreement unless such waiver is in writing and is signed by such party. No delay or omission on the part of either party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any other occasion.

Section 15. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the State Board and Dr. Maher with respect to the matters referred to herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the parties hereto.

Section 16. Severability. If any portion of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforceability of the remaining provisions of this Agreement.

Section 17. State Board Approval. This Agreement is subject to approval by the State Board. It is not binding on either party unless and until signed by both parties following the State Board's affirmative vote approving the terms of this Agreement in a public meeting.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates set forth below.

STATE BOARD OF EDUCATION

BRIAN L. MAHER, Ed.D.

By: _____
Patti Gubbels, President

By: _____

Date: _____

Date: _____

49-3186-30

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