

ANCHORAGE SCHOOL DISTRICT  
ANCHORAGE, ALASKA

ASD MEMORANDUM # 191 (2011-2012)

February 3, 2012

TO: SCHOOL BOARD

FROM: GRETCHEN GUESS, PRESIDENT

SUBJECT: APPROVAL OF THE SUPERINTENDENT CONTRACT FOR  
DR. JAMES W. BROWDER, JULY 1 2012 – JUNE 30, 2015

RECOMMENDATION:

That the Anchorage School Board approves Attachment A as the employment agreement between the Anchorage School Board and Dr. James W. Browder for the period July 1, 2012 to June 30, 2015.

PERTINENT FACTS:

After the current superintendent, Carol Comeau, announced her retirement on June 30, 2012, the Board launched a thoughtful, deliberate process to choose the next superintendent. This process took over seven months, with all board members fully participating as a selection committee of the whole.

Dr. Browder is a proven leader who led a district larger than Anchorage (Lee County, Florida with a student population of 82,000). During his tenure at Lee Country, he managed finances wisely through budget cuts and most importantly demonstrated the ability to deliver academic success.

Dr. Browder's salary and benefits are below the national average for urban superintendents. Dr. Browder will be paid a salary of \$180,000 per year with benefits closely aligned to those of current exempt employees.

Dr. Browder will start his transition in February 2012, and will take over as superintendent on July 1, 2012.

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Attachment: Employment Agreement for Dr. James Browder

Prepared and Approved by: Gretchen Guess, School Board President

## **EMPLOYMENT AGREEMENT**

This agreement is effective upon execution by the parties in accordance with the terms herein set forth, and is between the ANCHORAGE SCHOOL BOARD (Board) and Dr. James W. Browder (Superintendent). The Board and Superintendent agree as follows:

### **1. Term.**

The Superintendent shall be employed as Superintendent of the Anchorage School District (ASD) for the period beginning July 1, 2012 through June 30, 2015, subject to earlier termination of this agreement as set forth in Section 11 and any other provisions of this agreement.

### **2. Duties of the Superintendent.**

- A. The Superintendent is the chief executive officer of the ASD and is responsible for the efficient and effective direction and administration of the ASD in conformance with all applicable statutes, ordinances, regulations, Board policies, memos passed by a majority by the Board, and any other Board action approved by a majority of Board Members. The Superintendent is responsible for the organization or reorganization of ASD administrative and supervisory staff. Consistent with state law and any applicable collective bargaining agreement, the Superintendent shall recommend to the Board for approval all administrative and supervisory staff hiring, transfers, and promotions.
- B. The Superintendent shall devote his full time, skill, and attention to administration of the ASD. However, with prior approval of the Board, the Superintendent may engage in and receive compensation for consulting work, writing, lecturing, postsecondary teaching, or public speaking that would not reasonably be expected to interfere with the performance of his duties for the ASD. The Board has full discretion to determine whether such would reasonably be expected to interfere with the performance of his duties for the ASD, but may not arbitrarily or capriciously withhold its approval. No ASD resources may be used in the

performance of this additional work and the Superintendent shall take annual leave to perform any work which prevents him from attending to ASD responsibilities.

- C. The Superintendent is responsible for his work schedule; however, the Superintendent hereby acknowledges that the proper performance of his ASD duties will include some work outside of normal school hours, over weekends, and during school holidays. When the Superintendent is not available in person or by telephone, he must designate an administrator-in-charge, and inform the Board President and other appropriate administrators of that designation.
- D. The Superintendent shall organize and arrange for all meetings of the Board, and shall attend all such meetings unless excused by the Board President.
- E. The Superintendent shall comply with all applicable statutes, ordinances, and regulations, the Code of Ethics of the Professional Teaching Practices Commission, and the policies of the Board.
- F. After this agreement has been executed by the Superintendent and the Board, and prior to July 1, 2012, the Superintendent shall make all reasonable efforts to learn about the ASD and the Anchorage community and schools, meet with ASD employees and community leaders, and visit other Alaska communities as deemed appropriate by the Board. With prior approval of the Board President, the Superintendent shall be reimbursed for the reasonable expenses associated with these efforts according to the schedule provided in Section 10.B.
- G. By signing this agreement, the Superintendent subscribes to the following Oath of Office:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska and that I will faithfully discharge my duties as Superintendent to the best of my ability.

### **3. Board Evaluation of Superintendent's Performance.**

- A. Pursuant to Board policy, the Board shall evaluate the performance of the Superintendent at least once a year during the term of this agreement. On or before July 1 of each year, the Board shall provide a written review of the Superintendent's performance. This review shall include the following:
- i. Board Member Ratings. Each Board Member shall rate the Superintendent in such performance categories as may be approved by the Board in memo format. Annually, the board and superintendent shall agree on the performance categories and rating, or use previously approved measurements as passed by the Board. The rating for each category shall be presented in the Superintendent's performance evaluation as an average of the Board Member's individual ratings.
  - ii. Superintendent Impact and Results. The Superintendent's performance shall be evaluated in the following areas:
    - a. Performance measures and goals as laid forth in Board memo;
    - b. Employee relations;
    - c. Community relations;
    - d. Operational efficiencies;
    - e. District professional development and succession planning;
    - f. Board strategic initiatives and annual projects; and
    - g. Any other projects or goals the Board sets forth during the review for the following school year.
  - iii. Professional Development and Improvement Areas. Documentation and discussion on whether prior professional development and/or improvement plans were met and agreement for the following 12-month professional development or improvement areas.
- B. During each annual performance review, or at any other time the parties agree, the Board and the Superintendent may mutually agree to extend the term of this agreement, or make any other modifications provided

that they are mutually agreed upon. Any such changes must be in writing and signed by the Board President and the Superintendent.

#### **4. Compensation.**

Beginning on July 1, 2012, the Superintendent shall receive a gross annual salary of one hundred eighty thousand and 00/100 dollars (\$180,000), which is to be paid monthly in accordance with the ordinary payroll practices of the ASD. The Superintendent's salary shall be reviewed once per year at the time of the Superintendent's performance review, or at another time mutually agreed to by the parties.

#### **5. Expenses.**

A. The ASD shall pay on behalf of the Superintendent all actual and necessary business expenses (including, but not limited to, travel costs, lodging, business entertainment, and civic and professional organizational membership fees), or reimburse the Superintendent for such expenses, incurred by him within the scope of employment as Superintendent. Supporting documentation shall be submitted for any expenditure exceeding twenty-five dollars (\$25.00), and written approval of the Board President shall be required prior to any reimbursement.

These expenses shall be accounted for through the ASD controller, and the total shall be included in the quarterly financial report to the Board. All purchases and expenses shall be consistent with the Board approved budget and Board policies.

B. The Superintendent's travel shall be subject to review or approval pursuant to Board policy.

C. At the Superintendent's request, the ASD shall provide the Superintendent with a laptop computer and cellular phone or similar electronic medium, provided that the Superintendent uses such electronic medium (*e.g.*, cell phone and laptop computer) only as approved by the Board President and in accordance with the benefits and policies for exempt employees.

- D. The Superintendent is eligible for mileage reimbursement under the same policies and rules as any other exempt employee
- E. The ASD shall provide the Superintendent with actual, reasonable and necessary moving and relocation expenses or reimburse the Superintendent for such expenses, up to ten thousand dollars (\$10,000), incurred by him or his wife in order to assume his position with the ASD. Supporting documentation shall be submitted for all moving and relocation expenditures and written approval of the Board President shall be required prior to any reimbursement.

## **6. Ancillary Benefits.**

### A. Leave.

The Superintendent shall receive leave benefits under the same terms and conditions as granted to the ASD's exempt employees of the same tier level as the Superintendent (*See Administrative Procedures Manual for Exempt Employees*), with the exception that the Superintendent's leave for the first year will automatically accrue when he assumes office on July 1, 2012. However, if the Superintendent's employment is terminated during his first year of service, the automatically-accrued leave will be reduced on a pro-rata basis in accordance with the time served by the Superintendent during that year. In addition to the exempt holidays, the Superintendent shall receive seven personal holidays, which are un-cashable and non-accruable. There is no restriction on when these days can be used by the Superintendent.

### B. Medical and Life Insurance.

The Superintendent shall receive group medical insurance benefits and life insurance benefits under the same terms and conditions as granted to the ASD's exempt employees (*See Administrative Procedures Manual for Exempt Employees*), except that the Superintendent's insurance coverage shall begin on July 1, 2012.

C. Retirement.

The Superintendent shall participate in the State of Alaska Teachers' Retirement System (TRS), and ASD shall make all employer-required contributions to that system.

D. Annuity.

- i. Each year that the Superintendent is employed under this agreement, the ASD shall purchase on behalf of the Superintendent a tax sheltered annuity or contribute to a similar retirement account in the amount of fifteen thousand dollars (\$15,000). Any annuity or other retirement program funded under this provision shall be owned by the Superintendent, and the choice of program or programs, as well as the tax consequences thereof shall be the sole responsibility of the Superintendent.
- ii. If the Superintendent's employment is terminated during the fiscal year, the ASD's obligation to purchase an annuity will be pro-rated in accordance with the time served by the Superintendent during that year.
- iii. At the option of the Superintendent, a portion of his salary under Section 4 (Compensation) shall be withheld and paid into a tax-deferred annuity program of the Superintendent's choosing so long as the program conforms to all applicable legal requirements for such programs.

E. Disability.

- i. For the duration of this agreement, the Board shall provide to the Superintendent a disability insurance program at no cost to the Superintendent either by purchasing the same or through self insurance, which program in conjunction with TRS or any other disability plan in which the Superintendent participates guarantees that if the Superintendent, due to illness or accident (whether occurring on the job or elsewhere) is disabled and unable to carry out his duties, his salary as provided under this agreement shall continue to be paid

until the disability is removed or this agreement expires on June 30, 2015, whichever occurs first. In the case of a disability, the Superintendent's accumulated sick leave and personal leave accumulated from the point of him becoming Superintendent will be applied to maintain his salary and when such leave is exhausted, disability coverage provided herein shall commence.

- ii. If independent medical evaluation indicates that a disability will prevent the Superintendent from performing his duties for a period of six (6) months or more, the Board may, at its sole discretion, replace the Superintendent. Provided, however, that should the Board elect to permanently replace the Superintendent and more than twelve (12) months remain in the normal duration of this agreement, the Board shall pay severance payments to the Superintendent which shall include all compensation and benefits provided in this agreement for an additional twelve (12) months beyond the Superintendent's last day of service as provided in the written notice terminating the agreement. The Superintendent may elect to receive severance compensation and benefits on a monthly basis or in one lump sum payment. Should fewer than twelve (12) months remain in the normal duration of this agreement, compensation will cease with the expiration of the agreement on June 30.
- iii. If independent medical evaluation indicates that a disability will prevent the Superintendent from performing his duties for a period of two (2) months or more, the Board, at its sole discretion, shall appoint an Acting Superintendent for any period of disability.
- iv. If at any point a question exists concerning the capacity of the Superintendent to fulfill his duties because of any medical condition, the Board may require the Superintendent to submit to a medical examination to be performed by a doctor licensed to practice medicine. The Board and the Superintendent shall mutually agree upon the doctor who shall conduct the examination. The examination shall be

conducted at the expense of the Board. The doctor shall limit any report to the issue of whether the Superintendent has a continuing medical condition or disability which prohibits him from performing his duties.

#### **7. Mutual Obligation to Communicate.**

- A. It is the Superintendent's continuing responsibility to timely inform the Board of all major events or activities that may affect the ASD, its employees, or its students. The Superintendent is also responsible for timely informing the Board or individual Board Members of any concerns he may have about Superintendent/Board relations or Board Member conduct.
- B. It is the Board's continuing responsibility (individually and collectively) to timely inform the Superintendent of any criticisms, complaints, suggestions, or recommendations Board Members may hear from the community, including but not limited to students, employees, parents, and community leaders. The Superintendent shall investigate the issues raised and advise the Board of any action taken as a result of that investigation.
- C. The Board (individually and collectively) is responsible for providing timely feedback of its evaluation of the Superintendent's performance during the term of this agreement.

#### **8. Professional Growth.**

The Board encourages the continued professional growth of the Superintendent through his participations in the following:

- A. The operations, programs, and other activities conducted by local, state, and national school administrator and school board associations;
- B. Seminars and courses offered by public and private educational institutions; and
- C. Informational meetings with persons having particular skills or backgrounds which would serve to improve the capacity of the Superintendent to fulfill his duties to the ASD.

The Board shall permit a reasonable amount of release time to attend professional growth opportunities, subject to prior approval of the Board President as to the release time and any reasonable expenses.

**9. Certification.**

The Superintendent shall have and maintain such certification (including taking Alaska History) as is required by the State of Alaska to permit employment as a Superintendent of Schools in Anchorage. Should the Superintendent fail to meet state certification requirements, or fail to hold state certification, at any time after July 1, 2014, the Board may seek any appropriate remedy, including termination of this agreement and all benefits and obligations created under this agreement without liability to the ASD. This date may be extended for 120 days for administrative delays caused by the Department of Education and Early Development (DEED) or certifying institutions.

The Superintendent shall provide the Board with an annual written statement advising the Board of the current status of his certification. The Superintendent hereby expressly authorizes the State of Alaska, DEED, to release to the Board information verifying the current status of the Superintendent's certification.

**10. Superintendent's Transition.**

- A. Prior to assuming office on July 1, 2012, the Superintendent shall commit three weeks of his time to be present at the ASD's offices in Anchorage during February and March 2012 to prepare for his transition.
- B. During the transition period between February and March, the ASD shall pay for the Superintendent's expenses including airfare, car rental and hotel. The Superintendent shall be paid the ASD per diem rate for February and March trips for all work days as approved by the President.
- C. No earlier than April 1, 2012, the Superintendent will begin his transition to full-time. No earlier than April 1, the ASD shall pay the Superintendent the ASD per day rate of \$692.31 for all work days as

approved by the President. The Superintendent will bear his own expenses once he begins the full-time transition.

**11. Termination.**

- A. This employment agreement may be terminated prior to the term set forth in Section 1 by:
- i. Mutual agreement of the parties;
  - ii. Retirement or resignation of the Superintendent, subject to at least four months' written notice to the Board prior to the effective date of retirement or resignation. ASD and the Superintendent anticipate that in the event the Superintendent retires or resigns, the Superintendent will complete the school year.
  - iii. Death or disability of the Superintendent;
  - iv. Failure to obtain or loss of certification as described in Section 9;
  - v. Unsatisfactory performance of the Superintendent; or
  - vi. Termination without cause.
- B. Termination for Unsatisfactory Performance.
- i. The ASD agrees to employ the Superintendent so long as his services are reasonably satisfactory to the Board. Notwithstanding the stated term of this agreement as set forth in Section 1, or any extension or modification thereto, if the Superintendent does not perform to the Board's satisfaction using the reasonable cause standard, the Board by majority action may terminate this agreement.
  - ii. If the Board intends to consider termination for unsatisfactory performance, the Board must first serve written charges on the Superintendent and the Superintendent may, within ten (10) days, request a fair hearing before the Board on those charges. If requested, the hearing may not occur earlier than fifteen (15) days from the date of notice of the written charges unless an earlier date is agreed to by the Superintendent. The hearing shall be public or private at the option of the Superintendent, and the Superintendent may have legal counsel or other representation at his own cost. The

Board may retain a hearing officer to assist it in conducting the hearing, but a majority of the Board must be present during any testimony or argument concerning the charges. No Board Member who is absent for any portion of the hearing may vote on the charges.

Any vote to terminate may occur only after the hearing, or after ten (10) days if the Superintendent does not request a hearing. If approved by at least four members of the Board, the termination is effective immediately, and the ASD and the Board shall have no further obligation or liability under this agreement.

C. Termination without cause by the Board.

- i. The Board may terminate this agreement upon written notice of up to 120 days. Upon such notice, the Superintendent shall continue to perform all duties and responsibilities provided in this agreement until the termination date specified in the written notice. All rights and obligations set out in this agreement shall continue after the written notice up to the date of termination. The Board may elect to place the Superintendent on paid administrative leave for up to sixty days of the 120-day notice period. If the Board so elects, the Superintendent shall continue to receive all compensation set out in Paragraph 4, above, but shall have no authority or responsibility for supervising ASD operations, shall relinquish all ASD keys and property, and an interim Superintendent may be appointed in his place.
- ii. If this agreement is terminated under this provision, the Superintendent shall be entitled to continue to receive his salary and annuity, at the rate in effect as of the date of termination, for twelve (12) months after the date employment ends.

D. Termination without cause by the Superintendent.

- i. The Superintendent may terminate this contract without cause upon not less than 120 days' written notice. Upon such notice, the Superintendent shall continue to perform all duties and

- responsibilities provided in this agreement until the date specified in the written notice. If the Superintendent provides less than 120 days' written notice, the Superintendent agrees to pay the ASD an amount equal to the following: the total value of the Superintendent's banked annual and sick leave (*i.e.*, total leave multiplied by per day rate) multiplied by the ratio of the number of days the Superintendent stayed at the ASD after providing notice (numerator) divided by the 120 days of required notice (denominator). The numerator is calculated by subtracting from 120 the number of days the Superintendent stayed at the ASD after providing notice. If allowable by law, the Superintendent may, at his discretion, satisfy this payment through forfeiture of his banked leave of an equal amount.
- ii. The parties agree that damages to the ASD in the event the Superintendent terminates with less than 120 days' written notice would be hard to establish with certainty, but would include search costs associated with locating a replacement, disruption to the ASD, lost efficiency, and replacement salary for a new or interim Superintendent. The parties agree that the payment schedule provided in Section 11.D.i is not a penalty and constitutes a reasonable estimate of the minimum damages that the ASD would incur if the Superintendent terminates the agreement without cause and without 120 days' notice.
  - iii. If the Superintendent issues a notice of termination without cause within his first three years of employment (*i.e.*, during the term of this agreement as set forth in Section 1, absent any extension), the Superintendent agrees to repay the ASD moving and relocation expenses provided in Section 5.E according the following schedule:
    - (1) If notice is provided prior to completion of the first year, the Superintendent agrees to repay ASD all of his moving and relocation expenses;

- (2) If notice is provided after completion of the first year but prior to completion of the second year, the Superintendent agrees to repay ASD two-thirds of his moving and relocation expenses; and
- (3) If notice is provided after completion of the second year but prior to completion of the third year, the Superintendent agrees to repay ASD one-third of his moving and relocation expenses.

E. Before issuing any written notice of termination without cause provided for in this Section, the Board and Superintendent shall make a good faith effort to discuss and remedy any issues, problems or concerns either party may be experiencing with the other, if any.

**12. Indemnification.**

In addition to any indemnifications provided in Alaska Statute 14.12.115, the ASD shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent under the same terms and conditions applicable to other employees as provided for in Board policy.

**13. Entire agreement.**

This agreement constitutes the entire agreement between the parties. Any modification must be in writing and signed by both parties. Any prior understandings or agreements between the parties are deemed superseded by this written agreement. The terms of this written agreement will control over any prior written or oral understanding or agreement.

**14. Savings Clause.**

If, during the course of this agreement, it is found that any specific clause or provision of this contract is illegal, the remainder of the agreement, if not affected by such ruling, shall remain in full force and effect.

**15. Applicable Law.**

This agreement is subject to all applicable laws of the State of Alaska, rules and regulations of the State Board of Education and the rules, regulations and policies of the ASD, all of which are made a part of the terms and conditions of this agreement as if set forth herein. Any judicial proceeding

brought in relation to this agreement shall be adjudicated in the Superior Court for the State of Alaska in the Third Judicial District at Anchorage, Alaska.

**16. Contract Interpretation.**

Both the Board and the Superintendent have had the opportunity to be involved in the drafting of this agreement and to have legal counsel of their choice review this agreement. Therefore, the rule of construction that a contract is to be construed against the drafting party is inapplicable to this agreement.

**17. Contract Effect.**

This agreement is effective and binding on the ASD and the Board only upon signing by at least two (2) members of the Board and by the Superintendent.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

ANCHORAGE SCHOOL BOARD

SUPERINTENDENT OF SCHOOLS

By: \_\_\_\_\_  
Gretchen Guess  
President

By: \_\_\_\_\_  
James W. Browder  
Superintendent

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared GRETCHEN GUESS, known to me and to me known to be the President of the Anchorage School Board, and \_\_\_\_\_, known to me and to me known as the \_\_\_\_\_ of the Anchorage School Board, and they and each of them acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein contained and that each of them was authorized to do so by majority action of the Anchorage School Board.

WITNESS my hand and notarial seal the day and year first written above.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires:\_\_\_\_\_

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the State of Florida, personally appeared JAMES W. BROWDER, known to me and to me known to be the individual named in and who executed the foregoing document, and he acknowledged to me that he signed and sealed the same as his free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first written above.

\_\_\_\_\_  
Notary Public in and for Florida  
My commission expires:\_\_\_\_\_