



Union High School District

Board of Trustees
Joyce Dalessandro
Barbara Groth
Beth Hergesheimer
Amy Herman
John Salazar

Superintendent
Ken Noah

**SAN DIEGUITO UNION HIGH SCHOOL DISTRICT
BOARD OF TRUSTEES
REGULAR BOARD MEETING**

AGENDA ADDENDUM, REVISED

**THURSDAY, MAY 16, 2013
6:30 PM**

**DISTRICT OFFICE BOARD ROOM 101
710 ENCINITAS BLVD., ENCINITAS, CA. 92024**

NON-ACTION ITEMS..... (ITEMS 7 - 10)

- 10. UPDATE, EARL WARREN MIDDLE SCHOOL.....MARY ANNE NUSKIN, PRINCIPAL

DISCUSSION / ACTION ITEMS..... (ITEMS 16 - 20)

- 19. APPOINTMENT OF SUPERINTENDENT OF THE SAN DIEGUITO UNION HIGH SCHOOL DISTRICT
Appointment of Rick Schmitt as Superintendent of the San Dieguito Union High School District, effective July 1, 2013. Employment contract to be presented at a future board meeting.
- 20. APPROVAL OF SUPERINTENDENT EMPLOYMENT CONTRACT, EFFECTIVE JULY 1, 2013 – JUNE 30, 2016
Approval of Employment Contract for Rick Schmitt, as Superintendent of the San Dieguito Union High School District, effective July 1, 2013 – June 30, 2016, as shown in the attached supplement(s).

In compliance with the Americans with Disabilities Act, if you need special assistance, disability-related modifications, or accommodations, including auxiliary aids or services, in order to participate in the public meetings of the District’s Governing Board, please contact the [Office of the Superintendent](#). Notification 72 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the District shall also make available this agenda and all other public records associated with the meeting in appropriate alternative formats for persons with a disability.

San Dieguito Union High School District

INFORMATION REGARDING BOARD AGENDA ITEM

TO: BOARD OF TRUSTEES

DATE OF REPORT: May 15, 2013

BOARD MEETING DATE: May 16, 2013

PREPARED AND SUBMITTED BY: Barbara Groth,
Board President

SUBJECT: APPROVAL OF SUPERINTENDENT
EMPLOYMENT CONTRACT, EFFECTIVE
JULY 1, 2013, AND ENDING JUNE 30, 2016

.....

EXECUTIVE SUMMARY

The district administration is requesting approval of an employment contract for incoming superintendent, Mr. Rick Schmitt, who has been selected by the Board of Trustees as Superintendent of the San Dieguito Union High School District effective July 1, 2013. This comes as a result of a recent announcement by the district's current superintendent, Mr. Ken Noah, of his decision to retire in July, 2013.

RECOMMENDATION:

The administration recommends that the Board approve the employment contract as shown in the attached supplement(s). Proposed annual salary will be \$220,000.

FUNDING SOURCE:

District General Payroll Fund as Designated

/bb

**CONTRACT FOR EMPLOYMENT OF SUPERINTENDENT
BETWEEN
THE SAN DIEGUITO UNION HIGH SCHOOL DISTRICT
AND
RICK SCHMITT**

THIS AGREEMENT is hereby made and entered into this 15th day of May, 2013, by and between the BOARD OF EDUCATION ("Board") of SAN DIEGUITO UNION HIGH SCHOOL DISTRICT ("District") and Rick Schmitt ("Superintendent" or "Rick Schmitt").

NOW, THEREFORE, it is hereby agreed as follows:

1. Superintendent, Chief Executive Officer, and Secretary for the Board: Rick Schmitt is hereby employed as the District's Superintendent. Rick Schmitt also shall be the Chief Executive Officer of the District and shall serve as Secretary to the Board. By accepting this employment, Rick Schmitt agrees to devote his full time, best efforts and abilities to performing the duties and responsibilities as provided herein or as assigned to the Superintendent from time to time by the Board.

2. Terms of Employment:

The term of this Agreement shall be from July 1, 2013, through June 30, 2016.

3. General Terms and Conditions of Employment:

This Agreement is subject to all applicable laws of the State of California, and the rules and regulations of the California State Board of Education and the District. Said laws, rules and regulations are hereby made a part of the terms and conditions of this Agreement as though herein set forth.

4. Powers and Duties:

The Superintendent shall perform all of the powers and duties of a Superintendent of Schools in accordance with the laws, rules and regulations set forth above. All powers and duties legally delegated to the Superintendent are to be executed in accordance with the policies and regulations adopted by the Board. Acts which require ratification by the Board shall be referred to the Board at the earliest opportunity.

The Superintendent's duties and functions shall include the following:

A. The Superintendent shall be delegated all powers and duties necessary for efficient management and administration of the District to the full extent permitted by law. The Superintendent shall have the authority to organize and arrange the administrative and supervisory staff, including instruction, business, and operational affairs, which in his best judgment best serves the District. The responsibility for selection, placement, and transfer of existing personnel shall be vested in the Superintendent. Employment of new personnel will be recommended by the Superintendent subject to approval by the Board. In the event the Board does not approve the Superintendent's personnel recommendations, the Superintendent shall submit an alternative recommendation.

B. Working generally with the Board, District personnel, parents and the public, assist in the effort to develop short- and long-range District goals with criteria for determining effective achievement and evaluating outcomes, which may be incorporated into the goals and objectives of the District's strategic plan.

C. Represent the interests of the Board and the District in day-to-day contact with parents, other citizens, community and governmental agencies.

- D. Provide leadership, guidelines and direction to ensure that policies related to curriculum, instruction, pupil personnel services, personnel, budget and business affairs are carried out.
- E. Report regularly to the Board information regarding student learning and an analysis of student achievement and test scores.
- F. Review all policies adopted by the Board and make appropriate recommendations to the Board for additions, deletions or modifications.
- G. Evaluate employees directly accountable to the Superintendent and oversee the evaluation of other employees as defined by California law and Board policy.
- H. Provide leadership and direction in planning and financing school facilities.
- I. Advise the Board and make recommendations regarding possible sources of funds which may be available to implement present or contemplated District programs.
- J. Endeavor to maintain and improve the Superintendent's professional competency including reading appropriate periodicals and joining and/or participating in appropriate professional associations and their activities.
- K. Establish and maintain an effective community relations program including effective relationships with the media.
- L. Communicate openly, systematically and in a timely manner to the Board, staff and the community, and promptly inform the Board of critical issues or incidents.
- M. Provide educational leadership to ensure quality teaching and learning.
- N. In addition, the Superintendent shall perform all other duties and functions as assigned or required by the Board.
- O. Serve as liaison to the Board with respect to all matters of employer-employee relations and make recommendations to the Board concerning those matters.
- P. Unless unavoidably detained, or otherwise directed by the Board, attend all regular, special and executive session meetings of the Board.

5. Board-Superintendent Relations:

The Superintendent shall work with the Board in developing and maintaining a spirit of cooperation and teamwork. The Board shall be responsible for formulating and adopting policy and for taking action on matters which, by law, require Board action. Administrative responsibility and commensurate authority for administering the school system will be delegated by the Board as the board deems appropriate to the Superintendent. The Board shall provide the Superintendent with periodic opportunities to discuss Board-Superintendent relationships as they relate to the Board's productivity and the effectiveness of the Superintendent's leadership. It is agreed that the Board, individually and collectively, generally will refer promptly to the Superintendent for study and recommendation, criticism, complaints and suggestions brought to the attention of the Board or any member thereof.

The Board recognizes that it is a collective body and each Board member recognizes that his/her power as a Board member is derived from the collective deliberation and action of the Board as a whole in a duly constituted meeting. Individual Board members will not give direction to the Superintendent or any staff member regarding the management of the District or the solution of specific

problems. It is agreed that the Board, individually and collectively, will refer promptly to the Superintendent for study and recommendation, criticism, complaints and suggestions brought to the attention of the Board or any member thereof.

The Board shall hold the Superintendent accountable to manage the District consistent with Board-approved policies, which establish the Board's expectations. It is through Board Policy and official Board action that the Board gives direction to the Superintendent.

The Superintendent will be held responsible for establishing programs and services (after Board review) and for managing the District to meet the Board's expected outcomes, including the provision of data from which the Board can evaluate the District's achievements. Thus, the Board by exercising its governance and policy-making role can be assured that it determines what it is the District should accomplish and whether, in fact, the District is accomplishing it.

6. Evaluations:

A. The Board and the Superintendent shall agree upon a written evaluation format which shall be used during the Term.

B. On or before November 1 of each year, the Superintendent shall submit to the Board an analysis of District needs and recommendations for priority goals and tasks to be addressed by the Superintendent. These priority goals and tasks shall be reduced to writing and will be among the criteria by which the Superintendent is evaluated pursuant to this Article. The Board and Superintendent shall confer regarding these priority goals and tasks and agree upon the criteria and procedures to be used for the Superintendent's formal evaluation. Either or both parties may seek and retain the aid of a qualified impartial facilitator agreeable to both parties to endeavor to reach agreement upon the criteria to be used for the formal evaluation.

C. The Superintendent shall provide the Board with a mid-year progress report summarizing his progress toward meeting the goals and tasks developed pursuant to this Article. The Board shall conduct an informal progress assessment of the Superintendent on or before December 31 each year.

D. The Board shall conduct a formal written evaluation of the Superintendent, which shall be completed by June 30 of each year, unless another date is mutually agreed upon by the Board and the Superintendent. A copy of the written evaluation shall be delivered to the Superintendent within twenty (20) days of its completion. The Superintendent shall have the right to make a written response to the evaluation. Within 30 days of the Board's delivery of the written evaluation, the Board and the Superintendent shall meet to discuss the formal evaluation. The Board shall also devote a portion of, or all, of one meeting at least annually to a discussion of the working relationship between the Superintendent and the Board.

E. If the Board concludes that the Superintendent's performance is unsatisfactory, the Board shall identify in writing specific areas where improvement is required, provide written recommendations for improvement, and notify the Superintendent that another evaluation will be conducted within six months. Such written recommendations and specifications for improvement shall be provided within 30 days of the date of the evaluation.

F. An evaluation shall be deemed to be "satisfactory" if a majority of Board members have rated the Superintendent's performance as satisfactory in individual evaluations prepared by such Board members.

G. At least once a year, the parties shall meet to discuss possible modification to this Article.

7. Compensation:

A. Effective July 1, 2013, the Superintendent's annual salary shall be Two Hundred Twenty Thousand Dollars (\$220,000). The Superintendent shall be paid in twelve (12) approximately equal monthly installments. Any adjustments in salary during the term of this Agreement must be mutually agreed to in writing, shall take the form of a written amendment hereto, and shall not operate as a termination or increase the term of this Agreement.

8. Professional Schedule, Fringe Benefits and Sick Leave:

A. The Superintendent is a full-time management employee and shall have a two hundred twenty-three (223) day positive work year each school year during the term of this Agreement. All other days are considered non-work days. When the Superintendent determines to be absent for five (5) or more consecutive days off of work, he shall give notice in advance to the Board President. The Superintendent shall also be entitled to take all paid holidays provided other District management employees.

B. The Superintendent shall be entitled to receive all fringe benefits, including group health and welfare benefits, which are provided to the District's certificated management employees. If the Superintendent retires from the District into STRS, he shall be entitled to receive individual coverage under a District health plan at the expense of the District as follows: (1) one year of postretirement health and welfare benefits for each year served as District Superintendent or (2) until Medicare benefits become available to the retired Superintendent, whichever period is shorter. This benefit will not be available during any period of time in which the Superintendent is employed and receiving health and welfare benefits pursuant to such employment.

C. The Superintendent shall be required to render twelve (12) months of full and regular service to the District during each annual period covered by this Agreement and shall be entitled to 24 days of vacation, which shall accrue at a rate of two days per month of service. Each school year, the Superintendent may use his current year's vacation entitlement in advance of its actual accrual; however, should the Superintendent's employment terminate for any reason before that used vacation has accrued, the compensation previously paid to him on account of the use of unaccrued vacation will be deducted from his final paycheck. The Board prefers that the Superintendent take his allotted annual vacation days; however, it is recognized that there may be unforeseen circumstances that may inhibit the Superintendent from taking all vacation days during the school year. Therefore, for the duration of this Agreement, unused and unpaid vacation days may be allowed to accrue up to a maximum of forty-eight (48) days. Once the maximum of forty-eight (48) accrued vacation days has accrued, then further accrual of vacation days will cease until accumulated vacation is used so as to reduce the number of unused accumulated days below forty-eight (48). At that time, vacation accrual will recommence, until a maximum accrual of forty-eight (48) days is again reached.

D. The Superintendent shall be credited annually with twelve (12) days of earned sick leave. Sick leave shall be accrued and accumulated as provided by the Education Code and Board rules and regulations.

E. The Superintendent shall report to the Board, in writing on an annual basis, his use of sick leave and vacation days.

F. The Superintendent will pay his (employee) share of STRS and the District will pay its (employer) share of STRS.

9. Expenses:

A. The District shall pay the Superintendent for all actual and necessary travel and other District and school business-related expenses incurred by him in the conduct of his duties on behalf of the District.

B. The District shall pay for the services of a professional career coach for one year, in an amount not to exceed Ten Thousand Dollars (\$10,000).

C. The District encourages the Superintendent to participate in professional and community organizations and activities. The District shall pay the Superintendent's annual professional membership dues in ACSA (Association of California School Administrators), or other similar statewide organization, AASA (American Academy of School Administrators), or other state or national organization. In addition, the District shall pay the Superintendent's annual membership dues in other professional and community service organizations as may be approved by the Board in a total amount not to exceed Seven Hundred Fifty Dollars (\$750) while he is rendering services under this Agreement.

D. The Superintendent is expected to attend appropriate professional meetings at the local, county, state and national levels. Approval of the Board shall be obtained when the Superintendent attends conferences outside the State of California, and all actual and necessary expenses of attendance shall be paid by the District. In case of an emergency attendance requirement, the President of the Board will be notified and the expenses will be submitted for ratification at the next appropriate Board meeting.

E. The Superintendent may engage in outside professional activities, including consulting, speaking, writing and participating in professional associations related to education, provided said activities do not interfere with the Superintendent's duties. Days spent on such endeavors shall not be counted as working days by the Superintendent.

10. Physical Examination:

The Superintendent agrees to have an annual physical examination as requested by the Board. Any expense beyond that paid by District insurance will be borne by the District. The physician's report of the Superintendent's physical examination shall be filed with the President of the Board, or the President's designee, and be treated as confidential information by the Board. At the discretion of the Board, the Board shall be advised in writing by the examining physician of the current physical fitness of the Superintendent to perform his duties. The Superintendent agrees to execute any necessary documents to release this information to the Board.

11. Termination:

A. The Board may elect to terminate the Agreement prior to its expiration without cause upon forty-five (45) days written notice to the Superintendent. In such an event and in acknowledgement of the difficulty or impossibility of calculating damages to the Superintendent as a result of such termination, the parties agree that in the event of the Superintendent's termination other than for cause (as defined in paragraph B below) the liquidated amount of damages owed by the Board shall be the base salary, as set forth in section 7 (A) above, remaining to be paid during the full term of this Agreement, up to a maximum of eighteen (18) months. No additional sick leave shall accumulate after the date of termination. The salary payment of the severance package shall be paid within thirty (30) days from the date of termination. In the event Superintendent agrees to be reassigned to another position in the District upon termination of this Agreement, the above liquidated severance package shall be offset by Superintendent's salary in the new position. The parties agree that this provision, and subdivision (B), below, meet the requirements governing maximum cash settlements as set forth in Government Code sections 53260, et seq.

Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Superintendent and the Superintendent shall not be entitled to the cash, salary payments, health benefits or other non-cash settlement as set forth above. This provision, and subdivision (B), below, are intended to implement the requirements of Government Code section 53260(b). The provisions of Government Code section 53260 are incorporated into this Agreement by this reference.

B. In the event of a termination without cause, the Superintendent shall continue to receive health and welfare benefits (medical only) for the full remaining term of this Agreement, up to a maximum of twelve (12) months. No other fringe benefits, including but not limited to travel or mileage reimbursement (Section 9.A) and the professional membership dues (section 9.B) shall be earned, accrued, or paid after the date of termination.

C. The Governing Board may elect to terminate the Superintendent's Agreement for cause at anytime. For the purposes of this Agreement, "cause" shall exist if Superintendent: (1) acts in bad faith to the detriment of the District; (2) refuses or fails to act in accordance with a specific provision of this Agreement or direction or order of a majority of the Board; (3) exhibits misconduct or dishonesty in regard to his employment; (4) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (5) is unable to perform any of the essential functions of his position; or (6) fails to receive a satisfactory or better rating in any annual formal Board evaluation. The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties hereunder. In the event such cause exists, the Governing Board shall give the Superintendent (a) written notice of the proposed action and the reasons therefor; (b) a reasonably detailed account of the charges and the materials upon which the proposed action is based; (c) notice of the right to respond orally or in writing to the Board; and (d) the right to a meeting with the Board. Any request for a meeting shall be filed by the Superintendent with the presiding officer of the Board within ten (10) days after service of the notice of proposed action. The meeting, if requested, shall be held in closed session at the next regular or special Board meeting, and in no event more than thirty-five (35) days after service of the notice of proposed action. The Superintendent and the Board shall each have the right to be represented by counsel at their own expense. The Superintendent shall have a reasonable opportunity to respond to all matters raised in the charges. The meeting shall be conducted by the Board and shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. After the meeting, the Board shall issue a decision in the form of a resolution either rescinding or confirming the charges and specifying the action to be taken. The Superintendent shall be notified in writing within five (5) days of the decision. The decision of the Board shall be final. The Superintendent's meeting with the Board shall be deemed to satisfy the Superintendent's entitlement to due process of law and shall be the Superintendent's exclusive right to any conference or hearing otherwise required by law. The Superintendent waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the Superintendent's administrative remedies.

D. District and Superintendent agree that the payment provided under Section 11.A of this Agreement shall constitute the exclusive and sole remedy of any kind for any termination of his employment and the Superintendent agrees and covenants not to assert or pursue any other remedies of any kind, whether they be administrative, at law or in equity, with respect to any termination of his employment. Specifically, upon acceptance of payment under 11.A the Superintendent agrees to waive and release the District from any claims and/or causes of action against the District or Board in any way related to his employment by the Board, including but not limited to claims or actions under this Agreement.

E. Upon written evaluation by a licensed physician designated by the Board indicating the inability of the Superintendent to perform any of the essential functions of the position, with or without reasonable accommodation, this Agreement may be terminated by the Board upon

written notice to the Superintendent and after providing a reasonable opportunity to respond. The Board may, in its sole discretion, allow the Superintendent to continue in employment until expiration of current and accumulated sick leave and differential leave, but upon receipt of the written evaluation specified above, may immediately assign another employee the duties of Superintendent.

12. Notice of Finalist in Search:

In all cases the Superintendent immediately shall notify the Board of Education should he become a finalist in the selection process for Superintendent with any other District.

13. Waiver:

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

14. Modification:

This Agreement may not be amended or modified other than by a written agreement executed by the Superintendent and approved and signed by the Board.

15. Complete Agreement:

This instrument constitutes and contains the entire agreement and understanding between the parties concerning the Superintendent's employment with the District. This instrument supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. This is an integrated document.

16. Governing Law:

This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education, and to the lawful rules and regulations of the San Dieguito Union High School District Board of Education. By this reference the laws, rules, regulations, and policies are hereby made a part of this Agreement as though set forth in full at this point. In the event of a conflict of provisions, the laws of the State of California and the terms of this Agreement take precedence over any inconsistent provisions found in the policies and regulations of the Board of the District.

17. Construction:

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

18. Communications:

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed by registered or certified mail, postage prepared, addressed to the Superintendent and/or Board of Education at 710 Encinitas Blvd., Encinitas, CA 92024. Either party may change the address at which notice shall be given by written notice given in the above manner.

19. Execution:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

20. Legal Counsel:

The Superintendent and the Board each recognize that in entering into this Agreement, the parties have relied upon the advice of their own attorneys, who are attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them.

21. Savings Clause:

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect the other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and the provisions of this agreement are declared to be severable.

IN WITNESS THEREOF, the parties hereto have duly approved and executed this Agreement on the day and year above written.

Date: _____

BOARD OF EDUCATION OF THE
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

Barbara Groth, President

Amy Herman, Vice-President

Beth Hergesheimer, Clerk

Joyce Dalessandro, Trustee

John Salazar, Trustee

I hereby accept this offer of employment and agree to perform faithfully the duties and responsibilities of Superintendent of the San Dieguito Union High School District and Chief Executive Officer to the Board of Education.

Date of Acceptance: _____

Rick Schmitt

00168.00007/450951.1