

SETTLEMENT AGREEMENT

AND

RELEASE

This Settlement Agreement and Release of All Claims ("Agreement") is made and entered into by and between Elizabeth and William McCoy (Plaintiffs) and Gilbert Unified School District #41 ("Defendant").

RECITALS

A. Plaintiffs Elizabeth and William McCoy filed a lawsuit against Gilbert Unified School District #41. Plaintiffs' claims are set forth in the lawsuit entitled *Elizabeth and William McCoy, wife and husband v. Gilbert Unified School District #41*, 2:16-cv-03231-PHX-MHB ("lawsuit").

B. The Parties desire to enter into this Settlement Agreement in order to provide for a certain payment in full settlement and discharge of all claims which have been, or might be made, by reason of the incidents described in Recital A above, upon the terms and conditions set forth below.

C. In consideration of the mutual covenants and promises contained herein and for such other good and valuable consideration, the value of which is hereby acknowledged, it is agreed by and between the parties as follows:

AGREEMENT

1.0 Release and Discharge

1.1 In consideration of the payment set forth in Section 2.0, the Plaintiffs do hereby completely release and forever discharge the Defendant and its respective successors, assigns, agents, elected officials, employees, former employees, insurers (Arizona School Risk Retention Trust), representatives and all persons acting by, through or in concert with any of them ("Released Parties") from any and all past, present or future claims, demands, obligations, actions, causes of action, damages, costs, loss of services, expenses, compensation of any nature whatsoever, whether based on tort, contract or other theory of recovery and of which the Parties now have which may hereafter accrue or otherwise be acquired on account of or may in any way grow out of the incident described in Recital A above.

The Plaintiffs acknowledge that they understand that by entering into this Agreement, they will no longer have the right to assert any claim or lawsuit of

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any kind attempting to recover money or any other relief against the Released Parties for any matter that occurred before the execution of this agreement.

Plaintiffs also acknowledge that they understand that the only payment that the Released Parties will make is the payment provided by paragraph 2.0 of this Agreement. Plaintiffs acknowledge that they have been advised to consult with counsel regarding this release and has in fact consulted with counsel.

1.2 By way of example only, and without limiting the immediately preceding paragraph, this waiver and release is applicable to any cause of action, right, claim or liability under the Age Discrimination in Employment Act, the Older Worker's Benefit Protection Act, Title VII of the Civil Rights Act, the Reconstruction Era Civil Rights Acts, the Equal Pay Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the National Labor Relations Act, the Family and Medical Leave Act, the Arizona Civil Rights Act, the Arizona Employment Protection Act, the Arizona wage payment laws, and any other employment law, statute, regulation, rule of decision, or common law principle, including but not limited to wrongful discharge, breach of implied or express contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, defamation, invasion of privacy, tortious interference (in any form), assault, battery, and any other claim in contract or tort, or under the United States or Arizona Constitutions.

1.3 By executing this Agreement, Plaintiffs agree to and acknowledge the following:

1.3.1 THAT THE CONSIDERATION PROVIDED PLAINTIFFS UNDER THIS AGREEMENT IS IN ADDITION TO AND IN EXCESS OF ANYTHING OF VALUE TO WHICH PLAINTIFFS ARE ALREADY ENTITLED;

1.3.2 THAT THE DEFENDANT HAS GRANTED PLAINTIFF ELIZABETH McCOY A FULL TWENTY-ONE (21) DAY PERIOD TO CONSIDER THIS AGREEMENT;

1.3.3 THAT THIS AGREEMENT DOES NOT APPLY TO ANY RIGHTS OR CLAIMS THAT MAY ARISE AFTER THE DATE PLAINTIFFS SIGN THIS AGREEMENT;

1.3.4 THAT PLAINTIFFS SHALL HAVE A PERIOD OF SEVEN (7) CALENDAR DAYS FOLLOWING ITS EXECUTION OF THIS AGREEMENT IN WHICH TO REVOKE IT AND THIS AGREEMENT SHALL NOT BE EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED;

1.3.5 THAT BY SIGNING THIS AGREEMENT, PLAINTIFFS WAIVE THE RIGHT TO ASSERT ANY AND ALL EXISTING CLAIMS AGAINST THE RELEASED PARTIES, INCLUDING BUT NOT LIMITED TO, CLAIMS UNDER THE FEDERAL AND STATE DISCRIMINATION LAWS, SUCH AS THE AGE DISCRIMINATION IN EMPLOYMENT ACT (29 U.S.C. § 621, ET SEQ.) AND THE OLDER WORKERS BENEFIT PROTECTION ACT;

1.3.6 THAT PLAINTIFFS HAVE BEEN ADVISED AND IS

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HEREBY URGED TO TAKE THIS AGREEMENT TO COUNSEL OF THEIR CHOOSING FOR REVIEW AND CONSIDERATION BEFORE MAKING A DECISION TO SIGN IT; AND

1.3.7 IF PLAINTIFFS ELECT TO SIGN THIS AGREEMENT BEFORE THE TWENTY-ONE (21) DAY CONSIDERATION PERIOD HAS PASSED, THEY KNOWINGLY AND VOLUNTARILY WAIVE THE FULL TWENTY-ONE (21) DAY CONSIDERATION PERIOD.

1.4 This release, on the part of the Plaintiffs, shall be a fully binding and complete settlement among the Plaintiff and the Defendant.

1.5 The Plaintiffs acknowledge and agree that the release and discharge set forth above is a general release. The Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiffs' decision to enter into this Settlement Agreement. The Plaintiffs further agree that they have accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs assume the risk that the facts or law may be other than they believe. It is understood and agreed to by the Plaintiffs that this settlement is a compromise of a disputed claim, and the payment is not to be construed as an admission of liability on the part of the Defendant, by whom liability is expressly denied.

1.6 In the event Plaintiffs are currently a debtor within the jurisdiction of the United States Bankruptcy Court or in any other insolvency proceeding, Plaintiffs agree to obtain the approval and signature of the Bankruptcy Trustee for the purpose of ratifying this Agreement in his or her official capacity.

2.0 Consideration and terms of settlement.

2.1 In consideration of the Release set forth above, the total sum of NINETY-TWO THOUSAND FORTY-EIGHT AND 74/100 (\$92,948.74) DOLLARS will be paid as follows within fourteen (14) business days after: Receipt of the Agreement executed by Plaintiffs, unless revoked as provided in paragraph 1.3.4:

a. To Plaintiff Elizabeth McCoy in the sum of \$16,071.38 for wages subject to the applicable withholding (taxes, social security, etc.).

b. To Plaintiffs Elizabeth McCoy and William McCoy in the amount of \$76,550.62 as and for compensatory damages. Said check made payable to: "Randall Law, PLLC in Trust for Elizabeth and William McCoy".

c. The Defendant waives its right to receive from Plaintiff Elizabeth McCoy \$2,500 described as liquidated damages in her 2017-18 employment contract.

2.2 Plaintiffs understand and agree this is all the money they will ever receive from the Released Parties in connection with the lawsuit described in Recital A.

2.3 Plaintiff Elizabeth McCoy will tender her letter of retirement effective July 28, 2017 and further agrees not to seek re-employment with Gilbert Unified School District and understands that the District will not offer Plaintiff Elizabeth McCoy a position of employment.

2.4 The District agrees to provide a letter on District letterhead to Elizabeth McCoy as reflected in Exhibit "A" attached hereto.

3.0 **No Admission of Liability.**

This Agreement constitutes the settlement and compromise of a disputed claim. Nothing contained in this Agreement shall be construed as an admission by Defendant that it has violated any statute, law or regulation, breached any contract or agreement, or that it has engaged in any of the conduct or practices alleged by the Plaintiffs. The Defendant expressly denies that it has engaged in any unlawful practice.

4.0 **Representation of Comprehension of Document.**

In entering into this Settlement Agreement, the Plaintiffs represent that they have had the opportunity to consult with an attorney of their own choice concerning the legal and income tax consequences of this Settlement Agreement; that they have not relied on the advice or representations of the Defendant or its attorney regarding the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiffs.

5.0 **Attorney's Fees.**

Each party hereto shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the lawsuit described above and in connection with the Settlement Agreement, the matters and documents referred to herein, and all related matters.

6.0 **Payment of taxes.**

The Defendant does not make any representation or warranty to the Plaintiffs regarding the tax treatment or consequences of any payment under this Agreement. The Plaintiffs will be solely responsible for the payment of all taxes of whatever kind that may be or become due or payable by them in connection with such payment, and will indemnify and hold the Defendant harmless from all liens, actions or

claims on the part of the Internal Revenue Service or any other tax authority in connection with such payment that is assessed to Plaintiffs. This indemnity and hold harmless agreement will apply as to the full amount of all such liens, actions or claims and all expenses incurred therewith.

6.1 A form 1099 shall be issued in due course for the compensatory damages set forth in Section 2.0 above.

7.0 **Warranty of Capacity to Execute Agreement.**

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that Plaintiffs have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

9.0 **Governing Law.**

The Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.

10.0 **Additional Documents.**

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

11.0 **Entire Agreement and Successors in Interest.**

This Settlement Agreement contains the entire agreement between the Plaintiffs, the Defendant (and the Arizona School Risk Retention Trust) with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

12.0 **Effectiveness.**

This Settlement Agreement shall become effective immediately following execution by Plaintiffs.

13.0 **Confidentiality.**

The parties agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this Settlement Agreement or any of the amounts, numbers or terms and conditions of any sum payable to Plaintiffs hereunder, except as required by law. The parties further agree that all information learned or obtained in the course and conduct of the lawsuit and all documents obtained by discovery or otherwise in connection with the lawsuit shall remain confidential and not disclosed by the parties, their attorneys or any person under their control. The only exceptions to this confidentiality are (i) disclosure required by a valid order of a court of competent jurisdiction or, (ii) with the prior written consent of the other party.

Plaintiffs may disclose the terms and conditions of this Agreement to their accountant, attorney, or federal or state tax planners, provided they simultaneously inform that person that this information is strictly confidential and that the person may not disclose the information to any person without the advance written consent of the Defendant.

THE UNDERSIGNED HAVE READ THE FORGOING RELEASE AND FULLY UNDERSTAND IT.

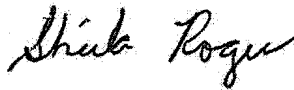
Signed, sealed and delivered this ____ day of _____, 2017.

Plaintiffs:

 7/28/17
ELIZABETH McCOY Date

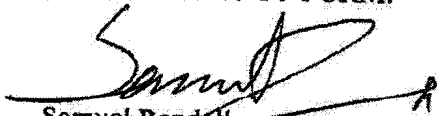
 July 28 17
WILLIAM McCOY Date

Defendant:

 7/28/17

SHEILA ROGERS, Chairman Governing Date
Board, Gilbert Unified School District

APPROVED AS TO FORM:

 7-28-2017
Samuel Randall
Attorney for Plaintiffs

Re: Elizabeth McCoy

To Whom It May Concern:

Elizabeth McCoy was employed by Gilbert Unified School District from August 17, 1994 until she retired on July 28, 2017. From 1994 to 2001 Ms. McCoy taught special education students at multiple elementary school sites. In 2001 she was promoted to Assistant Principal and served in that capacity at Highland Junior High School until 2017. At the time of her retirement, Ms. McCoy was assigned to Gilbert High School as an Assistant Principal.

Sincerely,

Dr. Suzanne Zentner
Assistant Superintendent
Office of Talent Management

EXHIBIT "A"