



Michael Zoerhoff
Superintendent of Schools

Office of Superintendent

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RECEIVED SEP 01 2020

TO: Kentwood Board of Education

DATE: May 21, 2018

SUBJECT: Superintendent's Contract

Rationale:

The proposed addendum to the Superintendent's contract recommends a two-year extension of the existing agreement beginning July 1, 2019 through June 30, 2021.

The contract language will remain consistent with the ending date now revised to June 30, 2021.

KENTWOOD PUBLIC SCHOOLS
Superintendent's Contract for Employment

This Employment Contract is entered into on this 1st day of July, 2016, between the Kentwood Board of Education, hereinafter called the "Board" and Michael James Zoerhoff, hereinafter called "Superintendent."

1. **Term:** The Board agrees to employ Michael James Zoerhoff as Superintendent of its schools for the term of three (3) years from July 1, 2016 to and including June 30, 2019, subject to the termination provisions of this agreement and further subject to the renewal provisions set forth herein.
2. **Extension:** This contract shall be subject to extension or renewal upon mutual agreement of the Board and the Superintendent, if not otherwise terminated as provided in this agreement, upon completion of the initial contract term.
3. **Duties:** The Superintendent shall serve as chief executive officer and chief administrative officer of the Board. The Superintendent agrees, during the period of this contract, to faithfully perform his duties and obligations in such capacity for the School District including, but not limited to, those duties required by the School Code. He will act as advisor to the Board on matters pertaining to the school administration or the School District, and he will inform the Board of significant administrative action taken on its behalf. The Superintendent shall recommend, effect, or cause to be effected, the policies and programs of the Board of Education as may be adopted. He will faithfully and diligently fulfill all the duties and obligations incumbent upon him as the executive head of the School District. The Superintendent shall perform such other duties as may be assigned by the Board from time to time during the term of this agreement.

The Superintendent agrees to perform the duties of Superintendent to the satisfaction of the Board. He shall perform his responsibilities in accordance with the policies and regulation of the Board now or hereafter adopted, as well as the Revised School Code and all other applicable laws.

He shall have the right to exercise all authority granted to the position by law and this contract and will have the authority to participate in all activities of the School District. He shall attend each meeting of the Board and shall be an ex officio member of all Board committees. The Superintendent shall be responsible, subject to confirmation of the Board, for the selection, placement, and transfer of personnel.

The Superintendent shall perform the duties of Superintendent in a competent, proficient, and professional manner and pledges to use his best efforts to maintain and improve the quality and efficiency of the operation of the School District.

4. **Communications:** Board members individually and collectively shall refer any criticism, complaints, and suggestions, which come to their attention to the Superintendent for his review and recommendations. Such referrals may be made directly to the Superintendent or through the Board President.
5. **Tenure:** The Superintendent shall not be deemed to be granted continuing tenure as Superintendent or in any other administrative position within the District.
6. **Qualifications:** The Superintendent represents as a condition of employment that he holds or meets, and will maintain throughout the term of this Agreement, all Michigan requirements, and certificates necessary for employment by the Board in the position of Superintendent. He will provide the Board with such certificates and other documentation as may be requested.

The Superintendent agrees to meet any and all continuing education requirements of the Michigan Department of Education as may be required. If, after notice of any applicable requirements and a reasonable opportunity to satisfy them following such notice, Superintendent fails to hold, meet, or maintain the qualifications required for the position assigned herein, this Contract shall automatically terminate and the Board shall have no further obligations hereunder.

7. **Evaluation:** The Superintendent's performance shall be evaluated by the Board not less than one (1) time each year. The evaluation process shall include, but is not limited to, a conference with the Superintendent, who has the discretion to have the conference take place in an open or closed meeting as set forth in the Michigan Open Meetings Act.

At the Superintendent's request, the Board may also meet with the Superintendent on a quarterly basis to evaluate his performance. The Superintendent will have the discretion to have the evaluation take place in open or closed session pursuant to the Michigan Open Meetings Act.

By December 1, 2013 and thereafter before October 1st of each subsequent contract year, the Board and the Superintendent will mutually establish specific objectives against which the Superintendent's performance will be evaluated. The objectives shall be reasonably related to the duties and

responsibilities of the position and will be related, but not limited to, the following factors:

- A. Leadership in education
- B. Business and Finance matters
- C. Employee relations
- D. Community relations
- E. Relationship with the Board of Education
- F. Section 1249(3) of the Michigan Revised School Code

In the event mutual agreement is not reached on or before October 1 or another mutually agreed upon date, in writing and signed by both parties, both parties agree that an independent facilitator selected by the KISD Superintendent shall be hired at the Board's expense, for the purpose of reaching consensus within thirty (30) days of the initiation of the facilitation process. If consensus cannot then be reached, this contract terminates and the Superintendent shall be deemed to have voluntarily resigned. In that event, the Superintendent is entitled to severance pay in the form of continued monthly payments equal to his regular monthly compensation until (1) he is employed, including self-employment; (2) June 30 of the year in which the termination occurred; or (3) until the expiration date of this contract, whichever of the three occurs first.

- 8. **Residency:** The Board and the Superintendent recognize that it would be in the best interests of the School District for the Superintendent to reside within the District. However, if this is not possible, the Superintendent shall maintain a residence within 20 miles of the District boundaries during the term of this Contract.
- 9. **Assignment:** The Board and the Superintendent acknowledge that this contract of employment is for the position of Superintendent of Schools and no other. Consequently, the Superintendent shall not be subject to assignment or transfer during the term of this agreement.
- 10. **Medical Examination:** The Superintendent's employment is contingent upon being fit to fully perform the essential functions of the position, on a regular and consistent basis, with or without reasonable accommodation. Prior to commencing employment, the Superintendent shall provide the Board with a report or reports from health care personnel acceptable to the Board evidencing that he is fit to fully perform the essential responsibilities of Superintendent. The Superintendent consents to such

test, authorizes the release of the results of such tests to the Board and/or its agents, and releases the Board from any and all liability resulting, directly or indirectly, from such tests or any decision based upon such tests. The excess cost above insurance coverage for examination necessary to obtain such reports and tests shall be at Board Expense. The Superintendent's continued employment is contingent upon such examinations evidencing the Superintendent's fitness to fully perform his responsibilities.

The Superintendent shall also submit to such medical examinations, supply such information, and execute such documents as may be required by any underwriter, policyholder, or third-party administrator providing insurance programs specified under this Agreement and the attached Schedule "A."

Upon request by the Board or its designee, prior to resumption of employment after any personal illness in excess of 10 consecutive working days during the school year, or prior to return from any leave due to incapacity or disability of any duration, the Superintendent may be requested to submit to fitness for duty certification, to the extent permitted by law, the cost of which shall be reimbursed by the Board to the extent not covered by available insurance.

Superintendent shall provide documentation satisfactory to the Board in the event he is incapacitated or disabled from performing the essential functions of his assigned position. If the Superintendent is unable to perform the essential functions of his position for a period in excess of 150 consecutive or nonconsecutive days within the school year, this Contract may be terminated by the Board, whereupon the respective rights, duties, and obligations of the parties shall thereby terminate.

11. **Midterm Termination of Contract:** It is expressly understood and agreed that in the event the Superintendent chooses to seek alternative employment, upon obtaining a new position, he shall waive any and all wages and fringe benefits otherwise due and owing as of the date the Superintendent begins said new employment. If new employment is accepted, accumulation of any additional vacation/ sick/personal leave days shall be pro-rated.

- A. Notwithstanding the above, the Board retains its right to terminate this Contract at any time for insubordination, moral turpitude, misconduct or gross incompetence, or if the Superintendent repeatedly or substantially violates any of the substantive terms or covenants of this Contract. Reasons justifying discharge shall include, but not be limited to, the following:

- Breach of the terms and conditions of this contract other than less than Effective performance
- Violation of Board policies after reasonable opportunity to cure
- Dishonesty
- Conviction of or plea of no contest to a felony or circuit court misdemeanor or to any offense involving use of alcohol, illegal drugs, prescribed drugs contrary to the prescription, or any offense involving students, employees of the district or parents of students
- Willful abandonment or Neglect of duty
- Conduct prejudicial to the Kentwood Public School District

In the event the Board determines to bring charges against the Superintendent, prior written notice of the charges shall be given to the Superintendent and the Superintendent, at his option, may request an open or closed hearing before the Board for the purpose of defending said charges.

In the event the Superintendent elects to contest the Board of Education's disposition in regard to such termination following such hearing, he shall have the right, exclusive of any other rights or remedies available to him at common law or by statute, to request arbitration, the award arising out of which shall be binding on the School District and the Superintendent and enforceable in any court of competent jurisdiction in this State.

The Superintendent shall request the arbitration no later than thirty (30) days from the date of the Board's decision. The hearing shall commence no later than sixty (60) days from the decision of the Board of Education unless otherwise mutually agreed upon by the parties.

The scope of the arbitrator's review pursuant to this submission agreement shall be limited to determining whether the Board of Education acted for a reason or reasons that are arbitrary or capricious as defined within section 101 of the Michigan Teachers' Tenure Act in its determination to terminate the Superintendent's employment. The arbitrator shall be selected through the mutual cooperation between the representatives or counsel for the respective parties, failing agreement on which, may be referred by either party to the appropriate Regional Office of the American Arbitration Association for appointment of an arbitrator and processing under their Voluntary Labor Arbitration Rules.

The Superintendent of Schools shall continue to receive full compensation under the terms of this agreement until such time as the arbitrator's award is received by the Board of Education.

In the event that the arbitrator determines that the termination of the Superintendent was without notice or for reason(s) that were arbitrary or capricious, he/she shall award the Superintendent the entire unpaid balance remaining on the employment contract, together with the reasonable value of all insurance and fringe benefits the Superintendent would have accrued had he been permitted to perform the remainder of his contractual obligation. If the Arbitrator determines that the reason(s) were not arbitrary or capricious, there shall be no award of back pay or any other remedy.

12. **Suspension:** At any time, the Board may, if it has reason to believe that there may be a violation of paragraph 11A above, or allegations of impropriety such that his continued presence could adversely affect the educational process, direct that the Superintendent be placed on administrative leave, or it may suspend all or any part of the performance of his responsibilities as Superintendent, and may assign the performance of such responsibilities to another person or persons. Such suspension of responsibilities shall be without loss of salary or other benefits under this Contract, until Superintendent is either reinstated or terminated in accordance with the terms of this Contract.
13. **Professional liability:** The District agrees that it shall defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against Superintendent in his individual capacity, or in his official capacity as agent and employee of the District, provided the incident arose while Superintendent was acting within the scope of his employment, his acts were authorized by the Michigan Revised School Code, the defense or indemnification of such litigation is not otherwise covered by existing insurance coverage and it is not criminal litigation.

The Board shall provide liability insurance for the Superintendent to cover legal expenses in defense of claims and payment of judgments resulting from his functioning as Superintendent and will reimburse him for any portion of such expense and judgments not covered by insurance. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

In the event Superintendent is (a) found liable for any claims involving fraud or moral turpitude; or (b) found liable civilly for any claim arising out of the Superintendent engaging in any act of personal profit or advantage to which Superintendent is not otherwise entitled; or (c) is fined or penalized by law or for other matters which may be deemed not subject to indemnification by Michigan courts or statutes, or (d) is found to have engaged in acts outside the scope of his employment as Superintendent,

and/or (e) his acts are found to not be authorized by the Michigan Revised School Code; Superintendent shall then reimburse the District for such indemnification and/or for such costs and expenses incurred by the District in his defense, including but not limited to actual attorney fees, and such reimbursement may be obtained by the District through salary deductions or other offsets against moneys owned to Superintendent. By execution of this Contract, Superintendent consents to any payroll deductions during his employment by the Board to implement the reimbursement provisions of this subparagraph to the maximum extent permitted by law.

14. **Professional Growth:** The Superintendent may attend professional meetings and conferences at the local, state, and national levels, the expenses of said attendance to be paid by the District. Attendance at national conferences must be approved by the Board.
15. **Non-renewal:** This Contract is subject to the statutory non-renewal process described in the Michigan Revised School Code. Other provisions of this agreement notwithstanding, the Board reserves the right to terminate this agreement at the completion of the 2015-2016 contract year by giving to the Superintendent a "Notice of Non-Renewal" on or before March 31, 2016.
16. **Death:** This Contract and its terms shall automatically terminate in the event of the death of the Superintendent. Any earned salary or vested benefits at the time of death shall be paid to the Superintendent's heirs and/or designated beneficiaries in the manner permitted or required by applicable law.
17. **Compensation:** Compensation for the Superintendent shall be governed by the provisions of Schedule "A" attached hereto and made a part hereof, the same as though fully set forth herein.
18. **Fringe Benefits:** Fringe Benefits for the Superintendent shall be governed by the provision of Schedule "A" attached hereto and made a part hereof, the same as though fully set forth herein.
19. **Dispute Resolution:** In addition to the arbitration procedure set forth in subparagraph 11A pertaining to termination, any and all disputes, controversies or claims arising out of or in connection with or relating to this Contract, or any breach or alleged breach thereof, or any claim that the District violated any local, state or federal statute, including, but not limited to: the Michigan Elliott-Larsen Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, the Michigan Teachers' Tenure Act, the Michigan Freedom of Information Act, the Age Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964, all as amended; Michigan common law doctrines; or tort claims relating to the

employment relationship with the District shall, upon the request of the party involved, be submitted to and settled by arbitration in the State of Michigan pursuant to the applicable rules of the American Arbitration Association (or at any other place or under any other forum of arbitration mutually acceptable to the parties involved). Arbitration under this provision shall be conducted pursuant to the Michigan Arbitration Act, MCL 600.5001 *et seq.*, MCR 3.602, and shall be subject to the following terms:

- A. The parties hereto specifically agree to arbitrate with the other party in a joint proceeding with regard to all common issues and disputes. As such, neither party may litigate such claims against each other in court. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.
- B. Notice of the demand for arbitration shall be filed, in writing, with the other party to this Agreement and with the American Arbitration Association (AAA). The demand for arbitration shall be made within 30 days after the claim, dispute, or other matter in question arose, but, as to any statutory claims, the demand shall be filed no later than the applicable Michigan Statute of Limitations. Each party is responsible to pay the initiation fee assessed by the AAA.
- C. The parties shall have the right to be represented by counsel of their choice and at their cost.
- D. With respect to any statutory claims, the parties shall be permitted pre-hearing discovery in the time and manner provided by the Michigan Court Rules.
- E. An arbitrator shall be chosen according to the AAA procedures, and shall be impartial to the matter. The arbitrator shall be sworn to hear and decide the matter fairly.
- F. The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth both findings of fact and conclusions of law only as to claims or disputes at issue.
- G. This arbitration procedure does not waive or limit, in any way, any statutory damages to which a party claims it or he is entitled. The Board shall pay ½ of the fees and costs of the arbitrator, and the Superintendent shall pay ½ of such fees and costs. Each party will deposit funds or post other appropriate security for its or his share of the arbitrator's fee, in an amount and manner determined by the

arbitrator, ten (10) days before the first day of hearing. Each party shall pay for its or his own costs and attorney's fees, if any. If any party prevails on a statutory claim that entitles the prevailing party to attorney's fees, the arbitrator may award reasonable fees to the prevailing party in accordance with such statute.

H. Any award by the arbitrator shall be final, conclusive, and binding upon the parties, and a judgment thereon may be entered in the highest court for the forum, state, or federal, having jurisdiction. Upon the entry of an arbitral award in favor of the Superintendent, the District shall have thirty (30) days after its receipt of such award within which to fully comply with the same, and a judgment may not be entered to enforce such award until such time as the District has had reasonable opportunity to comply with the arbitral award in accordance with this provision.

- 20. **Savings Clause:** If any provision of this Contract or any application of its terms is found to be unlawful by final order of a court of competent jurisdiction, then such provision or application is not valid or continuing except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.
- 21. **Breach:** In the event of a breach on the part of either party to this agreement, nothing contained herein shall be construed to render the obligations of either party under this agreement null and void.
- 22. **Entire Agreement:** This is the complete and entire agreement between these parties and supersedes all prior agreements, oral or written. No individual Board member may modify this Agreement; any modification must be written and approved by the Board at a public meeting.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

By: _____
Board President

By: _____
Superintendent

By: _____
Board Secretary

Date: _____

SCHEDULE A

COMPENSATION AND FRINGE BENEFITS

Professional Dues:

The Board shall pay the Superintendent's membership fees and dues in such clubs and organizations as it may determine.

Compensation:

- a) The Superintendent shall receive an annual salary in the amount of \$195,700 for the contract year 2016-2017; the salary shall increase each year at a rate of 3% (equal to an experience step increase). The increase calculation shall be rounded upwards to the nearest \$100 increment
- b) In the event the Superintendent completes a doctorate, he shall receive an additional stipend of \$4500 which in subsequent years shall be added to his base salary.
- c) The Superintendent shall annually receive a tax-deferred annuity in the amount of \$11,000. The Superintendent accepts all responsibility for required taxes (FICA) associated with the Board's contribution to the annuity.

Fringe Benefits:

The Board of Education shall provide the Superintendent with the following benefits:

- a) Health, dental, vision, LTD as identified in the general administrative contract for the district. The Board's contribution towards the Superintendent's health insurance shall not exceed the amounts specified within 2011 PA 152. The Superintendent will contribute the balance of the actual premium cost, less the Board's contribution for such premiums, through a flexible spending account or other tax deferred account.
- b) A Life Insurance policy for up to \$650,000 will be paid for by the district through a mutually agreed upon provider.
- c) Sick days as identified in the general administrative contract for the district.

- d) Vacation – thirty (30) work days vacation per fiscal year, July 1 through June 30. Accumulated vacation not used in a contract year (July 1-June 30) will be paid to the Superintendent on a per diem basis before July 14 of the next school year or upon termination of the contract or resignation of the Superintendent. This is an attempt to close out unused vacation payout each contract year.
- e) Personal Days, Bereavement Leave, and other fringe benefits as identified in the general administrative contract for the district.
- f) Reasonable Expenses – The Board shall reimburse the Superintendent in accordance with Board policies and procedures for all actual, necessary, and reasonable expenses related to the performance of the duties of Superintendent. The determination of reasonableness shall be in the sole discretion of the Board.
- g) Outside Activities - The Superintendent may undertake non-district related activities, e.g. speaking engagements, writings, and lecturing. In the event the Board, in its sole discretion, determines that any such activities interfere with the Superintendent's Effective performance or the time necessary for Effective performance of his duties, it may require that the Superintendent cease some or all of such activities.