

SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs CHARISSA WILLIAMS, CRYSTAL COBURN, PIPER REYNOLDS, BLAIR SAWYERS ("Individual Plaintiffs") and THE DETROIT FEDERATION OF TEACHERS, AFT LOCAL 231, AFL-CIO, (hereinafter referenced as "DFT") (Individual Plaintiffs and DFT, together, referred to as "Plaintiffs") and the SCHOOL DISTRICT OF THE CITY OF DETROIT (hereinafter referenced as "DPS") and ROY ROBERTS, in his official capacity as Emergency Manager and/or Emergency Financial Manager for Detroit Public Schools ("Roberts") (collectively Plaintiffs, DPS and Roberts are hereinafter referred to as "the Parties") hereby enter into this Settlement Agreement and Release with Confidentiality Provisions ("Settlement Agreement") as follows:

RECITALS

WHEREAS, Plaintiffs have filed a lawsuit and initiated other proceedings against the Released Parties (as defined in Section 1, below) which includes, but is not limited to, actions pending in the Third Judicial Circuit, State of Michigan, the Michigan Employment Relations Commission, and the American Arbitration Association, entitled, "CHARISSA WILLIAMS, CRYSTAL COBURN, PIPER REYNOLDS, BLAIR SAWYERS, and THE DETROIT FEDERATION OF TEACHERS, American Federation of Teachers Local No. 231 v. SCHOOL DISTRICT FOR THE CITY OF DETROIT and ROY ROBERTS, in his official capacity as Emergency Manager and/or Emergency Financial Manager of the School District for the City of Detroit" Case No. 12-015184-CZ, before the Honorable Robert J. Colombo; "SCHOOL DISTRICT FOR THE CITY OF DETROIT -and- DETROIT FEDERATION OF TEACHERS, AFT LOCAL 231, AFL-CIO, and DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES, AFT LOCAL 4168, AFL-CIO", Case No. C12 J-025, before Administrative Law Judge David Peltz; "In re the Arbitration Between: DETROIT PUBLIC SCHOOLS -and- DETROIT FEDERATION OF TEACHERS, AFT LOCAL 231" AAA Case No 54 390 00474 12, before Arbitrator William P. Daniel; and any and all Freedom of Information Act claims by Plaintiffs currently pending against DPS (hereinafter collectively referred to as "the Pending Litigation"); and

WHEREAS, the Plaintiffs challenged the District's development and implementation of its teacher evaluation procedure for the 2011-2012 school year in both the above-named civil litigation and through the grievance arbitration provision under the 2009-2012 collective bargaining agreement between the DFT and DPS; and

WHEREAS, the DFT has also alleged that the District has failed to bargain in violation of the Public Employment Relations Act; and

WHEREAS, the Parties have agreed that a comprehensive resolution of labor relations and litigation issues is beneficial to all; and

WHEREAS, DPS and Roberts without any admission of liability on their parts but to the contrary denying liability, desire to settle the claims made against them; and

WHEREAS the Parties have agreed to enter into this Settlement Agreement on the terms and conditions set forth herein in order to avoid the uncertainty and costs of protracted litigation.

NOW, THEREFORE, for good and mutual consideration as described in the foregoing Recitals and as more particularly set forth herein, the Parties agree as follows:

1. **Release.** Plaintiffs do hereby release and forever discharge DPS and Roberts and their past and present board members, directors, officers, agents, and employees (hereafter collectively referred to as "the Released Parties"), from any and all past and present, claims, demands, actions, rights, suits, causes of action, debts, attorneys' fees, costs, expenses, judgments, settlements, liabilities, and damages, of whatever nature, in law, equity or otherwise, including without limitation, any statutory, civil, or administrative claim, whether known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, foreseen or unforeseen, connected to, in any way related to, arising out of, or resulting from the Pending Litigation, the facts alleged in the Pending Litigation, or the subject matters of the Pending Litigation, as well as any and all claims and demands of every conceivable kind based on or connected with or involving the subject matter of the Pending Litigation, or which could have been raised in the Pending Litigation, including but not limited to the obligation of DPS and Roberts to engage in collective bargaining with the DFT. This Release by all Plaintiffs includes, but is not limited to, past and present claims under the Michigan Public Employment Relations Act, the National Labor Relations Act and the Freedom of Information Act, which were raised or could have been raised in the Pending Litigation but shall not extend to any obligations arising under this Settlement Agreement. Plaintiffs, DPS and Roberts agree that this Settlement Agreement binds their, successors, heirs, administrators, representatives, executors, predecessors and assigns, and will inure to the benefit of all Released Parties and their respective successors, heirs, administrators, representatives, executors, predecessors, and assigns.

2. **Other Claims.** This Settlement Agreement and Release includes specifically, but not by way of limitation, any claims and all claims asserted in the Pending Litigation, or any other known or unknown claim that could have been asserted by the Individual Plaintiffs, including, but not limited to: the Michigan Public Employment Relations Act, the National Labor Relations Act, the Teacher Tenure Act; the Revised School Code; the Freedom of Information Act; the Civil Rights Act of 1964 as amended, Section 1981 of the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967 as amended, the Older workers Benefit Protection Act of 1990, the Employee Retirement Income Security Act of 1974 as amended, the Americans With Disabilities Act, the Michigan Persons With Disabilities Civil Rights Act, the Michigan Elliott-Larsen Civil Rights Act, the Pregnancy Discrimination Act, the Family and Medical Leave Act, any tort claims, any claims for violation of the Bullard-Plawecki Employee Right To Know Act (prior to this Settlement Agreement), violation of any policy, practice or procedure of DPS, constructive discharge, breach of the covenant of good faith and fair dealing, termination in violation of public policy, negligent supervision, libel, slander, defamation, tortious interference with business relations or prospective employers, fraud and misrepresentation, and all claims under related common law, statutes, and executive orders at the federal, state and local levels of government, and any claim to any benefits from employment with DPS.

3. **Record Expungement and Recall.** In exchange for the consideration identified in this Settlement Agreement, the following shall be directed and implemented by Emergency (Financial) Manager Roy Roberts and the Detroit Public Schools:

- a. Record Expungement. The District shall send notices to all teachers who received an evaluation for the 2011-2012 school year, and who are currently employed by or who retired from the District, notifying them that they have the option of expunging their performance evaluation scores and/or ratings for the 2011-2012 school year from the DPS records and/or personnel files. PD360 information related to the performance evaluations for the 2011-2012 school year not otherwise expunged shall be kept strictly confidential. The District agrees that it shall not be used to determine teacher retention or placement for subsequent years, nor shall it be disclosed to any third parties, unless such disclosure is required (i) to comply with its legal obligations as a public municipal entity, or (ii) is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, Freedom of Information Act request or other administrative or judicial process. Expungement shall not include any underlying documents showing or related to a teacher's number of absences or disciplinary history. The District shall establish a deadline of thirty (30) days for teachers to elect expungement and shall inform each teacher of the deadline in the notice. Once the District receives timely notice that a teacher desires expungement, such expungement shall be freely granted without condition.

- b. Right to Recall. Within thirty (30) days of the execution of this Settlement Agreement, the District shall send a written notice by regular mail to all teachers presently on layoff as a result of their 2011-2012 performance evaluations. The notice shall provide that such teachers will have priority for recall and placement into an available position for which the teacher is certified and/or qualified. The District shall allow the teacher to respond in writing within seven (7) business days from the mailing date of the notice that the teacher desires to return to the District for the start of the 2013-2014 school year. The notice sent by the District shall advise teachers of the requirement that they respond to the District within the seven (7) business-day time period. If a teacher fails to respond to the notice identified in this paragraph within the time specified, the teacher shall be terminated without further obligation on the part of the District. The teachers shall also be advised that if they accept the recall into an available position, they will have the option of expunging their performance evaluation for the 2011-2012 school year. Priority recall shall be held open for the remainder of the 2012-2013 school year and/or for the first semester of the 2013-2014 school year. The District shall take reasonable steps to ensure that vacancies are filled by teachers currently on layoff. The District further agrees to the following:
 - i. For the purposes of this Agreement, Priority Recall means the following: The District will not place new hires into available positions before teachers who are currently on layoff as a result of the 2011-2012 performance evaluation are either placed or have declined to respond to the recall notice; provided, however, if no teacher on layoff has the requisite certifications for available positions, the District will not be obligated to place the laid-off teachers in such positions.

- ii. The District shall provide to the DFT in electronic or hard-copy form, upon reasonable prior written request to the Office of Labor Relations, any and all information reasonably necessary for the DFT to monitor the District's compliance with the requirements of this Settlement Agreement as set forth in this section below. By August 30, 2013, the District shall provide the following: the number of retirements as of August 1, 2013; the number of resignations as of August 1, 2013; and the total number of DFT bargaining unit members as of August 1, 2013. By October 14, 2013 (after reorganization), the District shall provide information detailing the District's actual enrollment. The DFT agrees that such information shall be used for the sole purpose of monitoring compliance with this litigation and further agrees not to disclose or otherwise publish such information but rather to keep such information confidential in accordance Paragraph 10 below.
- c. Except as otherwise specified in this Settlement Agreement, the District shall have the sole discretion in determining the contents of the notice(s) it will provide under this Section, including whether the notice of expungement opportunity and the notice of recall may be combined in the mailing.

4. **FOIA Request.** In addition to the information stated above in Paragraph 3(b) (ii), the District agrees to provide within 30 days of the execution of this Settlement Agreement, the following specific information in satisfaction of the DFT's August 27, 2012 Freedom of Information Act Request. (1) a list of teachers who remain on layoff status; (2) a list of teachers to whom the District has sent notice of recall; (3) a list of teachers who responded to the recall notice affirmatively (after August 27); (4) a list of teachers who retired or resigned prior to the beginning of the 2012-2013 school year; (5) a list of teachers who retired under the Bridge-to-Retirement program; (6) a list of teachers who have retired during the 2012-2013 school year as of the date of this Agreement; (7) a list of teachers who have filed an appeal under the DPS procedures; and (8) a list of teachers who have been reinstated pursuant to that appeal procedure.

5. **Enforcement.** Any controversy or dispute arising out of or relating to, or involving the enforcement, implementation, application or interpretation of this Settlement Agreement may be submitted to the Third Circuit Court for the County of Wayne ("Court") for resolution as a breach of contract or other appropriate claim under Michigan law.

6. **Dismissal of Claims.** In consideration of the agreed upon terms set forth in this Settlement Agreement, Individual Plaintiffs and the DFT individually and jointly agree to voluntarily dismiss with prejudice the Pending Litigation (as described herein) without costs to any party, consistent with the Stipulated Order of Dismissal attached hereto as an Exhibit. The DFT agrees to execute said Order of Dismissal simultaneous with the execution of a Tentative Agreement. Plaintiffs also agree to file the Order of Dismissal within 7 days of executing a Tentative Agreement. All dismissals and/or withdrawals, as described herein, shall not operate to foreclose, waive or abrogate the claims, defenses, rights, or positions of any Party that may relate to the actions or inactions by any Party in the future.

7. **Execution of Tentative Agreement.** In consideration for this Settlement Agreement, the Parties agree to enter into a Tentative Agreement which shall contain the Parties'

agreements with respect to certain Priority Provisions; provided, however, the Parties shall not be required to, but may at the sole discretion of DPS and Roberts, reach mutual agreement on any other terms or conditions beyond Priority Provisions. Within seven (7) days of fully executing a Tentative Agreement, the DFT shall support any request to amend MERC Charge No. C12 J-205 (as necessary) to ensure that the DFT is no longer a party to the pending Unfair Labor Practice Charge. The DFT agrees to withdraw all claims against all named parties. The Parties further agree that this Settlement Agreement may be voided at the option of the DFT in the event that a Tentative Agreement upon Priority Provisions is not reached. By way of clarification, this Settlement Agreement shall not be contingent upon a DFT membership ratification vote approving the Tentative Agreement as a collective bargaining agreement.

8. **Warranty.** Each party represents and warrants that it (1) is duly authorized to execute and implement this Settlement Agreement and, (2) has not assigned or otherwise encumbered or impaired any of the claims resolved under this Settlement Agreement.

9. **Non-Admission.** The Parties agree that neither this Settlement Agreement nor the consideration provided herein shall be construed as an admission of liability or lack of merit in any of the Parties' claims or defenses. The parties recognize that they have a dispute as to whether DPS and/or Roberts have been obligated to bargain under PERA, and that neither DPS nor Roberts nor the DFT waive their respective rights, authority, or claims under such applicable laws. Nothing in this Settlement Agreement shall be construed as a waiver of Roberts's and DPS's position that there is a collective bargaining agreement by and between the DPS, Roberts, and the DFT effective July 1, 2012 and that DPS's decision to engage in negotiations as described herein does not constitute a nullification or rejection of the DFT/DPS Contract imposed on July 1, 2012. Conversely, nothing in this Settlement Agreement shall be construed as a waiver of the DFT's position that there is not and has not been a collective bargaining agreement by and between the DPS, Roberts, and the DFT effective July 1, 2012. In the event the parties do not reach a tentative agreement, the parties will return to their respective positions.

10. **Confidentiality.** All discussions, correspondence (electronic or hard-copy form), or proposals relating the Settlement Agreement shall be confidential for all purposes under Rule 408 of the Michigan Rules of Evidence, and shall be kept confidential (not disclosed to the public by the parties) to the extent allowed by law.

The Parties further agree and acknowledge that "Confidential Information" (as defined below) obtained by the DFT during the course of the "Pending Litigation", whether before or after the date of this Settlement Agreement, is the property of the Released Parties, as applicable. Therefore, the DFT agrees that it shall not disclose to any unauthorized person or entity, or use for the its own purposes any "Confidential Information" without the prior written consent of the Released Parties, unless and to the extent that the aforementioned matters become generally known to and available for use by the public other than as a result of the DFT's acts or omissions in violation of this Agreement. The DFT further agrees and acknowledges that to the extent they receive a request to disclose "Confidential Information" pursuant to a deposition, interrogation, request for information or documents in legal proceedings, subpoena, civil investigative demand, governmental or regulatory process or similar process, the DFT shall notify DPS of the request, and, in consultation with DPS, take necessary steps to prevent or assist the DPS to prevent such disclosure. However, in the event that disclosure is ordered by any court, agency, or authority, or in the event that DPS waives such confidentiality, the DFT shall only disclose information that

it is legally required to disclose, and shall only make such disclosure after the DPS has had an opportunity to review the information before it is released.

For purposes of this Agreement, "Confidential Information" means information disclosed by DPS pursuant to this Settlement Agreement as well as procedures and information disclosed under Paragraph 3(b)(iii) above.

11. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties, and its terms are contractual and not a mere recital. This Settlement Agreement supersedes all prior agreements, understandings or writings, whether oral or written. Plaintiffs recognizes that they may be mistaken as to the facts and/or law upon which they may be relying upon in executing this Settlement Agreement and that such facts and/or law may be other than or different from its present beliefs. Nonetheless, in order to settle this matter, Plaintiffs intend to and do hereby waive any and all claims, demands and causes of action that are known or unknown, as outlined herein.

12. **Choice of Law and Severability.** This Agreement, and each and every term and provision hereof, shall be construed in accordance with the laws of the State of Michigan. If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall, in such event, be construed as if such invalid and/or unenforceable provision had never been contained herein.

13. **Free Act and Deed.** Plaintiffs hereby certify that they have carefully read the foregoing General Release and Settlement Agreement, that they have had an opportunity to consult with their attorneys before signing this Settlement Agreement, that they have had a reasonable period of time within which to consider this Agreement, and that they have signed this Settlement Agreement knowingly, voluntarily, and freely, and with such counsel as deemed appropriate.

14. **Signatures in Counterpart.** This Settlement Agreement may be signed and executed in one document or in counterparts. If the Parties sign this Settlement Agreement in counterparts, all such counterparts and/or separate pages with signatures shall be deemed to be on and the same instrument. Counsel shall exchange copies of any such signed counterparts. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan and the United States Constitution. This Settlement Agreement constitutes the entire agreement between the Parties and no modification of this Settlement Agreement shall be valid unless executed in writing and signed by the Parties. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

15. **Settlement Severability.** The Individual Plaintiffs have twenty-one (21) days of consideration and opportunity to consult independently with counsel regarding this Settlement Agreement and have seven days to revoke after execution. *See*, 29 USC § 626 (f). In the event that any of the Individual Plaintiffs chooses not to enter into this Settlement Agreement or chooses to revoke her agreement within seven days after execution of the Settlement Agreement, then the Settlement Agreement shall be binding upon the remaining Parties and signatories hereto.