

NORTH CAROLINA

EMPLOYMENT CONTRACT

WAKE COUNTY

THIS AGREEMENT, made and entered the 18th day of June, 2013, by and between the Wake County Board of Education, hereinafter referred to as "Board," and Dr. James G. Merrill, hereinafter referred to as "Superintendent";


WHEREAS, the Board desires to provide the Superintendent with a written employment contract in order to enhance administrative stability and continuity within the schools which the Board believes generally improves the quality of its overall educational program; and

WHEREAS, the Board and the Superintendent believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the education program of the schools;

NOW, THEREFORE, the Board and the Superintendent, for the consideration herein specified, agree as follows:

1. **TERM**

The Board, in consideration of the promises herein contained of the Superintendent, hereby employs James G. Merrill as Superintendent of Schools for a term beginning August 1, 2013 and ending June 30, 2017. Beginning in 2014, and each year thereafter, at the time of the completion of the Superintendent's annual summative evaluation, the Board will consider whether by specific action and with the consent of the Superintendent to extend the termination date of the existing contract to the extent permitted by state law.



2. **PROFESSIONAL CREDENTIALS AND RESPONSIBILITIES OF SUPERINTENDENT**

A. **CREDENTIALS.** The Superintendent shall furnish all documentation required by the N.C. Department of Public Instruction for verification of appropriate credentials for serving as superintendent. The Superintendent agrees to re-activate his North Carolina Superintendent license.

B. **DUTIES.** The Superintendent shall have charge of the administration of the schools under the direction of the Board. He shall be the chief executive officer of the Board; shall serve as secretary to the Board; and be entitled to attend all Board and Board committee meetings (unless the Board has entered closed session to discuss his own performance); shall direct and assign teachers and other employees of the schools under his supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the Wake County Public School System, the Superintendent shall confer with the Board prior to any reorganization of the Central Office administrative staff and shall obtain Board approval for any increase in expenditure related to such reorganization; shall select all personnel subject to the approval of the Board; shall have the authority to immediately accept resignations of personnel for and on behalf of the Board; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district; and in general shall perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by law or by the Board from time to time, including but not limited to any duties identified by the Board in establishing the Superintendent's annual performance criteria, which will be developed in consultation with the Superintendent. The Board individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation and shall



refrain from individual interference with the administration of school policies except through Board action. This is an agreement for the performance of professional services as superintendent by the Superintendent, who shall not be assigned to any other position during the term of this contract.

3. COMPENSATION

A. ANNUAL AGGREGATE SALARY. The Superintendent shall be paid an annual aggregate salary in the amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00). The annual aggregate salary paid the Superintendent from state and local funds shall be paid in equal monthly installments in accordance with the rules of the Board governing payment of other professional employees of the school administrative unit. At no time shall the annual aggregate salary of the Superintendent be decreased during the term of this contract.

During the period of this agreement, the Superintendent's salary shall be reviewed at least annually by the Board. The Board may increase the Superintendent's salary at any time by action of the Board. In addition, the annual aggregate salary will increase by the amount of any increase in the State provided salary range for superintendents applicable to school systems the size of Wake County.

Any modification in the aggregate annual salary amount made during the term of the Contract, other than the increases provided above, shall be in the form of a written modification pursuant to Section 20 herein.

B. LONGEVITY. In addition to his annual aggregate salary, the Superintendent shall receive longevity pay based on the state schedule and local Board policy.

C. **ADVANCED DEGREES.** The Superintendent shall receive payment for advanced degrees to the extent that the State appropriates additional funding to the school system expressly for payment of said degrees.

4. VACATION AND OTHER BENEFITS

A. The Superintendent shall receive annual leave and sick leave as provided by state law and North Carolina State Board of Education regulations. This annual leave and sick leave shall be taken in accordance with Board policy and State Board of Education regulations. This annual leave and sick leave may be carried forward as provided by law and Board policy, and payment for any accrued and unused annual leave at the termination of this contract shall be made in accordance with Board policy and State Board of Education regulations. In order to provide essential services to the Board which might not otherwise be provided, the Superintendent may not be able to use all of his earned vacation in a year and/or be unable to schedule vacation at a desirable time. In addition, the Board recognizes that the Superintendent does and will commit to the services of the school system many hours of additional time, above and beyond those necessary for the completion of his duties, including time spent locally and outside the school system in representing the school system, often at night and on weekends. In recognition of these services, and in consideration of such circumstances, the Board annually on June 30 shall compensate the Superintendent in an amount equal to ten (10) days computed at 1/250 of the Superintendent's aggregate annual salary.

B. The Board shall reimburse the Superintendent on an annual basis the full premium for family medical, dental and vision insurance coverage paid by the Superintendent during the term of employment under any plan approved for other professional employees of the school administrative unit.



C. The Superintendent shall receive the same terminal pay and other personal benefits, including the use of any "cafeteria benefits plan" approved by the Board, as provided to other professional employees of the school administrative unit as permitted by law.

D. The Board will reimburse on an annual basis the Superintendent for the purchase of term life insurance coverage during the term of employment at two times the amount of his annual base salary. The Superintendent shall submit appropriate documents to the finance officer in support of the reimbursement request.

E. Until such time as the Superintendent qualifies for short-term and long-term disability benefits from the State of North Carolina, the Board shall reimburse the Superintendent on an annual basis for the purchase of disability insurance coverage in amounts that are at least equivalent to those state benefits, under the circumstances for which the Superintendent would otherwise qualify for such benefits. The Superintendent shall submit appropriate documents to the finance officer in support of the reimbursement request.

F. The Superintendent may participate in school system retirement savings plans to the same extent as other professional employees of the school system as permitted by law.

G. With prior approval of the Chairman of the Board, the Board shall pay the Superintendent's membership charges, not to exceed Two Thousand Dollars (\$2000.00), for membership in up to five (5) professional or civic organizations as the Superintendent feels are necessary to maintain and improve his professional skills, civic involvement, or to advance the mission of the Board.

H. The Board shall provide the Superintendent with a smartphone/personal data assistant, a home fax or scan machine, office and home Internet access, laptop computer and/or Ipad, and other electronic devices for effective modern communication to facilitate the

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Superintendent in carrying out his duties. All maintenance and other monthly or recurring charges for the electronic equipment provided pursuant to this paragraph shall be at the expense of the Board, and all such equipment shall remain the property of the Board. As to the home Internet access, the Board will reimburse the Superintendent on an annual basis upon the submission of appropriate documentation to the finance officer.

I. The Board recognizes that the Superintendent does and will commit to the services of the school system many hours of additional time, above and beyond those necessary for the completion of his duties, including time spent locally and outside of the school system representing the Board, often at night and on weekends. As additional compensation for these extra work hours, the Board shall permit the Superintendent to take compensatory time off from his normal work schedule up to and including ninety-six (96) hours per year. Any and all compensatory time shall be taken prior to the Superintendent using any of his annual vacation days, with each eight (8) hours of compensatory time constituting one (1) full workday. Any such hours of compensatory time which are not used during the year in which they are earned shall be forfeited and may not be accumulated or carried over to the following fiscal year, nor shall they be carried over at the termination of the Superintendent's employment.

J. In the event of public controversy or threat to the Superintendent or his immediate family arising from the Superintendent's position with the school system, if the Board or Superintendent ever deems it necessary for the protection of the Superintendent or his immediate family, the Board will provide security measures that it deems reasonable and appropriate to enhance the safety of the Superintendent and/or his immediate family.

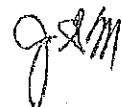
K. The Board, on an annual basis, will reimburse the Superintendent for the Superintendent's required retirement contribution paid to the Teachers' and State Employees' Retirement System during the term of the contract.

5. PROFESSIONAL GROWTH OF SUPERINTENDENT

The Board expects the Superintendent to continue his professional development and expects him to participate in relevant learning experiences. The Superintendent should attend appropriate professional meetings at the local and state level at the Superintendent's discretion, and out-of-state meetings with the prior approval of the Chairman of the Board. The actual expenses of said attendance will be paid from the current operating funds of the Wake County School System in an amount and manner prescribed by Board policy. The Superintendent shall file itemized expense statements with the Finance Officer for reimbursement of these expenses in accord with Board Policy. Request for reimbursements of actual expenses in excess of Board approved per diem must be approved by the Chairman of the Board or, in the Chair's absence, the Vice-Chair. Similarly with approval of the Chair, or in the Chair's absence, the Vice-Chair, expenses for such items as lodging, registration and transportation may be prepaid directly to a billing agency.

6. EXPENSES

The Board shall reimburse the Superintendent for reasonable expenses he incurs on behalf of the Board. The Board recognizes that the Superintendent shall incur such expenses from time to time as the Board's representative in the pursuit of educational excellence, private funding, grants and for other reasons. The Superintendent shall file itemized expense statements with the Chairman of the Board for approval of reimbursement of these expenses. Approved reimbursements shall then be submitted to the Finance Officer for payment. In the absence of



the Chairman, the actions, authority and responsibilities of the Chairman set forth in this section may be carried out by the Vice-Chairman.

7. TRANSPORTATION

The Board shall pay the Superintendent additional salary in the amount of Nine Hundred Dollars (\$900.00) per month in lieu of a transportation allowance and in exchange for his using his personal vehicle for in-county travel and foregoing any reimbursement for his costs. This additional salary shall not be considered as part of his aggregate salary for the purpose of annual salary increases. Out-of-county travel shall be reimbursed at the prevailing IRS rate. In lieu of reimbursement for out-of-county travel, the Superintendent may use a Board-owned vehicle for such out-of-county travel if the Board makes available a vehicle for this purpose.

8. BENEFITS OPTION.

As an inducement to forego retirement or other options which may become available to him, the Board will permit the Superintendent to forego the benefits provided under Sections 4B of this Agreement and receive the supplemental salary equivalent to the direct cost of those benefits to the Board, in lieu of receiving those benefits. The supplemental salary the Superintendent receives through this conversion of benefits shall not be considered a part of his aggregate salary for any other provision of this contract.

9. PROFESSIONAL LIABILITY

The Board agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Superintendent was acting within the scope of his employment; and



provided further, that such liability coverage is within the authority of the Board to provide under state law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this contract and any extensions thereof. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings.

10. MEDICAL EXAMINATION AND DISABILITY

A. **MEDICAL EXAMINATION.** The Superintendent hereby agrees to have an annual medical examination, the cost of which will be reimbursed by the Board upon the submission of appropriate documentation to the finance officer. A statement from a licensed physician of the Superintendent's choice, certifying to the physical competency of the Superintendent to fulfill his duties and responsibilities, shall be filed with the Chairman of the Board and treated as confidential information by the Board.

B. **DISABILITY.** If the Superintendent is unable to perform his essential functions by reason of disability for more than one hundred twenty (120) calendar days, and efforts to reasonably accommodate his disability do not enable him to perform his essential functions, the Board will cooperate fully with the Superintendent in his application for disability benefits.

11. EVALUATION

The Board and Superintendent shall meet no later than October 1, 2013 to:

- Review the Superintendent's plan of entry.
- Discuss and reach agreement on working protocols for the Superintendent and Board.
- Discuss and reach agreement on communication protocols for the Superintendent and Board.

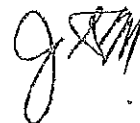
- Discuss and reach agreement on Superintendent work priorities through June 30, 2014.

No later than November 30, 2013, the Superintendent shall present to the Board for consideration a proposal which outlines the Superintendent's performance evaluation process and specific performance criteria for 2013-2014. This proposal will also include for Board consideration a discretionary performance compensation plan for the Superintendent.

The Board shall meet with the Superintendent by August 31 each year to finalize the Superintendent's annual performance goals. The Board shall provide the Superintendent with periodic opportunities to discuss Superintendent-Board relationships. The Board shall provide the Superintendent with a written annual evaluation of his performance no later than August 31 of each year. As part of the annual evaluation process the Board shall determine whether the Superintendent will be awarded an additional salary increase or performance-based compensation or both.

12. CONSULTING AND OUTSIDE EMPLOYMENT

The duties and responsibilities of the Superintendent require full-time employment and frequently require that the Superintendent attend to his duties during the evenings, weekends and holidays. The Superintendent shall not accept any outside employment that in any manner interferes with the performance of his duties and responsibilities as Superintendent of the Wake County Public School System. The Board grants to the Superintendent, subject to prior approval of the Chairman of the Board, the opportunity to accept private consulting and speaking or teaching engagements and appointments to foundations, boards or commissions that do not interfere with the Superintendent's performance of his duties under this agreement. Annual leave time must be taken to perform any private consulting or other outside employment during normal



weekday work hours. The Superintendent shall make a written report to the Board no later than June 1 of each year listing all outside employment he has performed during the preceding year.

13. CONFLICT OF INTEREST PROHIBITED

The Superintendent acknowledges that he has read and understands the conflict of interest statutes of the State of North Carolina and agrees to comply with the statutes and any other State laws or Board policies relating to conflicts of interest.

14. TERMINATION

Throughout the term of this contract the Superintendent shall be subject to discharge for good and just causes as provided by the North Carolina General Statutes § 115C-274 provided, however, that the Board does not arbitrarily or capriciously call for his dismissal and that the Superintendent shall have the right to written charges, a fair hearing before the Board, and ten (10) days' written notice of said charges and hearing. At any such hearing before the Board, the Superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any testimony relevant to the issue. The hearing shall be conducted in closed session in accordance with procedures adopted by the Board to assure due process. A transcript of the record of the proceedings before the Board shall be made available without charge to the Superintendent. If the Superintendent chooses to be accompanied by legal counsel at the hearing before the Board, he will assume the cost of his legal expenses.

15. UNILATERAL TERMINATION BY THE BOARD

The Board may, at its option, unilaterally terminate this contract. In the event of such termination the Board shall pay to the Superintendent, as severance pay, the annual aggregate salary he would have earned pursuant to Section 3A of this Agreement for the upcoming twelve (12) months of the contract or the remaining time of the contract, whichever is less. In the event

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that the Board offers to terminate the contract by paying the amount specified herein, the right to a hearing before the Board, as specified in Section 14 above, and the right to appeal the Board's actions shall be considered waived by the Superintendent.

16. RESIGNATION

The Superintendent shall give at least ninety (90) calendar days' written notice to the Board if he intends to resign prior to the end of the term of this contract or extensions thereto. In the event that he fails to give the required notice, the Superintendent agrees to pay the Board Thirty Thousand Dollars (\$30,000) which the parties agree is a reasonable and proper measure of damages that will be incurred by the Board by an untimely resignation by the Superintendent. Furthermore, the Board, in its sole discretion, may terminate this contract at any time after the Superintendent has given written notice that he intends to resign prior to the end of his term of employment. In such event the Superintendent shall be entitled to be paid through the date of his resignation and paid for any unused state accrued annual leave; and the provisions of Section 14 and 15 of this contract shall not apply and, if the Superintendent has given 90 days prior written notice of resignation, the \$30,000.00 damage payment described above shall be waived. In addition, if an unexpected severe medical condition or emergency arises that directly involves the Superintendent or his spouse which prevents the Superintendent from giving 90 days prior written notice of resignation, the \$30,000 damage payment described above shall be waived.

17. RESIDENCE

The Superintendent shall maintain his primary personal residence (domicile) within the geographic boundaries of Wake County during the term of this Agreement.

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18. RELOCATION EXPENSES

The Board shall reimburse the reasonable and necessary moving expenses of the Superintendent for relocating his primary residence to Wake County. The Board shall also provide the Superintendent with reimbursement for up to thirty (30) days temporary housing in Wake County not to exceed Two Thousand Dollars (\$2,000.00). The Superintendent shall submit receipts to the financial officer to support the reimbursements set forth above.

19. PREEMPLOYMENT SERVICES

The Superintendent shall spend up to ten (10) working days consulting in Wake County prior to August 1, 2013, to familiarize himself with the school system and community. For any such preemployment services before August 1, 2013, he shall be compensated at a daily rate in an amount equal to 1/250 of his annual aggregate salary established in Section 3 of this Contract. For any professional services provided by the Superintendent prior to August 1, 2013, he shall be reimbursed for his actual, reasonable expenses for lodging, meals, and travel to, from and within Wake County. The preemployment services described herein are for consulting and shall not affect the commencement of the term of service as Superintendent provided in Section 1 of this Contract.

20. AMENDMENT

The Agreement may be amended during its term by mutual written consent of the Board and the Superintendent. Any such amendment shall be in writing, approved by official action of the Board, and accepted in writing by the Chairman of the Board and the Superintendent.

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21. SAVINGS CLAUSE

If, during the term of this contract, it is found that a specific clause of the contract is illegal under federal or state law, the remainder of the contract not affected by such a ruling shall remain in force.

22. LAW

This Agreement shall be governed by, construed and enforced in accordance with the law of the State of North Carolina.

23. FILING

A copy of this contract shall be filed with the Superintendent of Public Instruction in North Carolina.

24. ENTIRE AGREEMENT

The parties hereto agree that this instrument contains the entire agreement between them as of this date, and that it has not been induced by either party by any representations, promises or undertakings not expressed herein, and that there are no collateral agreements, stipulations, promises or understandings whatsoever by the respective parties in any way affecting the subject matter of this contract which are not expressly contained in this instrument.

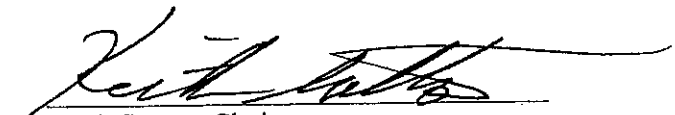
IN TESTIMONY THEREOF, the Wake County Board of Education has approved this Agreement and caused this instrument to be executed in its name by its Chairman, and duly attested to, all by order and resolution of the Board, and Dr. James G. Merrill has accepted this Agreement and has hereunto set his hand and seal, this the day and year first above written.

SUPERINTENDENT




Dr. James G. Merrill (SEAL)

WAKE COUNTY BOARD OF EDUCATION



Keith Sutton, Chair

ATTEST:



Christine Kushner, Vice-Chair

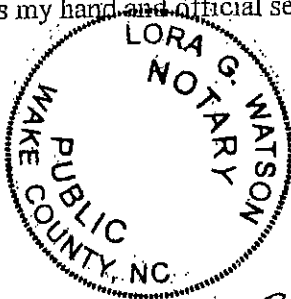


STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Lora G. Watson, a Notary Public, do hereby certify that Keith Sutton appeared before me, with whom I am personally acquainted, who, being by me duly sworn, says that Christine Kushner is Vice-Chair of the Board and that he is Chairman of the Wake County Board of Education, the corporation described in and which executed the foregoing and annexed instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, that the name of the corporation was subscribed thereto by said Chairman and that said Chairman and Vice-Chair subscribed their names thereto and said common seal was affixed, all by order of the members of the Wake County Board of Education, and said instrument is the act and deed of said corporation.

Witness my hand and official seal, this the 18th day of June, 2013.

(Notary Seal)



Lora G. Watson
Notary Public

My Commission Expires: 8/5/2014

~~STATE OF NORTH CAROLINA~~ Commonwealth of Virginia
~~COUNTY OF WAKE~~ City of Virginia Beach, County Princess Anne

I, Nina Hernandez a Notary Public for said County and State, do hereby certify that Dr. James G. Merrill personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this 14 day of June, 2013.

(Notary Seal)

Nina Hernandez, 7291740
Notary Public

My Commission Expires: February 28, 2017

Pursuant to N.C. Gen. Stat. §115C-441(a), this instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Mark A. White
Finance Officer

June 18, 2013
6/18/2013
Date