

SUPERINTENDENT'S EMPLOYMENT AGREEMENT

This Agreement made this 26th day of November, 2019, by and between the SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA (hereinafter "School Board") and David K. Moore, Ed.D. (hereinafter "Superintendent").

W I T N E S S E T H:

WHEREAS, the School Board wishes to retain the Superintendent to provide all of the services of Superintendent, fully and faithfully, consistent with the spirit, intent and statutory requirements regarding the duties and responsibilities of a school superintendent in the State of Florida; and

WHEREAS, the School Board shall appoint the authorized Superintendent of Schools for the District pursuant to Section 1001.50, Florida Statutes; and,

WHEREAS, the Superintendent is willing to provide said services and will faithfully and fully comply with the duties and responsibilities of his office as outlined herein, as well as provide those services to the School Board as are requested by the School Board throughout the term of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth hereinafter, it is agreed as follows:

I. **Superintendent of the School District of Indian River County.**

The School Board hereby appoints David K. Moore, Ed.D as Superintendent of Schools for the School District of Indian River County, effective December 20, 2019, at 12:00 a.m.

II. **Services and Duties.**

A. **Superintendent Is the Chief Executive Officer.**

The Superintendent shall use his best efforts and devote his full working time to provide those services and work required of the Superintendent by law, such additional duties as are prescribed by the School Board, and the job description adopted by the School Board. The Superintendent shall be the Chief Executive Officer of the School District, and, subject to conformance with applicable laws and School Board policies (duly enacted pursuant to law) and directives of the School Board (by majority vote or consensus by a quorum present at a duly conducted public meeting), shall have charge of the administration of all schools, facilities and personnel within the District. The Superintendent shall provide supervision directly and indirectly of all staff members and shall organize, reorganize and arrange the administrative and supervisory staff as best serves the School District subject to approval by the School Board.

B. **Conformance with Law and Duly Enacted Board Policy and Directive.**

The Superintendent's duties relating to the District's school system shall be those provided by the rules and policies of the School Board, laws of the State of Florida, rules and regulations of other appropriate administrative agencies, including but not limited to the Florida Department of Education and the United States Department of Education, and such special duties and

functions as may be prescribed or assigned by the School Board through mutual goal setting or other forms of direction. All of such duties shall be performed within the time frames or deadlines imposed by law, applicable policy, rule, or goal setting. Absent a legally imposed time frame, the Superintendent shall perform his duties within a reasonable period of time and with due regard for promptness, diligence and professionalism.

C. Obligation of the Superintendent to Present Matters for Decision.

The Superintendent is required by law, School Board policy, and, from time to time, by direction of the School Board, to bring certain matters before the School Board for consideration, decision, or other action. In addition to such matters, the Superintendent is charged to exercise his best professional judgment and shall timely present to the School Board such recommendations which the Superintendent may determine are reasonably necessary for the successful accomplishment of his duties as Superintendent.

D. Devotion of Resources.

The Superintendent shall assign or devote such resources and personnel in a manner which in his judgment best serves the interest of the School District of Indian River County, Florida, consistent with law and the policies and direction of the School Board of Indian River County.

E. Certification.

The Superintendent shall at all times throughout the term of this Agreement obtain, (if necessary), maintain and keep current a valid certification in administration and supervision or equivalent, as issued by the Florida Department of Education. The Superintendent shall notify the School Board immediately of any change in the status of such certification. Suspension, revocation, or lapse of such certification shall be deemed a breach of this Agreement by the Superintendent and shall release the School Board from all obligations under this Agreement.

F. Re-assignment. Without the written consent of the Superintendent, the School Board shall not re-assign the Superintendent to another position, nor shall it re-assign his duties to other employees in the District.

G. Residence. During the entire period of employment under this Agreement, the Superintendent shall maintain a residence in Indian River County, Florida.

H. Outside Professional Activities. While the Superintendent shall devote his full working time to the affairs and activities of the District, the Superintendent may serve as a paid or unpaid consultant to other school districts or educational agencies, lecture, engage in writing and speaking activities, or engage in other professional activities as long as those activities do not impede or interfere with the Superintendent's ability to

perform his duties under this Agreement. However, such outside professional activities shall not be allowed in the first year of this Agreement, shall not occur until after the Superintendent has obtained the Chief Executive Officer Leadership Development Program Certificate described below, and the School Board Chairman must provide prior approval of such outside professional activities. Further, any such outside professional activities, whether paid or unpaid, shall be charged against the Superintendent's vacation leave, sick leave, or personal leave.

III. **Term of Agreement.**

This Agreement for Superintendent duties shall commence on December 20, 2019, at 12:00 a.m., and shall remain in full force and effect, continuously, until June 30, 2024, at 11:59 p.m., unless terminated sooner pursuant to this Agreement. This Agreement may automatically extend for additional years as provided in paragraph V. below.

A. **Transition Period.** Commencing December 2, 2019 and ending December 19, 2019 (up to a total of 13 working days), Dr. Moore shall serve in the capacity of Consultant to the School Board, review pertinent information and meet with the current Interim Superintendent as needed, to evaluate the School District and transition into the position of Superintendent. The services to be provided by Dr. Moore during the Transition Period will not constitute employment by the School Board and the Superintendent will not

be an employee of the School Board until December 20, 2019. Dr. Moore will be compensated for his consulting services on a per diem basis in an amount to be determined by reference to the base salary provided for in paragraph IV.A. below. Additionally, the School Board will pay for the costs of Dr. Moore's attendance at the FADSS/FSBA joint conference which he will attend during the Transition Period.

IV. **Compensation.**

For all services rendered by the Superintendent under this Agreement, the School Board shall pay and provide for the Superintendent the salary, and other benefits described hereafter:

- A. **Base Salary.** The Superintendent shall receive an annual salary of One Hundred Eighty Thousand Dollars (\$180,000.00) from December 20, 2019 through June 30, 2021, less appropriate deductions for employment taxes and income tax withholding. Beginning with the fiscal year July 1, 2021 - June 30, 2022, and each subsequent fiscal year thereafter, if the Superintendent receives an overall performance rating of satisfactory or greater on the evaluation described in paragraph VII herein, then he shall receive for that fiscal year the same percentage wage increase, if any, on the same basis granted to other 12 month administrators of the District. In no event shall the Superintendent receive less in base salary in subsequent years than he did in the immediate prior year of this Agreement.

- B. Deferred Compensation. The Superintendent shall receive deferred compensation in the form of a contribution to a tax sheltered annuity plan or similar vehicle in the name of the Superintendent, in the amount of 5% of his base salary. The deferred compensation shall be paid into the Superintendent's account monthly and it shall be fully vested and earned upon its deposit.
- C. Florida Retirement System. The Superintendent shall participate in the Senior Management Category of the Florida Retirement System, subject to then applicable laws and rules relating to such category and program.
- D. Chief Executive Officer Leadership Development Program Certificate. The parties agree the Superintendent shall participate in, and receive the Chief Executive Officer Leadership Development Program Certificate pursuant to Section 1001.47, Florida Statutes, to the extent that program is in effect and an appointed Superintendent is permitted to participate. The School Board shall fund all reasonable and necessary costs incurred by the Superintendent in complying with the requirements of the program, and in obtaining and maintaining certification pursuant to the program requirements. Obtaining this certificate and maintaining it in good standing is a requirement of this Agreement, to the extent that Florida law provides for the continuation of the program and allows an appointed superintendent to participate therein. In addition to the base salary provided in subparagraph A above, the

Superintendent shall receive an annual performance salary incentive from the Board in the amount provided for elected Superintendents pursuant to Sections 1001.47(4) and (5), Florida Statutes, so long as the Superintendent has successfully completed all phases of the program as described in that statutory section, and demonstrated successful performance as determined by the Florida Department of Education, as set forth in that statutory section. Upon completion of Phase 1, the Superintendent shall be entitled to an additional \$2,000.00 per year. If the certification is earned during a calendar year, the increase shall be pro-rated from the date the certification is received until June 30 of that year. Upon the successful completion of both Phases, the Superintendent shall be compensated in accordance with Section 1001.47(5)(b), Florida Statutes, where he shall be paid a salary incentive of not less than \$3,000.00 nor more than \$7,500.00, based upon his performance evaluation. After the Superintendent is initially certified, he must complete a similar performance assessment process annually to maintain certification and the continuance of the salary incentives.

- E. Civic and Community Activities Expenses. The School Board will annually budget a fund of Three Thousand Dollars (\$3,000.00) that the Superintendent shall have available to expend for civic and community activities, civic club memberships that the Superintendent believes will benefit directly or indirectly the School District, and activities that promote

good relations with the public, business community and other community and civic leaders. The Superintendent must obtain the permission of the School Board to exceed Three Thousand Dollars (\$3,000.00) annually in expenditures in this category. However, notwithstanding any other provision hereof, in no event shall the Superintendent expend more than his purchase order authority for expenditures in this category, and all expenditures in this category shall be reported to the Board at least quarterly or on such other schedule as the School Board may direct.

F. Automobile Allowance. The School Board shall provide the Superintendent with a monthly allowance of \$850.00 for in-county business use of the Superintendent's personal automobile which may be used to fund car payment, automobile insurance, care, maintenance, fuel, oil, or travel expenses in the Superintendent's discretion. This automobile allowance is in lieu of and in place of the provision or use of a District vehicle.

G. Per Diem and Travel Expenses of the Superintendent Not Otherwise Accounted For. The School Board shall reimburse the Superintendent, for authorized and reasonably necessary out-of-county travel and per diem expenses incurred as a result of the Superintendent providing services to the School District pursuant to this Agreement, in accordance with the provisions for per diem and travel expense reimbursement of public officers

set out in Section 112.061, Florida Statutes, as it may be amended, and Chapter 112, Florida Statutes, generally.

- H. Leave. Vacation and other leave (including sick leave) shall be the same as for other twelve (12) month administrative employees of the School District.
- I. Terminal Pay. Upon termination of employment the Superintendent shall receive in lump sum his lawfully allowed “Terminal Pay”, pursuant to applicable state law, and subject to then existing School Board policies or rules, and subject to the limitations in Sections 1012.61 and 1012.65 Florida Statutes, as the same may be amended. This lump sum payment shall be in addition to any other amount payable to the Superintendent upon termination of employment under this Agreement, including accrued and unpaid business expense reimbursement. It is specifically understood and agreed that the computation of terminal pay for the Superintendent shall be done under the same rules, limitations and policies as govern other School Board employees.
- J. Disability or Death.
 - 1. Termination for Disability. The School Board shall have the right to terminate the Superintendent’s employment under this Agreement in the event of his disability to perform fully his duties.

- a. The School Board shall pay up to Five Thousand Dollars (\$5,000.00) annually toward the premium for a disability policy of insurance that insures the Superintendent from and against disability that prevents him from performing the responsibilities of his job as Superintendent of Schools. The disability policy of insurance shall be procured through the School Board's then existing benefits plan available to all employees. The disability policy will provide as a benefit at least sixty percent (60%) of the base salary on a monthly basis up to a maximum amount specified in the policy.
 - b. Superintendent agrees that the School Board shall have the sole discretion to decide upon a termination for disability and said determination shall be based on a Florida licensed medical doctor determination of disability and inability to perform the essential requirements of the job. In the event of such termination, the Superintendent waives all right to contest or challenge the School Board's decision in that regard.
2. Payment in the Event of Death. In the event of the death of the Superintendent during the term of this Agreement, the School Board shall pay to his surviving spouse, if any, or if the Superintendent

does not have a surviving spouse, to the estate of the Superintendent, all of the Superintendent's salary to which he was entitled through the date of his death, including any Terminal Pay amount to be paid as provided for in sub-paragraph IV.I, payable within one month of the date of his death.

- K. Other Benefits Not Specifically Mentioned in this Agreement. The Superintendent is eligible to participate in other benefits that are afforded twelve (12) month administrative employees of the School District, under the same terms and conditions as other administrative employees, including but not limited to life insurance and participation in the health plan. The Superintendent shall also be eligible to exercise any retirement option available to other administrators of the School District. If the Superintendent retires from the School District, the Superintendent shall retain the right, under the same eligibility requirements as other employees, to participate in such School District group insurance plans as are in effect at such time, if any, which participation shall be at no expense to the School Board.
- L. Budgetary Process. Nothing herein precludes the Superintendent from requesting that the School Board, through the budgetary process, include additional line items and/or authorization for expenditures as he shall deem

reasonably necessary or appropriate for the operation of his office or the school system.

M. Temporary Housing/Relocation Expenses. The School Board shall fund up to \$10,000.00, or actual expenses, whichever is less, as a temporary housing allowance from December 2, 2019 through May 31, 2020. The School Board shall also fund up to \$10,000.00, or actual expenses, whichever is less, for relocation expenses of the Superintendent. This relocation expense allowance shall expire on June 30, 2020.

N. Professional Associations. The School Board shall pay for membership, conference expenses, and reasonable travel expenses of the Superintendent for participation in the American Association of School Administrators and the Florida Association of District School Superintendents.

O. Technology. The School Board shall provide and pay the associated monthly charges for the technology reasonably necessary to carry out the duties of the Superintendent, including a cellular phone, tablet and laptop.

V. **Agreement Renewal.**

Commencing on June 30, 2022, and on or before June 30 of each year during the term of the Agreement, the School Board will decide whether to extend the term of this Agreement as follows:

- A. Taking no action, in which event the term of this Agreement shall be automatically extended by one additional year beyond its then current term;
or
- B. Taking action to extend this Agreement for one or more additional years beyond its then current term; or
- C. Taking action declining to extend this Agreement beyond its then current term.

VI. **Termination of the Agreement.**

- A. Termination of the Agreement without Cause. Notwithstanding any other provision of this Agreement, the School Board reserves the right, at any time during the term of this Agreement or any renewal or extension thereof, in its sole discretion, to terminate this Agreement and the Superintendent's employment without cause. However, if the Superintendent is terminated and released from this Agreement and this Agreement is thereby terminated pursuant to this provision, then the Superintendent shall receive his terminal pay calculated as for any 12 month administrative employee pursuant to paragraph IV.I. hereof, plus his base salary only, without any other benefits, including monetary benefits, for a period of twenty (20) weeks from the date of the School Board vote to terminate pursuant to this provision, payable in accordance with the normal payroll schedule. The Superintendent agrees that the School Board shall have the sole and absolute

discretion to decide upon such termination under this paragraph and that in the event of such termination, the Superintendent waives all rights to contest or challenge the School Board's decision and will accept the payments provided in this paragraph in full satisfaction of the Board's obligations under this Agreement and in full release of any and all claims against the School Board under this Agreement. Nothing herein prevents the School Board and Superintendent from negotiating a lump sum payment in lieu of the periodic payments provided for herein.

B. Termination for Cause. The School Board may terminate for cause in accordance with the following procedures:

1. The School Board may terminate for cause at any duly conducted meeting, provided however, that no action will be maintained to terminate the Superintendent for cause without first giving the Superintendent thirty (30) days prior written notice of the cause and an opportunity for the Superintendent to cure such cause by initiating corrective action in good faith regarding the cause specified in such notice within said thirty (30) day period of time. The term "cause" as it is used in this Agreement shall mean any material breach of this Agreement, violation of any requirement or provision of Florida Statutes, School Board policy or clearly established case law, a failure to meet or make reasonable progress

to the meeting of annual goals to the meeting of the annual goals established pursuant to paragraph VII of this Agreement, a failure to perform the duties of the office as provided by law of this Agreement, failure to follow the direction of the collective School Board acting in accordance with law, and/or any matter that would be a basis for termination for cause that would apply to other instructional personnel of the School District as specified in Section 1012.33, Florida Statutes, as the same may be amended from time to time.

2. However, the Superintendent will not receive an opportunity to cure if the cause is any act or matter that would be sufficient to terminate the employment of a member of the administrative or instructional staff or for any of the grounds mentioned as a basis for possible suspension or dismissal in Section 1012.33, Florida Statutes, as it may be amended from time to time. If the School Board terminates the Superintendent for cause, the Superintendent's sole legal remedy is an action in the court of appropriate jurisdiction and venue.
3. If the Superintendent is terminated for cause and a court of appropriate jurisdiction fails to reverse that decision the Superintendent shall not receive the twenty (20) weeks base salary provided for in paragraph VI.A. hereinabove. However, if a court

determines that the School Board did not properly terminate the Superintendent for cause, the parties hereby agree that such termination from employment will be deemed a termination without cause pursuant to the provisions of paragraph VI.A. above, and the Superintendent will be entitled to the twenty (20) weeks of pay and terminal pay in accordance with the provisions of said subparagraph. Accordingly, the actual damages to be suffered upon a breach of the Agreement are not reasonably ascertainable by the parties at this time, and the parties agree that a reasonable amount of damages upon a breach by the School Board for failure to properly terminate the Superintendent for cause is twenty (20) weeks of pay and terminal pay under this Agreement, and that said amount is not a penalty.

4. If the Superintendent is terminated for cause, the Superintendent shall be entitled to no further compensation under this Agreement except terminal pay in accordance with sub-paragraph IV.I.

C. Superintendent Termination of Agreement.

1. If the Superintendent decides to apply for any employment position outside the jurisdiction of the School Board, the Superintendent shall, prior to applying for the employment position, provide written notice to the School Board of the intended employment application.

2. If the Superintendent decides his employment as Superintendent shall end, the Superintendent shall provide at least thirty (30) days' advance written notice to the School Board, and the Superintendent shall only receive payment under this Agreement for the balance of his base salary and benefits for the actual days he is performing duties as Superintendent and not for the remainder of the term of this Agreement. In the event the School Board breaches the Agreement, the Superintendent may terminate the Agreement immediately.
3. If the Superintendent fails to comply with the notice provisions in this subparagraph, the Superintendent agrees to pay to the School Board the value of any accrued terminal pay benefits as defined in paragraph IV.I., up to a maximum of Ten Thousand Dollars (\$10,000.00), with said sum being withheld from final monetary payments or otherwise paid by the Superintendent until the full cost is paid to the Board.
4. The payment which might be owed by the Superintendent pursuant to this section will not be owed if the Superintendent resigns after having been given notice of the School Board's intention to terminate his employment, without cause or for cause, nor with those payments be due if the Superintendent resigns his employment

on account of any material breach of this Agreement by the School Board.

VII. **Goals; Evaluations; Board Member Discussions and Board Action.**

- A. Goals. On an annual basis, no later than the first available meeting in August in each year, the School Board and the Superintendent shall mutually establish measurable goals for achievement by the Superintendent. If the goals are not mutually agreed, the goals shall be established by the School Board unilaterally. These measurable goals shall be assessed, beginning upon the completion of the first full fiscal year of employment, and annually thereafter, for purposes of negotiating increases in base salary, if any.
- B. Annual Evaluation. Before the first day in August of each year during the term of this Agreement, the Superintendent shall report to the School Board his progress in meeting goals and performance objectives established as provided under sub-paragraph A, above, and such matters as he deems relevant to his performance under this Agreement. During the two-week period following delivery of the Superintendent's progress report, the School Board shall review with the Superintendent his progress in meeting the goals and objectives, and the working relationships among the Superintendent, School Board, faculty, staff, and community. Each individual member of the School Board may prepare and present a written

or oral evaluation of the Superintendent's performance. Also the annual evaluation of the Superintendent's performance may include a formal evaluation procedure and form as may be mutually agreed upon by the School Board and the Superintendent. If agreement on the form for the evaluation is not mutually agreed, then it shall be as established by the School Board unilaterally. Any evaluation by a School Board member, whether written or oral, which indicates that the performance of the Superintendent has not been satisfactory overall shall include in writing the incidents or areas of unsatisfactory performance. The Superintendent shall be entitled to present a written response to any written unsatisfactory evaluations or evaluations which indicate a need for improvement. Thereafter, the School Board shall place the Superintendent's annual evaluation on a School Board meeting agenda for action no later than August 30 of each year. In the sole discretion of the School Board, the completion of the annual evaluation process may be extended in order to allow for the School District to receive the results of annually administered tests and assessments, and/or annually announced grades and results that are issued by the State or Federal Departments of Education, including statewide assessment results, and grades for individual schools. A delay in the receipt of such data or other good cause, as determined by the School Board in its sole discretion, may delay the completion of the evaluation

process beyond the start of the next school year. If there is such delay, then any compensation which the School Board may determine shall be retroactive to the beginning of the fiscal year.

- C. Procedure for Discussion with School Board Members. Each School Board member may meet individually with the Superintendent subject to applicable law and legislation relating to open government to discuss how the particular board member views the performance of the Superintendent and his progress in light of School Board policy decisions and objectives. Such meetings shall consist of full, frank and honest exchanges, but shall not involve the discussion of any matter that is prohibited by law to be discussed in such private meeting. Without limitation, the Superintendent will not discuss with any School Board member, individually, any matter related to how another School Board member views any topic, nor shall any School Board member and the Superintendent act as a conduit for any other School Board member during the course of any such discussion. The purposes of these individual meetings may include the individual School Board informing the Superintendent how the individual Board member views the performance of the Superintendent or for the Board member to inform the Superintendent regarding matters of District business.

VIII. **Board/Superintendent Communication and Work Relationship.**

No later than February 1, 2020, and periodically thereafter, the School Board and the Superintendent shall meet in order to establish processes and procedures for how they will communicate with one another and work together. The Superintendent shall, consistent with the Public Records Act (Chapter 119, Florida Statutes), and the Sunshine Law (Section 286.011, Florida Statutes), keep the individual School Board members informed of matters that are material and significant in the reasonable discretion of the Superintendent. Board members individually may not take action on behalf of the School District. Therefore, the members of the School Board will promptly refer to the Superintendent for his study and recommendation, criticism, complaints and suggestions called to the attention of individual members of the School Board. Additionally, to the extent reasonably possible, the School Board as a body corporate will refer to the Superintendent for his study and recommendation, criticisms, complaints and suggestions called to the attention of the School Board so that the Superintendent may make his professional recommendations before the School Board takes action with respect to such matters.

IX. **Indemnification.**

To the extent allowed by law, the School Board will defend, hold harmless and indemnify the Superintendent against any and all civil demands, claims, suits, actions, and legal proceedings brought against the Superintendent individually or in his capacity as agent or employee of the School Board that may arise while the

Superintendent is acting within the scope of his employment and is not acting in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of human rights, safety, or property; and further, criminal litigation shall not be included in this indemnity clause. This clause shall be interpreted and construed in a manner not inconsistent with Florida Statutes governing the indemnification of School Board employees. No School Board member shall be personally liable to the Superintendent for any cost, expense, fee or judgment arising from matters described in this paragraph.

X. **Applicability of School Board Policy and Florida Law.**

The Superintendent shall be bound by all policies of the School Board and shall faithfully enforce, administer and abide by the same. Additionally, the Superintendent is bound by the Code of Ethics for Public Employees and Officers in Florida and all other laws of Florida that relate to the operation of the School District and the performance of his duties.

XI. **Annual Physical Examination.**

Once each year during the term of employment under the Agreement, including any renewal, the School Board shall pay for a complete physical examination of the Superintendent by a primary care physician who is a participant of the School District's health network. The Superintendent agrees to undergo such an annual physical examination. The results of such examination shall be given to the School

Board, prior to the evaluation process in paragraph VII.B., by the examining physician in the following form:

“In my opinion, based upon a complete physical examination of David K. Moore, Ed.D, he is (is not) physically capable of carrying out the duties of Superintendent.”

(Signature of Physician)

XII. **Severability.**

If any of the provisions of this Agreement are held invalid it shall not affect the validity or enforceability of any other provision, and the invalid provision shall be deemed severed from the remainder of the Agreement, and the remainder of the Agreement shall be fully enforceable.

XIII. **Amendments.**

This Agreement embodies the entire Agreement between the parties and all prior negotiations and understandings, whether written or oral, are deemed to be merged

and integrated in this written Agreement. This Agreement may not be amended except by written Agreement duly adopted by the parties in the manner provided by law.

WHEREUPON, the undersigned parties do hereby enter and accept this Agreement on 11/26, 2019.

SUPERINTENDENT, SCHOOL DISTRICT
OF INDIAN RIVER COUNTY, FLORIDA

By:



David K. Moore, Ed.D, Superintendent

SCHOOL BOARD OF INDIAN RIVER
COUNTY, FLORIDA

By:



Laura Zorc, Chairman