

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT is entered into this ____ day of _____, 2016, by and between the Board of Education of Montgomery County, Maryland (hereinafter “Board”), and Dr. Jack R. Smith (hereinafter “Superintendent”).

WHEREAS, the Board desires to employ the Superintendent to perform the job of Superintendent of Montgomery County Public Schools (MCPS), including the duties and responsibilities set forth in the *Education Article* of the *Annotated Code of Maryland* and applicable provisions of the Code of Maryland Regulations (COMAR), and

WHEREAS, the Board and the Superintendent agree that a written agreement is necessary to define and govern the relationship between them and that such employment shall be governed by this Contract to the fullest extent consistent with applicable law.

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

1. TERM.

The Superintendent’s term shall begin July 1, 2016, and he shall serve as Superintendent of MCPS system until June 30, 2020.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES.

A. Certification. The Superintendent affirms that he meets the qualifications of Section 4-201(c)(1) of the *Education Article* of the *Annotated Code of Maryland* and Section 13A.12.04.03 of COMAR to allow him to hold the position of Superintendent of Schools for Montgomery County, Maryland. The Superintendent further agrees that he will maintain any and all certifications, required under Maryland law, necessary to hold the position of Superintendent, and that he shall promptly notify the Board in the event he no longer meets the

qualifications specified by law or if he should receive notice that his qualifications will lapse.

B. Duties. The Superintendent shall have charge of the administration of the schools under the rules and regulations of the Board and in accordance with the *Education Article* and other applicable provisions of the *Annotated Code of Maryland*. He shall be the executive officer, secretary and treasurer of the Board and shall perform all duties incident to the Office of the Superintendent of Schools, including, but not limited to, those as described and defined by Sections 4-204 and 4-205 of the *Education Article* of the *Annotated Code of Maryland*. The Superintendent or his designee shall attend all meetings of the County Board, and its committees, participate in all Board deliberations and provide administrative recommendations as warranted. Notwithstanding the foregoing, the Superintendent shall not attend (1) certain closed sessions of the Board in accordance with applicable law and (2) executive sessions of the Board when the Board is considering the Superintendent's tenure, evaluation, salary, or the terms of the Superintendent's employment, provided that the Board may invite the Superintendent to participate in such executive sessions.

C. Outside Activities. The Superintendent shall devote his total best efforts on a full-time basis to the affairs of the MCPS system. The Superintendent may engage in other employment or professional activities for compensation during the term of this Contract, so long as said activities do not interfere with his official duties and only after prior written approval of the Board, with such approval not to be unreasonably withheld. The Superintendent may accept and/or earn honoraria or compensation for such outside activities. However, the Superintendent shall perform these activities on release time as permitted by the Board, including the teaching of a course at a university or college limited to one (1) section per academic term in the traditional

graduate time frame for compensation. The Superintendent shall perform all other such activities on annual leave days, holidays, or other non-duty days.

Should the Superintendent author and/or publish for any compensation, profit or royalty, research or scholarly work using any data or referencing the activities of Montgomery County Public Schools during his tenure as Superintendent, the compensation received for said work becomes the sole property of the Board to disburse as appropriate.

D. Standards of Conduct. The Superintendent is expected to act professionally and consistent with the core values, tenets, mission and vision of MCPS. The Superintendent shall refrain from acts, conduct, or omissions within or without the scope of employment that brings discredit to MCPS, or may be damaging or injurious to the people or reputation of MCPS.

3. PROFESSIONAL GROWTH OF SUPERINTENDENT.

The Board encourages the continuing professional growth of the Superintendent through his participation in programs conducted or sponsored by local, state and national school administrators and school board associations; seminars and courses offered by educational institutions; and other informational meetings with other persons whose particular skills or backgrounds would serve to improve the capabilities and capacity of the Superintendent to carry out his professional responsibilities. Such participation may include attendance at and participation in the annual conferences of the American Association of School Administrators (AASA), Maryland Association of Boards of Education (MABE), and the National School Boards Association (NSBA). In connection with such activities, the Board shall permit a

reasonable amount of time away from daily administrative responsibilities and shall reimburse the Superintendent for reasonable and actual costs of such participation, subject to the normal MCPS procedures for expense reimbursement and to the oversight of the Board. In addition, the Board shall pay the membership dues of the Superintendent for AASA, MABE, NSBA, and other professional and civic groups' membership fees for which the Superintendent feels it is appropriate to maintain and improve his professional skills, community relations, and obligations, as approved in advance by the president of the Board.

4. COMPENSATION.

A. Salary. The Superintendent shall receive an annual salary of Two Hundred Seventy-Five Thousand Dollars (\$275,000). The annual salary of the Superintendent shall be paid in accordance with the schedule of salary payments in effect for all other twelve (12) month administrative employees of MCPS. The annual salary shall be subject to required withholding for income taxes, Social Security contributions, and other required withholdings of contributions and taxes. Absent mutual consent of the parties, the Superintendent's salary shall not be decreased during the term of this Contract in accordance with *Education Article §4-202(b)*.

B. Annual Salary and Total Compensation and Benefits Review. The Superintendent's salary shall be reviewed on an annual basis, at the time of the Superintendent's evaluation by the Board. It is presumed that the Board will consider an annual increase in the salary paid to the Superintendent during the term of the Contract, taking in account factors such as the Superintendent's performance evaluation, fiscal realities, and increases (or lack thereof) given to MCPS employees in general; and it is understood that those factors may, in certain years, preclude an increase.

5. BENEFITS.

The Superintendent shall be entitled to the following benefits:

A. Annual Leave.

i. Accrual of Annual Leave. The Superintendent shall be entitled to 25 days of annual leave each year.

ii. Scheduling of Annual Leave. The Superintendent is expected to schedule Annual Leave in consideration of the school calendar, the budget process, and other factors of importance to MCPS. The scheduling of the Superintendent's leave shall be approved by the Board President.

iii. Unused Annual Leave. The Superintendent shall be allowed to carry over unused annual leave from year to year. The Superintendent shall cash in one-half of his accrued but unused annual leave each year. Upon the termination of the Superintendent's employment (whether during the term of this Agreement or at its conclusion), the Superintendent or in the event of his death, his estate shall be paid for the remaining unused annual leave days upon termination.

B. Sick and/or Personal Leave. The Superintendent shall be entitled to 20 days of sick and/or personal leave per year. The Superintendent shall be allowed to carry over unused sick and/or personal leave from year to year. Upon the termination of the Superintendent's employment (whether during the term of this Agreement or at its conclusion), the Superintendent, or in the event of his death, his estate shall be paid for 30% of the unused sick leave upon termination.

C. Legal Holidays. The Superintendent shall be entitled to the legal holidays provided in the official school calendar, subject, however, to the recognition of the Superintendent

that the nature of the position may require his working or presence at events on some of those holidays.

D. Retirement Plan(s). The Superintendent shall be eligible to participate in the retirement plans available to employees covered by the MCAAP agreement and under the terms and conditions specified in those plans, as they may be amended from time to time. The Board shall pay to the Superintendent the amount of the Superintendent's contribution to the plan(s) during the duration of the Superintendent's appointment.

E. Deferred Compensation. The Board agrees to pay the amount of Forty Thousand Dollars (\$40,000) annually during the term of this Agreement to the Montgomery County Public Schools 403(b) Plan in behalf of the Superintendent.

F. Transportation. The Board shall provide the Superintendent with a vehicle (approved by the Board) for school district business and personal purposes during the term of this Contract. For purposes of this section, providing a vehicle may include reimbursement to the Superintendent of the costs of a vehicle lease. The Superintendent's expenses for gasoline, insurance, maintenance, and repairs, in connection with the use of said vehicle, shall be paid by the Board. To the extent that the use of the vehicle for personal purposes results in tax consequences, the Superintendent shall be responsible for payment of such taxes.

G. Medical, Dental, Vision, Prescription Drug, Disability and Life Insurance. The Superintendent shall be entitled to select and participate in one of the MCPS system's family medical, dental, vision, prescription drug, and life insurance plans at the same cost and terms as other MCPS employees, as those plans may be amended from time to time. In addition, the Board shall provide a disability insurance plan for the Superintendent at a cost not to exceed \$8,000 annually.

H. Technology Support. The Board will provide appropriate technology support to permit the Superintendent to carry out his duties.

I. Relocation Expenses. The Board shall pay to the Superintendent or appropriate vendors up to twelve thousand dollars (\$12,000) to assist with the actual and reasonable costs related to the relocation of the Superintendent's personal residence to Montgomery County. The Superintendent shall submit appropriate documentation for the expenses. This amount is intended to cover, among other things, moving expenses and transitional housing in Montgomery County for up to the first six months of the term of this Contract.

6. EXPENSES.

The Superintendent shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by him that are directly related to the performance of his job. The Superintendent is expected to incur expenses in a prudent and reasonable manner, reflecting the public service nature of the position and the fiscal constraints under which MCPS operates. Each month, the Superintendent shall submit documentation for such expenses to the Board President who will review and sign such reimbursements and forward to the Chief Financial Officer for approval and processing. Expenses incurred by the Superintendent shall be subject to Board oversight at all times. In incurring and submission for reimbursement of expenses, the Superintendent shall adhere to rules, regulations and guidelines applicable to MCPS staff.

7. INDEMNIFICATION.

A. In accordance with Section 4-104(d)(1) of the *Education Article, Annotated Code of Maryland*, the Board is required to provide the Superintendent with counsel in any actions brought against him during his term of employment, so long as his conduct was within the performance of his duties, within the scope of his employment, without malice, and where the Board

determines he was acting within his authorized official capacity. In accordance with Section 5-518(e) of the *Courts and Judicial Proceedings Article of the Annotated Code of Maryland*, the Superintendent, while acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of Section 5-518 of that Article, including damages that exceed the limitation on the county board's liability. Effective the term of this Contract and to the fullest extent allowed by law and consistent with State statutes, the Board hereby indemnifies, defends, and holds harmless the Superintendent and/or his estate from any and all demands, claims, damages, suits, actions, and legal proceedings brought against the Superintendent, whether in his individual or official capacity, for any incident or activity arising out of or in the course and scope of the employment of the Superintendent, including any liability arising from the use of the school system's vehicles in the course of his employment, so long as the Superintendent's conduct was within the scope of employment, without malice and gross negligence. Such indemnity shall include the costs and attorney's fees reasonably required to effectuate this provision. For indemnification not provided by any insurance coverage, the Board's obligation is capped for legal fees, in that it will only pay the Superintendent's legal fees at the billing rate of any lawyer retained to represent the Board, increased to reflect the reasonable current rates of any attorney on the MABE/LSA panel.

B. If, in the good faith opinion of the Superintendent or the Board, an actual conflict with the Board exists, or potentially could reasonably exist, between the legal position of the Superintendent and the legal position and responsibilities of the Board regarding the defense of any claim against the Board or the Superintendent, the Superintendent may, after prior notice to the Board, engage his own counsel, in which event the Board will indemnify the

Superintendent for the costs of his legal defense, as permitted by State law and within the parameters described above. The Board shall not, however, be required to pay or reimburse the Superintendent for his legal fees or other costs to him of legal proceedings in the event the Board and the Superintendent have adverse interests in any dispute or litigation.

C. Nothing herein shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of the Board of Education of Montgomery County, or their officers or employees pursuant to Maryland law, or otherwise. Any cost, expense, or liability of the Board of Education of Montgomery County or Montgomery County Public Schools is subject to availability of appropriations from its funding authorities.

D. The provisions of this paragraph shall survive the expiration and/or termination of this Employment Contract.

8. EVALUATION AND INFORMAL DISCUSSIONS.

A. The Board and the Superintendent shall meet at least quarterly during the term of this Contract to informally discuss the Superintendent's performance and progress towards the established goals and objectives.

B. Both the Board and the Superintendent recognize that a carefully developed and implemented evaluation process is a valuable part of Board/Superintendent communication. The Board shall evaluate and assess, in writing, the performance of the Superintendent at least once per year, generally not later than November 1 of each year, during the term of this Contract.

C. It is anticipated that the evaluation of the Superintendent will include but not be limited to: assessment of progress in student achievement goals, performance of duties required by law, working relationships with the Board, other government agencies, and stakeholders (including parents, community and staff), and standards of professional conduct.

D. The Superintendent shall provide the Board with a self-evaluation of his accomplishments and achievement of the agreed-upon goals and objectives using the agreed-upon evaluation format. The Superintendent's self-evaluation shall be provided to the Board prior to the Board's evaluation of the Superintendent.

9. TERMINATION OF CONTRACT.

A. In addition to automatic termination at the end of its term, this Employment Contract may be terminated by:

(1) Material breach of the terms and conditions of this Employment Contract by either party;

(2) Mutual agreement of the parties;

(3) Retirement or resignation by the Superintendent;

(4) Permanent disability of the Superintendent which results in his inability to substantially perform the essential functions of his position with or without reasonable accommodations because of illness or incapacity for a continuous period lasting longer than two consecutive months;

(5) Upon written recommendation by the Board to the Maryland State Board of Education to terminate the Superintendent for cause as set forth in Section 4-201(e)(1) of the *Education Article, Annotated Code of Maryland*; or

(6) Death of the Superintendent.

Should the Superintendent resign other than pursuant to paragraph 9.A(2) above, or separate from employment because of retirement, resignation, permanent disability (which renders the Superintendent incapable of fulfilling his duties under applicable laws and this Contract), termination for cause, termination due to his breach of this Contract, or death, this Contract shall terminate, and all obligations of the Board shall cease except for payment through the date of separation.

If the termination is because of a judicially determined material breach of this Contract by the Board, the Superintendent shall receive as severance an amount equal to a period of twelve months, or the salary remaining for the term of this Contract if less than one year remains, whichever is the lesser amount, and any benefits to which he may be entitled under this Contract. However, in no event shall the severance for separation be less than an amount equal to six months' salary. The severance shall be the only amounts owed to the Superintendent, and the Superintendent shall not be entitled to recovery of damages or any other amounts.

10. RESIDENCY.

Within a reasonable period of time following the beginning of the term of this Contract, the Superintendent shall establish residency within Montgomery County and maintain that residency throughout the term of this Contract.

11. SAVINGS CLAUSE.

This Contract shall constitute the entire agreement between the parties and shall not be modified unless with the written consent of both parties. Should any provision hereof be found to be invalid, such finding shall be limited to the specific provision and the Contract shall otherwise remain in full force and effect.

12. AMENDMENT.

This Employment Contract may only be amended by the parties, in writing, executed by all parties hereto.

13. CHOICE OF LAW.

This Employment Contract is made pursuant to and shall be governed, construed and enforced in all respects and for all purposes in accordance with the laws of the State of Maryland and all changes, amendments and modifications are governed by the laws of Maryland.

14. STATE SUPERINTENDENT APPROVAL.

This Employment Contract is contingent upon the written approval by the State Superintendent pursuant to *Education Article* Section 4-201(c)(2) of the appointment of the Superintendent by the Board. Should the State Superintendent not approve the appointment, this Employment Contract shall be void *ab initio*.

IN WITNESS WHEREOF, we have executed this Contract on the dates indicated.

BOARD OF EDUCATION OF MONTGOMERY
COUNTY, MARYLAND

Date

By: _____
Mr. Michael A. Durso, President

SUPERINTENDENT

Date

By: _____
Dr. Jack R. Smith