

**CONTRACT OF EMPLOYMENT
BETWEEN
FORT WAYNE COMMUNITY SCHOOLS AND
DR. MARK D. DANIEL**

This Contract of Employment Between Fort Wayne Community Schools and Dr. Mark D. Daniel (this “**Agreement**”), in the manner permitted by *Ind. Code Ann. § 20-28-8-6*, is entered into this 26th day of May, 2020 (the “**Effective Date**”), by and between the Fort Wayne Community Schools, an Indiana school corporation (“**FWCS**”), and Dr. Mark D. Daniel (“**Superintendent**”). FWCS and Superintendent are sometimes referred to herein collectively as the “**Parties**” and individually a “**Party**”.

RECITALS

WHEREAS, the Fort Wayne Community Schools Board of School Trustees (the “**Board**”) desires to obtain the knowledge and experience of and to employ Dr. Mark D. Daniel as Superintendent of FWCS;

WHEREAS, FWCS desires to secure for itself the services of Superintendent and Superintendent desires to be employed by FWCS; and

WHEREAS, FWCS and Superintendent desire to enter into and to reduce to writing the terms of Superintendent’s employment by FWCS, in accordance with Indiana statute.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

1. POSITION AND DUTIES.

1.1. Superintendent shall serve as the chief executive and administrative officer of FWCS, and perform all the duties and possess all the authority now or hereafter granted to him by the laws of the State of Indiana or by the job description currently in effect and attached hereto as Exhibit A (the “**Services**”), and such additional duties and responsibilities to which the Board and Superintendent may hereafter agree. The Board shall, subject to and as established by law, determine the scope of Superintendent’s duties, but shall endeavor to arrive at its determination through dialogue with Superintendent. Matters brought to the attention of any member of the Board, affecting the job or performance of Superintendent, shall promptly and confidentially be brought to the attention of Superintendent by the president of the Board.

1.2. The Parties agree that the Services to be provided by Superintendent are consistent with a reasonable division of responsibilities between the policy-making responsibility of the Board and the implementation and management responsibilities of the Superintendent. The Parties further agree that this division of responsibilities is consistent with and shall continue to be

implemented consistent with the Indiana School Boards Association Code of Ethics for school board members.

1.3. During the Term of this Agreement, Superintendent shall devote substantially all of his business time and attention to the performance of Superintendent's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise, if any such activities would conflict or interfere with the performance of the Services either directly or indirectly, without the prior written consent of the Board.

1.4. Superintendent agrees that during the Term of this Agreement, he will fully meet the minimum qualifications for the position of superintendent, as required by the Indiana Department of Education. These qualification standards include maintaining the license from the Indiana Department of Education, required for the position of Superintendent.

2. **TERM OF EMPLOYMENT.**

2.1. Subject to Section 7 of this Agreement, Superintendent's initial term of employment hereunder shall be from the period beginning on July 1, 2020 and ending on June 30, 2023 (the "**Initial Term**"). The Parties agree that forgoing provisions will result in a continuous three (3) year Agreement. Thereafter, the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for not more than five (5) successive periods of one (1) year, unless either Party provides written notice of its intention not to extend the Term (defined hereinafter) at least five (5) months (or on February 1) prior to the end of the Initial Term or any one (1) year extension thereof. The period during which the Superintendent is employed by FWCS hereunder is referred to as the "**Term.**" Upon the expiration of the Term, the Parties may negotiate a new agreement for employment, which is mutually acceptable to the Parties.

3. **PLACE OF PERFORMANCE.** The principal place of Superintendent's employment shall be Fort Wayne, Indiana; provided that, the Superintendent may be required to travel on FWCS business, during the Term.

4. **COMPENSATION AND BENEFITS.**

4.1. **Base Salary.** FWCS shall pay Superintendent an annual rate of base salary of Two Hundred Fifteen Thousand and 00/100 Dollars (\$215,000.00) in periodic installments in accordance with FWCS customary payroll practices and applicable wage payment laws, but no less frequently than monthly. Superintendent's base salary may be reviewed at the end of each Contract Year (defined hereinafter) by the Board. Superintendent's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary.**" The Base Salary will be subject to possible increases in future Contract Years in accordance with the terms set forth herein. If the Superintendent is evaluated as "highly effective" or "effective," as more fully discussed in Section 4.4, and achieves the annual performance objectives established by the Board, then the Board may in its absolute and sole discretion increase the Superintendent's Base Salary during any year of the Agreement by 1% to 10% of the Superintendent's Base Salary that is in effect at the time the raise is granted.

4.2. ***Annual Performance Bonus.***

4.2.1. For each Contract Year of the Term, the Superintendent may be eligible to receive an annual performance bonus of up to Ten Thousand and 00/100 Dollars (\$10,000.00) (the “**Annual Bonus**”), if Superintendent receives a performance rating of “highly effective” or “effective”, as more fully described in Section 4.4, for said Contract Year. The determination of Superintendent’s performance rating shall be in the sole and absolute discretion of the Board. If the performance rating of “highly effective” or “effective” is not achieved, Superintendent shall not be eligible for an Annual Bonus.

4.2.2. The Annual Bonus, if any, will be paid within two and a half (2 ½) months after the end of the applicable Contract Year, in accordance with FWCS’s customary payroll practices and subject to all applicable withholdings.

4.3. For the purposes of this Agreement, the term “**Contract Year**” shall mean the period of time from July 1, 2020 to June 30, 2021 and the same period of time each year thereafter, during the Term of this Agreement.

4.4. For the purposes of this Agreement, the Board may rate Superintendent as “highly effective” or “effective”, according to criteria established by the Board, in the Board’s sole discretion, and in a manner the Board deems is fair, proper and in accordance with Indiana law.

4.5. ***Annuity.*** On or before August 1, 2020, and on or before each following August 1, as long as this Agreement is in effect, FWCS shall purchase an annuity or make a payment to another qualified investment vehicle owned and selected by Superintendent in the amount of Twenty Thousand and 00/100 Dollars (\$20,000) per year. In the event this annuity is terminated, or in the event Twenty Thousand and 00/100 Dollars (\$20,000) exceeds the amount which may be contributed without tax to the Superintendent, all monies in excess of that part, which qualifies for the deferral, shall be paid as salary to the Superintendent on the date on which said payments would otherwise be due.

4.6. ***Vacation Leave.*** In each Contract Year, the Superintendent shall be granted paid vacation days in accordance with the School Corporation’s Administrative Salary Schedule I. The number of paid vacation days granted to the Superintendent via the Administrative Salary Schedule I shall never be lower than twenty (20) days per year, but may be greater than twenty (20) days per year in the absolute and sole discretion of the Board. Superintendent will be allowed to carry over a maximum of fifteen (15) unused vacation days per calendar year, to an accumulation of thirty-five (35) maximum vacation days per calendar year. Any accrued and unused vacation days in excess of fifteen (15) days, at the end of any given calendar year, will be forfeited. School holidays and school vacation periods identified in the district calendar period, plus federal holidays outside of the school calendar, are not required working days for Superintendent and are not counted toward the vacation day allocation. In the event that Superintendent has unused accumulated vacation leave, at the time that his employment with FWCS terminates, he shall be paid at the rate of 1/260th of the applicable Base Salary for each day of unused accumulated vacation leave, up to a maximum of fifteen (15) days, and all other unused accumulated vacation leave shall be forfeited.

4.7. **Cell Phone.** Superintendent shall provide the cellular phone number to FWCS and the Board for their use in contacting and communicating with Superintendent. Superintendent is required to have a reliable cellular phone for the completion of his duties. FWCS shall pay Superintendent a monthly cellular phone allowance in accordance with the Administrative Salary Schedule I, which shall never be lower than Fifty and 00/100 Dollars (\$50.00), but may be greater than Fifty and 00/100 Dollars (\$50.00), as determined by the Board in the Board's absolute and sole discretion. Superintendent will pay the expenses for the cellular phone that exceed the allowance amount specified in this Section 4.7.

4.8. **Administrative Benefits.** Except as specifically specified herein, Superintendent shall receive all benefits provided to all FWCS administrators on Administrative Salary Schedule I (for purposes of which the "salary base" as used therein refers to the Superintendent's Base Salary) for a specific Contract Year. Provided that, if there is a disagreement between the terms and provisions of this Agreement and the terms and provisions of the Administrative Salary Schedule I, the terms and provisions of this Agreement shall control.

4.9. **Moving Allowance.** FWCS shall reimburse Superintendent for documented moving expenses approved by the Board up to a maximum of Ten Thousand and 00/100 Dollars (\$10,000.00).

4.10. **Automobile Allowance.** FWCS shall provide Superintendent with a late model automobile for his business and personal use owned or leased by FWCS plus reasonable and necessary expenses for gasoline, insurance, maintenance and repairs, during the Term of this Agreement. At the termination of this Agreement, Superintendent may purchase, or take over the lease for the provided vehicle, provided there is no financial loss to FWCS by doing so.

4.11. **Technology Stipend.** FWCS will provide a yearly stipend for Superintendent to apply to reasonably incurred technology costs for remote access for work performed outside of the office, in an amount of up to Two Thousand and 00/100 Dollars (\$2,000.00) per calendar year (the "Technology Stipend"). Provided that, the Board, in the Board's sole discretion, may from time to time increase the Technology Stipend, in the event the Board determines such an increase is needed to assist Superintendent in completion of his duties. FWCS will provide equipment (i.e. computers and/or laptops) consistent with equipment provided to administrative staff members. Additional technology or equipment needed by Superintendent may be personally purchased with proceeds from the Technology Stipend.

4.12. **Rotary Club Membership.** If applicable, FWCS will reimburse Superintendent for the cost of a membership to the Rotary Club of Fort Wayne. If Superintendent is able to utilize any already existing FWCS business Rotary Club of Fort Wayne membership, such membership shall satisfy the requirements of this Section 4.12.

4.13. **Other Business Expenses.** Superintendent shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business and travel expenses incurred by Superintendent in connection with the performance of Superintendent's duties hereunder and in accordance with FWCS expense reimbursement policies and procedures. Upon prior Board approval, the Board may pay on behalf of Superintendent the cost of membership and participation in State and National professional associations of educational administrators, and expenses related

to Superintendent's attendance at conferences and activities. Superintendent will obtain pre-approval from the Board for attendance at out-of-State conferences and activities.

4.14. **Documentation and Payment of Expenses.** Superintendent shall submit invoices for sums owed by FWCS, pursuant to Sections 4.9 through 4.13, within thirty (30) days of the date of the invoice and FWCS shall pay all undisputed sums owed, pursuant to Sections 4.9 through 4.13, in accordance with established reimbursement policies of FWCS, after the FWCS's receipt of an invoice submitted by Superintendent. Failure to timely submit an invoice to FWCS may result in nonpayment of such invoice.

5. **OUTSIDE ACTIVITIES.** Superintendent, subject to the Board's rights set forth herein in Section 1 above, may undertake consulting work, speaking engagements, writing, lecturing, or any leadership duties or responsibilities related to any state or national educational, or professional organization or alliance, with or without remuneration, provided such activities do not interfere with the meeting of his responsibilities as Superintendent and with notice to the Board. If such activities are with remuneration, the Board shall not be obligated to pay associated expenses and such activities shall be scheduled on the Superintendent's vacation or personal days. The Superintendent shall notify the Board, annually in advance, in writing, of any anticipated outside activities for each school year governed by this Agreement.

6. **EVALUATION.** The Board will evaluate the Superintendent's performance at least once every Contract Year, in accordance with Indiana law.

7. **TERMINATION OF AGREEMENT.** This Agreement may be terminated pursuant to *Ind. Code Ann. § 20-28-8-7*, as follows:

7.1. On any date, if the Board and Superintendent mutually consent;

7.2. Before the expiration date set forth in the Agreement, if the Board terminates this Agreement for cause under a statute that sets forth causes for dismissal of teachers. However, the Board must give Superintendent proper notice and, if Superintendent requests a hearing at least ten (10) days before the termination, must grant Superintendent a hearing at an official meeting of the Board;

7.3. Upon the death of Superintendent or if Superintendent is determined to be disabled within the terms of the long term disability policy provided by FWCS and is entitled to benefits under that policy; or

7.4. Upon the expiration of this Agreement.

8. **INDEMNIFICATION.** FWCS shall indemnify and hold Superintendent harmless from any and all demands, claims, suits, actions and legal proceedings brought against Superintendent in his individual or official capacity as an agent or employee of FWCS, in connection with any matter arising while he was acting within the scope of his employment, to the extent permitted by Indiana law. Provided that, the indemnification provisions contained in this Section 8 shall not apply to any demand, claim, suit, action or legal proceeding initiated by Superintendent, FWCS or the Board related to any contest or dispute between Superintendent and FWCS or the Board with respect to this Agreement or Superintendent's employment hereunder.

9. **AGREEMENT AS A PUBLIC RECORD.** The Parties agree that this Agreement is a public record under the Indiana Public Records Law, *Ind. Code Ann.* § 5-14-3, and *Ind. Code Ann.* § 20-28-6-2 pertaining to teacher contracts generally.

10. **NOTICES.** All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement must be in writing and will be deemed to have been duly given on the day of delivery if delivered by hand, on the day of transmission if sent by e-mail with confirmation (or on the next business day if not sent on a business day), on the first business day following deposit with a nationally recognized overnight mail service, delivery charges prepaid, or on the third business day following first class mailing, with postage prepaid:

If to the FWCS: FWCS
 Attention: President of the Board
 currently Julie Hollingsworth
 1200 S. Clinton Street
 Fort Wayne, IN 46802
 Email: julie.hollingsworth@frontier.com

With Copy to: Carson, LLP
 Attention: Bruce Boxberger
 301 West Jefferson Blvd., Suite 200
 Fort Wayne, Indiana 46802
 Email: boxberger@carsonllp.com

If to the Superintendent: Dr. Mark D. Daniel
 1618 Forest Park Blvd.
 Fort Wayne, IN 46805
 Email: mdaniel6@msn.com

11. **EXECUTION BY ELECTRONIC SIGNATURE.** The Parties agree that this Agreement may be transmitted by them for execution by electronic transmission. The Parties intend that electronic signatures on this Agreement shall be binding on them.

12. **SUCCESSORS AND ASSIGNS.** This Agreement is personal to Superintendent and shall not be assigned by Superintendent. Any purported assignment by Superintendent shall be null and void from the initial date of the purported assignment. This Agreement shall inure to the benefit of FWCS and permitted successors and assigns.

13. **GOVERNING LAW AND WAIVER OF JURY TRIAL.** Any and all matters of dispute between the Parties to this Agreement, whether arising from the Agreement itself or arising from alleged extra contractual facts prior to, during, or subsequent to the Agreement, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the contract, shall be governed by, construed and enforced in accordance with the laws of the State of Indiana, not including its conflicts of laws rules but including its statutes of limitations, regardless of the legal theory upon which such matter is asserted. Venue for any legal dispute between the Parties shall be Allen County, Indiana and the Parties specifically submit to such jurisdiction. **SUPERINTENDENT AND FWCS HEREBY WAIVE THE RIGHT TO TRIAL BY JURY**

OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE CONDUCT OF THE RELATIONSHIP BETWEEN SUPERINTENDENT AND FWCS.

14. **FORCE MAJEURE.** FWCS shall not be liable or responsible to Superintendent, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, but not limited to: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities, terrorism, or other civil unrest; (d) action by any governmental authority, including actions such as stay-at-home orders; (e) change in laws, regulations, or orders; (f) national or regional emergency; (g) epidemics, pandemics, and quarantines; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortages of power, supplies, infrastructure, or transportation; and (j) other similar events beyond the reasonable control of the impacted Party (collectively, a "**Force Majeure Event**"). Moreover, in the case of the Force Majeure Event, FWCS may delay, postpone or diminish any Annual Bonus, for the Contract Year impacted by the Force Majeure Event.

15. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement, together with the regular teacher's contract between the Parties and any exhibits or attachments hereto, contains the entire agreement between the Parties and supersedes all prior agreements or understandings between the Parties. This Agreement may be amended only by an agreement in writing signed by the Parties.

16. **HEADINGS; CONSTRUCTION.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No Party will be considered the drafter of this Agreement or any other document attached as an exhibit or otherwise associated with this Agreement. This Agreement and the other associated documents have been reviewed, negotiated and accepted by all Parties and their attorneys and will be construed and interpreted according to the ordinary meaning of the words so as fairly to accomplish the purposes and intentions of the Parties. As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the context so indicates or requires.

17. **ENFORCEMENT; SEVERABILITY; ETC.** It is the desire and intent of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. In the event that a court of competent jurisdiction determines any particular covenant, provision or clause of this Agreement is determined to be unreasonable or unenforceable for any reason, FWCS and Superintendent acknowledge and agree that the court interpreting the provisions of this Agreement shall have the authority, if necessary, to reform any such provision to make it enforceable under applicable law. To the extent a provision or clause cannot be reformed and remains invalid or unenforceable, such provision shall be deemed severed from the remainder of this Agreement with no effect on the enforceability of the remaining provisions.

18. **COUNTERPARTS.** This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

19. **ATTORNEY FEES.** In the event of any dispute between the Parties arising out of this Agreement, the prevailing Party shall be entitled, in addition to any other rights and remedies available, to recover its reasonable attorney fees and costs.

[Remainder of page intentionally left blank; signatures on following page]

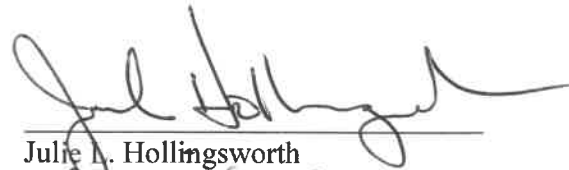
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“SUPERINTENDENT”



Dr. Mark D. Daniel


“FWCS”



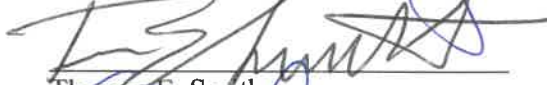
Julie L. Hollingsworth



Maria L. Norman



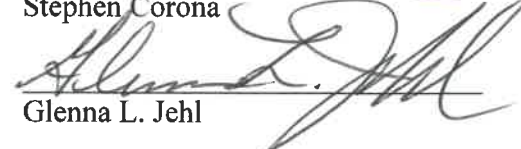
Anne M. Duff



Thomas E. Smith



Stephen Corona



Glenna L. Jehl

Exhibit "A"
Superintendent's Duties

Exhibit "A"



WE ARE YOUR SCHOOLS

FORT WAYNE COMMUNITY SCHOOLS

JOB DESCRIPTION

CLASS TITLE: SUPERINTENDENT

DEPARTMENT: ADMINISTRATION

REPORTS TO: Board of School Trustees

Job Code:		Contract/Policy:	Administrative	
FLSA Code:	Exempt	Pay Scale/Group:	77	1

BASIC FUNCTION:

Serves the Board of School Trustees as the executive officer administering the school system in accordance with state laws and board policies. Develops and administers rules and regulations for school operations within the scope of Board policies. Plans, organizes, controls and directs the day-to-day operations and activities of FWCS including District-wide school sites, divisions, departments, programs and services; coordinates and directs personnel, resources, communications and information to meet the educational and operational needs of the District, assures smooth and efficient activities, and enhances student learning, achievement and educational opportunities; supervises and evaluates the performance of assigned personnel.

QUALIFICATIONS:

Any combination equivalent to: master's degree in education or related field and ten years experience working as an administrator for a school district or related organization. Must have strong planning, administrative, supervisory, analytical, computer, organizational, accountability, and oral and written communications skills. Incumbents must possess knowledge of the comprehensive organization, operations, policies and objectives of the District. Incumbents must possess a valid superintendent's license issued by the Indiana Department of Education.

ESSENTIAL FUNCTIONS:

1. Plan, organize, control and direct the day-to-day operations and activities of FWCS including District-wide school sites, divisions, departments, programs and services; monitor, analyze and adjust District services in response to student needs and progress; assure optimal allocation of District resources; coordinate and direct administrative functions to assure activities comply with established local, State and federal standards, requirements, laws, codes, regulations, policies and procedures
2. Serve as the executive officer of the Board of School Trustees, administering the school

system in accordance with State laws and Board policies; administer District operations and activities to guide FWCS towards meeting established goals and objectives; establish and maintain District time lines and priorities.

3. Coordinate and direct personnel, resources, communications and information to meet the educational and operational needs of the District, and enhance student learning, achievement and educational opportunities; provide educational leadership and collaborate with the Board in the planning, development and implementation of District-wide programs, services, schedules, goals, strategies, standards, systems, projects, processes, policies and procedures.

4. Supervise and evaluate the performance of assigned administrators and personnel; interview and select employees and recommend transfers, reassignment, termination and disciplinary actions; direct and participate in the recruitment, employment and retention of administrators.

5. Monitor and analyze District-wide operations and services for educational and financial effectiveness and operational efficiency; develop and implement short and long-range plans.

6. Provide technical direction and assistance to the Board in matters related to the employment, assignment and retention of District-wide classified and certified personnel, building and finance programs, the annual school district budget and curriculum and instructional materials.

7. Coordinate and direct District-wide communications, activities, services and information among administrators, personnel, Board members, outside organizations, school sites, community groups, and various agencies; investigate, analyze and direct activities to assure proper and timely resolution of administrative, operational and educational issues and conflicts of the District.

8. Collaborate with the Board, Chief Financial Officer and others in developing and preparing the annual preliminary budget for the District; determine budget priorities; research, obtain and maintain a variety of funding sources.

9. Lead the District's strategic planning effort to enhance achievement among students and close the achievement gap; provide leadership and direction in developing new, innovative and responsive instructional programs and support services.

10. Maintain current knowledge of educational trends, innovations and practices, and local, State and federal programs, laws, and pending legislature related to District services; keep the Board informed concerning local, State and federal programs for the improvement of curriculum and instruction; direct the modification of District programs, services, policies and procedures to meet local, State and federal requirements as needed.

11. Assure adequate resources and personnel to meet District needs; monitor staffing needs and initiate recruitment activities as appropriate.

12. Direct the preparation and maintenance of a variety of narrative, financial and statistical records, files and reports related to District programs, projects, budgets, compliance, systems, financial activity, personnel and assigned duties; assure mandated reports are completed and submitted to appropriate State or federal agency according to established time lines.

13. Review, analyze and determine appropriate response to collective bargaining issues and conflicts; direct the development of collective bargaining agreements.

14. Coordinate, attend and conduct a variety of meetings; present materials and information concerning District programs, services, operations and activities; represent the District at local, regional and State meetings, conferences and special events.

15. Perform related duties of the overall school system as assigned by the Board of School Trustees.

PHYSICAL REQUIREMENTS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to speak and hear. The employee is required to have dexterity of hands and fingers. The employee is required to sit or stand for extended periods of time. They may be occasionally required to bend at the waist, kneel or crouch. Specific vision abilities required by this job include close vision, and ability to adjust focus. While performing the duties of this job the incumbent is seated or walking at will and has limited physical labor.

