

**EMPLOYMENT AGREEMENT  
BY AND BETWEEN  
BOARD OF EDUCATION OF THE AVERILL PARK  
CENTRAL SCHOOL DISTRICT  
AND  
JAMES FRANCHINI, Ed.D.**

AGREEMENT, made this 15th day of November, 2021, by and between the Board of Education of the Averill Park Central School District, Rensselaer County, New York (hereinafter, the "Board") and James Franchini, Ed.D., (hereinafter, the "Superintendent").

**WHEREAS**, the Board of Education of the District (hereinafter "the Board") at a meeting duly held on November 7, 2016 passed a resolution appointing James Franchini, Ed.D., as Superintendent of Schools of the District for a period of four (4) years from July 1, 2017 through June 30, 2021 and approved an Employment Agreement ("Agreement") covering the terms and conditions of his employment; and

**WHEREAS**, in subsequent meetings the Board has made other changes to the Agreement; and

**WHEREAS**, the Board, at a meeting duly held on November 15, 2021 passed a resolution extending Dr. Franchini's employment and appointment to June 30, 2026, made other changes to his Agreement, and approving this new employment agreement to replace the prior Agreement; and,

**WHEREAS**, the Superintendent has accepted the salary and changes to his terms and conditions; and,

**WHEREAS**, the parties wish to amend and replace any previously executed Employment Agreement to reflect the present terms and conditions of employment; and,

**WHEREAS**, the parties wish to enter into a new written Employment Agreement (hereinafter "Agreement") pursuant to the Education Laws of the State of New York setting forth the terms and conditions of said employment and the Board by its resolution authorized the President of the Board to enter into an Agreement with the Assistant Superintendent.

**NOW, THEREFORE**, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the parties agree as follows:

**ARTICLE I  
TERM OF EMPLOYMENT AND WORK YEAR**

1. The Superintendent's term of employment shall be for five (5) years, commencing on July 1, 2021 and terminating on June 30, 2026, unless further extended or sooner terminated

as hereinafter provided.

2. The Superintendent's work year shall be 12 months, from July 1 to June 30.

## **ARTICLE II DUTIES AND RESPONSIBILITIES OF SUPERINTENDENT AND BOARD**

1. The Superintendent shall have charge of the schools of the District under the direction of the Board; he shall be the chief administrative officer of the District and shall perform all the duties and possess all the powers and authority now or hereafter imposed upon or granted to a superintendent of schools under the provisions of the Education Law or other applicable statutes, laws, rules and/or regulations and those duties and/or responsibilities established by the Board pursuant to such statutes, laws, rules and regulations.

2. During the term of this agreement, the Superintendent shall faithfully, diligently and in accordance with accepted professional standards perform and discharge the duties and responsibilities of Superintendent of Schools of the District as the same are set forth in the Education Law and other applicable statutes, laws, rules and/or regulations and the duties and/or responsibilities established by the Board pursuant to such statutes, laws, rules, and/or regulations.

3. Without limiting the foregoing, the Superintendent shall have the specific authority, right and responsibility to:

- a. organize and reorganize the administrative and supervisory staff, including instructional and non-instructional personnel, in a manner which in the Superintendent's judgment best serves the District;
- b. make recommendations to the Board of Education as a prerequisite to either the appointment or the termination of employment of both instructional and non-instructional personnel;
- c. supervise, direct and evaluate associate, assistant and other superintendents, directors, supervisors, principals, teachers and all other persons employed in either the business management or the instructional activities of the District;
- d. transfer teachers and administrators from one school to another, or from one grade of a course of study to another grade in such course, subject to the terms of any relevant collective bargaining agreements;
- e. with respect to their relationships to one another and the determination of their respective powers and duties, the parties acknowledge that they are both subject to the laws of the State of New York and applicable rules and regulations of the Board of Regents and the Commissioner of Education of the State of New York; and,

- f. consistent with and pursuant to Educational Law Section 211-B (5)(a), the Superintendent shall cooperate fully with any distinguished educators appointed by the Commissioner of Education.

The Board may, from time to time, prescribe additional or different duties and responsibilities for the Superintendent, provided, however that the Board shall not, without the Superintendent's written consent, adopt a policy, by-law or regulation which impairs or reduces the duties and authority specified above; and, provided further, that all additional duties and responsibilities prescribed by the Board are consistent with those normally associated with the position of Superintendent of Schools in the State of New York. This provision shall continue in full force and effect during any period of suspension.

4. During the term of this Agreement, the Superintendent shall devote his full time, skills, labor and attention to the performance and discharge of his duties and responsibilities; provided, however, that the Superintendent may undertake consultation work, speaking engagements, writing, lecturing or other professional duties, obligations and activities, with or without remuneration, so long as such activities do not affect the performance and/or discharge of the Superintendent's duties and/or responsibilities under this Agreement and have been previously approved by the Board President.

5. The Superintendent represents that he will, throughout the term of this Agreement, hold a valid certificate to act as a Superintendent of Schools in the State of New York and that proof of such certification will be furnished to the District Clerk upon request. It is expressly understood that failure to hold and maintain such certification shall be cause for the immediate termination of this agreement and of the employment of the Superintendent.

6. The Superintendent shall be notified of and shall have the right to attend all meetings of the Board, including executive sessions of the Board, except that the Board may exclude the Superintendent from any portion of a meeting during which they are discussing his performance or salary and benefits.

7. The Board, individually and collectively, shall promptly and discretely refer to the Superintendent, for his study and recommendation, any and all criticisms, complaints, suggestions, communications or comments regarding the administration of the District or the Superintendent's performance of his duties.

### **ARTICLE III COMPENSATION**

1. The Superintendent shall be paid, as salary, for the period July 1, 2021 through June 30, 2022, the sum of One Hundred and Seventy-Seven Thousand Dollars (\$177,000.00). Effective July 1, 2022, the annual salary shall be One Hundred and Eighty-Two Thousand Dollars (\$182,000.00). Effective July 1, 2023, the annual salary shall be One Hundred and Eighty-Seven Thousand Dollars (\$187,000.00). Effective July 1, 2024, the annual salary shall be One Hundred and Ninety-Two Thousand Dollars (\$192,000.00). Effective July 1, 2025, the annual salary shall be One Hundred and Ninety-Seven Thousand Dollars (\$197,000.00).

2. For each subsequent twelve-month period of employment (following June 30, 2026), the Superintendent's salary shall be determined by negotiations between the Board and the Superintendent based upon the Board's evaluation of the Superintendent's performance during the prior school year with any such salary increase being determined no later than June 1st of each year, if the parties are able to agree on an increase. However, in no event shall the Superintendent's base salary for any twelve-month period of employment be less than the amount of base salary received during the preceding twelve-month period.

3. The Superintendent's compensation for each subsequent twelve-month period of employment shall be determined by the Board no later than June 1<sup>st</sup> of each year.

4. All compensation, less deductions required by law or authorized by the Superintendent, shall be paid in equal installments in the same manner as salary is paid to other certified employees of the District or as may be mutually agreed to by the parties.

#### **ARTICLE IV ANNUAL GOALS, OBJECTIVES AND EVALUATION**

1. On or before September 1 of each school year of this Agreement, the Superintendent shall provide to the Board a written statement of the annual goals and objectives which the Superintendent intends to concentrate on during the upcoming school year (i.e. individual goals and objectives). In lieu of the Superintendent using goals and objectives the Superintendent develops independently, the Superintendent and Board can mutually agree to use the School District Goals and Objectives which are developed by the Superintendent and administration and approved by the Board (i.e. District Goals and Objectives). In such case, the remainder of this paragraph shall not apply. If individual goals and objectives are developed and submitted, the Board shall review said goals and objectives and if the Board concurs with the Superintendent's written statement of goals and objectives, the Board's concurrence will be noted on said written statement via execution by the Board President. If the Board does not agree with the Superintendent's written statement of goals and objectives, it shall meet with the Superintendent to form mutually acceptable goals and objectives. If the Superintendent fails to provide such goals and objectives to the Board in accordance herewith, then the Board may determine such goals and objectives and shall provide same to the Superintendent by October 1.

2. The Board also shall devote at least a portion of one meeting during the month of January in each year during the Superintendent's employment by the District to a general discussion in executive session between the Board and the Superintendent with respect to his performance and his working relationship with the Board as a mid-year assessment. The Superintendent will be notified, in writing, of any issues or criticisms concerning performance raised during the January meeting which the Board would like addressed and the Superintendent shall concentrate on those areas.

3. The Board shall devote at least a portion of one meeting during the month of June in each year of the Superintendent's employment by the District to an evaluation in executive

session of his performance and his working relationship with the Board. The evaluation shall be based upon performance criteria as mutually established by the Board and the Superintendent by September 1 of each year which shall be reduced to writing in a form mutually agreed upon by the parties. The Superintendent shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the Board scheduled to discuss such evaluation. The performance evaluation prepared pursuant to this paragraph shall be confidential to the extent permitted by law and shall be kept so by the Board and individual Board members.

## **ARTICLE V BENEFITS**

### **A. Sick Leave:**

1. The Superintendent shall be credited with twenty-five (25) sick leave days effective July 1, 2017 for his use throughout the term of this Agreement as an initial "bank" of days above and beyond the annual allocation of sick leave described herein. The Superintendent shall be credited with fifteen (15) days of paid sick leave per school year, which shall be credited on July 1 of each school year. Sick leave may be used for illness or injury to the Superintendent or a member of his immediate family. "Immediate family" shall be defined as spouse, children, parents, grandparents or siblings.

2. Unused sick leave days may be accumulated by the Superintendent from year to year, if unused, up to a maximum limit of 240 days. Upon the accrual of thirty (30) sick leave days, not counting the initial bank of 25, the Superintendent may choose to either accrue unused days, to the maximum of 240, or elect to cash in unused sick leave days and be paid \$100 for each unused sick leave day. In addition, upon retirement from the District in accordance with the rules of the New York State Teachers' Retirement System (NYSTRS), the Superintendent will be paid for all unused and accumulated sick leave days at the time of such retirement at the rate of \$100 per day which shall be paid into a non-elective deferral IRS 403(b) account designated by the Superintendent. When the Superintendent leaves the employment of the District he will not be entitled to payment for any unused or accumulated sick leave days, except as provided in this provision. The initial twenty-five (25) days of sick leave "bank" provided in "1" above, shall be excluded from any payment or payment calculation set forth herein. Such days are solely available for use as paid sick days during the Superintendent's employment.

3. The Superintendent shall report the use of sick leave to the Director of Personnel Development, or other duly designated person, for the purpose of maintaining an accurate accounting of such leave.

### **B. Bereavement Leave:**

1. The Superintendent shall be entitled to five (5) consecutive calendar days of paid leave due to and immediately following a death in his immediate family. "Immediate family" is defined as spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

2. If the death occurs while the Superintendent is on sick or vacation leave, the days used for the bereavement leave shall not be deducted from his accumulated sick or vacation leave. Unused bereavement leave days shall not accrue or carry over in any manner.

3. The Board may grant additional bereavement leave days in circumstances where it determines that such additional leave is necessary and justified.

4. The Superintendent shall report the use of bereavement leave to the Director of Personnel Development, or other duly designated person, for the purpose of maintaining an accurate accounting of such leave.

C. Personal Leave:

1. The Superintendent shall be credited with five (5) days of personal leave each year for the purpose of conducting business which cannot be conducted at any other time.

2. Any unused personal leave at the end of each year will be added to the Superintendent's accumulated sick leave.

3. The Superintendent shall report the use of personal leave to the Director of Personnel Development, or other duly designated person, for the purpose of maintaining an accurate accounting of such leave.

D. Vacation Leave:

1. The Superintendent shall be entitled to twenty-five (25) days of paid vacation leave each school year, exclusive of holidays, credited on July 1<sup>st</sup> of each year. Use of vacation leave is encouraged. The Superintendent may carry-over up to a maximum of ten (10) days of unused vacation leave from year to year. At no time will the Superintendent have more than thirty-five (35) unused vacation leave days at the commencement of a year, inclusive of any current year's allotment. Any unused vacation days beyond that number shall be forfeit. In lieu of carrying over any unused vacation leave at the conclusion of any year, the Superintendent may choose to be paid at the rate of 1/260<sup>th</sup> for such unused day(s), up to a maximum of ten (10) such days per year. The total number of days that the Superintendent may carry over or be paid for is ten (10) days.

2. In the event the Superintendent has unused accumulated vacation leave at the time his employment with the District terminates, by retirement or resignation, he shall be paid at the rate of 1/260<sup>th</sup> for each such unused accumulated day up to the maximum of thirty (30) days set forth above. If the Superintendent terminates employment at other than June 30<sup>th</sup>, he is entitled to pro-rated portion of the annual allotment set forth above for purposes of payment.

3. The Superintendent shall report the use of vacation leave to the Director of Personnel Development, or other duly designated person, for the purpose of maintaining an accurate accounting of such leave.

E. Conferences and Other Expenses:

The Superintendent shall be entitled to attend professional conferences at the local, state and national level, with the expenses of such conferences paid by the Board so long as such attendance has been approved in advance by the President of the Board. The Superintendent is authorized to incur other reasonable and necessary expenses, up to the approved budgeted amount in the discharge of his duties. Any items requiring expenditures beyond the budgeted amount shall require prior Board approval.

F. Holidays:

Provided school is not in session, the Superintendent shall be granted leave with pay for the following holidays:

Independence Day	New Year's Eve and New Year's Day
Labor Day	Martin Luther King Day
Columbus Day	President's Day
Veteran's Day	Good Friday
Thanksgiving Day and the day after	Memorial Day
Christmas Eve & Christmas Day	Rosh Hashanah & Yom Kippur (When observed as Holidays by the District)

G. Insurance:

1. Health Insurance - The Superintendent shall be entitled to coverage under the District's health (with prescription drug) insurance plan, currently CDPHP EPO, for the Superintendent and his dependents, as such plan may be established by the Board, as set forth herein. Such plan shall be the plan available to other employees in the District which may change from time to time. The District shall pay 75% of the premium cost of such coverage and the Superintendent shall pay the remaining 25% premium cost through payroll deduction.

2. Health Insurance in Retirement - After having been employed as Superintendent in the School District for a minimum period of ten (10) continuous years, and upon his retirement from the District in accordance with the rules and regulations of the NYSTRS, the Board will provide him with health (with prescription drug) coverage, for the remainder of his life, with the Superintendent paying twenty-five (25%) percent of the premium for individual or dependent coverage. Only dependents consisting of a spouse and dependent children the Superintendent has at the time of his retirement are eligible for dependent coverage under this provision. The Superintendent shall be afforded the ability to participate in the health (with prescription drug) plans in existence from the School District as such plans may change from time to time during the Superintendent's retirement. This paragraph shall survive the term and be enforceable after the termination of this Agreement.

3. Health Insurance Buy-Out - The Superintendent may elect to waive the health insurance set forth above during employment and receive an annual payment of \$1,500.00 for

any coverage (individual or dependent), depending on his eligibility for such coverage in the following conditions:

g. He must provide written notice to the Director of Personnel Development, or other duly designated person, on or before June 1<sup>st</sup> of the desire to waive coverage effective July 1<sup>st</sup> the following school year. This notice must be repeated each year;

h. He must submit proof with his request that he is covered by health insurance through his spouse;

i. He may reinstate such coverage before the following July 1<sup>st</sup> for circumstances permitted by the District's carrier due to loss of alternative coverage; and,

d. The payment for waiver of coverage shall be made in June of the year in which coverage is waived, less any deductions. Should the Superintendent waive coverage for a partial year due to need to reinstate coverage, a pro-rata portion of the annual payment will be made.

4. Dental and Optical Insurance – The Superintendent shall be entitled to participate in dental and optical plans made available by the School District, for either individual or dependent coverage, with the District contributing 75% of the premium and the Superintendent contributing the remaining 25% of premium through payroll deductions.

H. Section 125 Plan:

The District shall make available to the Superintendent the same IRC Section 125 plan made available to other professional employees for use for payment of health insurance premiums and other expenses authorized by and consistent with IRS laws and regulations. The plan administrator will be selected by the District.

I. Mileage Reimbursement:

The District shall reimburse the Superintendent for mileage at the IRS rates when he is required to use his personal car in the performance of his official duties as Superintendent outside of the School District.

J. Association Dues:

The District shall pay or reimburse 100% of the Superintendent's annual membership fee for the Superintendent's membership in the New York State Council of School Superintendents, or civic organizations related to his performance of duties as Superintendent in and around Averill Park, New York.



K. Tax Deferred Annuities:

The Superintendent may, in accordance with applicable Federal and New York State Law, elect to withhold and transfer an amount of his salary, said amount to be determined by the Superintendent, to participate in a tax deferred annuity program of his choice, an IRS 403(b) and/or IRS 457(b) plan. The Superintendent must elect to participate in such a program in writing, submitted to the District by June 1 of each school year to be effective July 1 of the subsequent school year.

L. Other Benefits:

The District shall provide the Superintendent with a home and/or lap top computer, and District issued credit card for his use when performing duties associated with his position as Superintendent. Any such use shall be consistent with any applicable Board Policy. Such items shall be the property of the District and shall be returned to the District at the time the Superintendent leaves the employment of the District. It is understood and accepted that there may be some limited personal use of the cell phone and/or lap top computer.

**ARTICLE VI  
AGREEMENT RENEWALS**

1. The Board shall notify the Superintendent, on or before June 30, 2025, whether it intends to extend his employment for an additional term commencing on July 1, 2026 or whether the Superintendent's term will expire on June 30, 2026. The parties may also mutually agree to extend the employment of the Superintendent at any other time before this date. By June 30 of each school year thereafter the Board shall likewise act to notify the Superintendent whether it intends to extend the term of his employment commencing on July 1 of the year set for termination of the then current contract. At such time, if the Board wishes to extend the employment of the Superintendent, a motion to extend the term of this Agreement and the Superintendent's employment for an additional term will be moved, seconded and voted upon by the Board. The failure of the Board to act in accordance herewith shall not cause this Agreement or the employment of the Superintendent to be extended beyond the then current expiration date. In the event that the Board notifies the Superintendent of its intention to extend his appointment as Superintendent of Schools, then within sixty (60) days of such notice, the Superintendent shall advise the Board in writing as to whether he intends to accept the extended appointment.

2. Should the Board fail to meet or act in regard to the Superintendent's employment, as required herein, the Superintendent may, at any time request in writing that the Board inform him whether or not it intends to extend his appointment for an additional term. The Board shall, in writing, respond to this request in either the affirmative or the negative within thirty (30) days of its receipt of the request.

3. Any extension of the term of the Superintendent's employment shall be evidenced by an amendment to this Agreement and by a resolution duly passed at a public Board of Education meeting; and shall be upon the same terms and conditions as herein set forth unless

otherwise agreed in writing by the parties. In no event shall the benefits provided to the Superintendent under this Agreement and subsequent contract extensions be decreased or eliminated during the term of his employment, without his consent.

## **ARTICLE VII AGREEMENT TERMINATION**

1. This Agreement may be terminated at any time, without cause, by mutual agreement, in writing, between the Superintendent and the Board; or by the Superintendent's written resignation on ninety (90) days' notice to the President of the Board.

2. The Superintendent's employment during the term of this Agreement may only be terminated for just cause, in accordance with the procedures set forth below.

3. Hearing Procedures:

(a) Charges against the Superintendent may only be brought by the Board and all such charges shall be in writing. The Superintendent shall be entitled to a fair hearing on said charges, upon at least thirty (30) days' notice, before an independent hearing officer who shall be an attorney at law. The hearing shall be in executive or public session, at the option of the Superintendent. The hearing officer may be selected by mutual agreement between the Superintendent and the Board or, in the event no such agreement is reached within fifteen (15) days after the Superintendent's receipt of the written charges, a request shall be made to the American Arbitration Association, by either party for a list of Arbitrators from which a hearing officer shall be selected in accordance with the procedures of the American Arbitration Association.

(b) The Superintendent shall be entitled to due process protection at such hearing, including but not limited to the right to elect a public or private hearing; to be represented by counsel, to present, cross-examine and subpoena witnesses, to subpoena documents, papers, letters or other tangible evidence, to have all testimony given under oath, to receive without cost an accurate written transcript of the proceedings; and to receive written findings of fact and conclusions of law. The hearing officer's decision shall be final and binding upon the parties, subject to their respective rights to appeal in accordance with any applicable law. The District, at its expense, shall provide a certified court reporter who will transcribe all proceedings.

(c) The hearing officer shall, upon the conclusion of the hearing, prepare and submit a written decision, which decision shall include findings of fact and a disposition of each charge. Both the Board and Superintendent shall be bound by the decision of the hearing officer. Both parties shall, however, retain their right to appeal the decision of the hearing officer to any forum with jurisdiction

(d) If none of the charges against the Superintendent are sustained at such hearing or after any appeal therefrom, the Board shall reimburse the Superintendent for her costs and

attorney's fees incurred in defense of the hearing or appeal therefore.

## **ARTICLE VIII DISABILITY**

1. The Board reserves the right, during the Superintendent's term, in the event of his absence, illness, injury or other disability, to appoint an Acting Superintendent of Schools who shall temporarily perform the duties of Superintendent at the pleasure of the Board. In the event of such illness, injury or disability, the Superintendent shall cause his physician(s) to make a written report to the Board of his condition, and shall, at the Board's expense, submit to an examination by the Board's physician(s) designated for that purpose, at such reasonable time or times as the Board shall request.

2. In the event that by reasons of illness, accident or other cause beyond his control, the Superintendent shall be incapacitated from rendering the services required for a period of six (6) months beyond the expiration of his accumulated and unused leave entitlements, the Board may at its option and upon written notice to the Superintendent, terminate this contract. Such termination shall be effective thirty days following such notification.

## **ARTICLE IX INDEMNIFICATION**

Consistent with any applicable law, the District agrees, as a further condition of this employment contract, 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 District, provided the incident arose while the Superintendent was acting within the scope of his employment or under the direction of the Board, including but not limited to all uninsured financial loss arising out of any proceeding, claim, demand, suit or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person or damage to the property of any person, and that he provides any written notice required by law.

## **ARTICLE X MISCELLANEOUS**

1. The validity or enforceability of any particular provision of this Agreement shall not affect its other provisions and this Agreement shall be construed in all respects as if such invalid or unenforceable provision has been omitted.

2. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. Any action by either party concerning this Agreement shall be commenced in New York State Supreme Court for the County of Rensselaer.

3. The failure of either party at any time to require the performance by the other of any of the terms, provisions or agreement hereof shall in no way affect the right thereafter to enforce

same and shall not constitute the waiver of either party hereto of any breach of any of the terms, provisions or agreement or be construed as a waiver of any succeeding breach.


4. The original of this Agreement shall be filed with the Clerk of the Board of Education.

5. This Agreement constitutes the entire contract between the parties and contains all the agreements between them with respect to the subject matter hereof. This shall supersede all prior agreements and/or resolutions in regard to the employment of the Superintendent.

IN WITNESS WHEREOF, the parties have caused this Agreement to be subscribed on the day and year first above written.

Averill Park Central School District

By:   
Jessica Zweig  
President, Board of Education

By:   
James Franchini, Ed.D.

STATE OF NEW YORK     )  
                                          )ss.:  
COUNTY OF                     )

On this 15 day of NOV, 2021, before me, the subscriber, personally appeared James Franchini, Ed.D., to me personally known and known to me to be the same person described in and who executed the within instrument, and he duly acknowledged to me that he executed the same.

Lynn M. Burdick  
Notary Public, State of New York

Lynn M. Burdick, Reg 01BU4977859  
Notary Public, State of NY  
Qualified in Rensselaer County  
Commission Expires 2-19-23

STATE OF NEW YORK     )  
                                          )ss.:  
COUNTY OF Rensselaer )

On this 15<sup>th</sup> day of NOV, 2021, before me, the subscriber, personally appeared Jessica Zweig, President of the Board of Education of the Averill Park Central School District, to me personally known and known to me to be the same person described in and who executed the within instrument, and she duly acknowledged to me that she executed the same in her capacity as Board President.

Lynn M. Burdick  
Notary Public, State of New York

Lynn M. Burdick Reg 01BU4977859  
Notary Public, State of NY  
Qualified in Rensselaer County  
Commission Expires 2-19-23