

SETTLEMENT AGREEMENT AND RELEASE

On this ___ day of February 2013, the Lebanon School District (“the District”), and Omary Rodriguez-Fuentes, Madeline Echevarria, and Lenora Hummel, individually and on behalf of the Class as set forth below, and the Pennsylvania State Conference of NAACP Branches (“PA-NAACP”) (collectively, “Plaintiffs”) enter into this Settlement Agreement and Release (“Agreement”), **INTENDING TO BE LEGALLY BOUND**, in full and final settlement of all claims or damages, costs, expenses, actions and causes of action arising from the Federal Class Action identified below, and hereby

AGREE AS FOLLOWS

Whereas, Plaintiffs and Rosa Rivera filed on January 21, 2011 a federal class action complaint against the Lebanon School District (the “Defendant”) docketed at 1:11-cv-147 (M.D.Pa., Kane C. J.) (the “Federal Class Action”); and

Whereas, Plaintiffs sought, inter alia, restitution of all payments in excess of \$300 per truancy citation retained by the Defendant from truancy fines imposed by the Lebanon magisterial district courts from 2004 through 2009 in excess of \$300 on a single citation; and

Whereas, the Court on June 28, 2012 certified a plaintiff class consisting of “all persons against whom the Magisterial District Court 52-1-01 or 51-2-01 imposed fines exceeding \$300 per citation for truancy violations in the Lebanon School District who have paid an amount exceeding \$300 plus costs on any single citation” (“the Class”); and

Whereas, on November 20, 2012 the Court denied Defendant’s motion for summary judgment and granted in part Plaintiffs’ motion for partial summary judgment on Plaintiffs’ state law claim in Count II, holding “Defendant was unjustly enriched by its receipt of excessive truancy fines;” and

Whereas, Rosa Rivera has applied to withdraw as a plaintiff; and

Whereas, a trial on the federal claims asserted by Plaintiffs in Count I of the Complaint has not been held and the parties waive the opportunity for an adjudication of those claims in return for the respective consideration set forth in this Agreement; and

Whereas, the parties have records from the Administrative Office of Pennsylvania Courts as to the truancy fines paid in excess of \$300 per citation received by the Defendant since January 1, 2004 on fines imposed from 2004 through 2009 which total approximately \$108,000 and those records include the name of the truancy defendant who made each payment; and

Whereas, the Parties all wish to achieve an amicable resolution to their dispute in an effort to avoid further complex and time-consuming litigation.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Resolution of the Federal Class Action. This Agreement concerns the resolution and dismissal, with prejudice, of the Federal Class Action, and all claims thereunder, in exchange for the consideration specifically set forth herein.

2. No Admission. Defendant is not admitting any liability for any claim asserted in the Federal Class Action. This Agreement is the compromise of a disputed matter, and neither the execution hereof nor the performance of any act contemplated hereby is an admission by a party of any liability, other than that created specifically by this Agreement.

3. Class Action Claims. This Agreement is specifically intended to settle and compromise all claims presented to the Court in the Federal Class Action, and will be submitted to the Court for approval pursuant to Fed. R. Civ. P. 23.

4. **Class Restitution Fund.** Defendant will create a fund of \$108,000.00 for the repayment of fines in excess of \$300 per citation paid by class members (“The Class Fund”). Subject to the terms of this Agreement, class members shall be entitled to repayment of all amounts paid in excess of \$300 per citation, except for any amounts credited by the magisterial district courts prior to execution of this Agreement to reduce another truancy fine owed to the Defendant. Payments to Class Members shall come after payment for certain expenses for locating Class Members, in accordance with Paragraph 6. Payments to class members shall be made in accordance with the provisions of this Agreement.

5. **Unclaimed Amounts in The Class Fund.** To the extent that any amounts in The Class Fund are unclaimed at the close of the claims period set forth in paragraph 9 and have not been used to pay certain costs of administration as provided in paragraph 6, Plaintiffs Echevarria, Rodriguez-Fuentes, and Hummel shall receive, in addition to any amounts they are entitled to under Paragraph 4, \$3,000 each (or such lesser amount as is available) in consideration of the uncompensated time and effort they expended in pursuing this claim on behalf of the class. Any amounts remaining after these expenditures shall be used by the Defendant to pay for truancy prevention programs consistent with those contained in the Pennsylvania Department of Education’s Truancy Toolkit. Defendant shall provide to Class Counsel and the Court a final accounting of disbursements made to class members within 60 days after the close of the claims period or any extension of the claims period necessary to resolve disputed claims as provided in Paragraphs 9 and 10. Defendant shall, within the accounting, identify the manner in which funds, if any are available, are to be directed toward truancy prevention programs.

6. **Other Costs to be Paid by Defendant.** In addition to creating The Class Fund, Defendant agrees to pay: (a) the cost of notice to the class by publication and mail in connection

with the hearing for approval of this Agreement pursuant to Rule 23 as set forth in paragraph 8; (b) the cost of notices, claim forms, postage and other necessary expenses in connection with the distribution of The Class Fund to class members as set forth in paragraph 9; and (c) the cost of trying to locate class members who are no longer directly traceable to the last address known to Defendant through the services of Heffler Claims Administration (“Heffler”). The amount to be paid for the locating services to be performed by Heffler by Defendant shall be capped at \$9,000 total for the class. Any additional cost for locating class members necessary to fulfill this Agreement and approved by Class Counsel (which approval will not be unreasonably withheld) will be drawn from The Class Fund before payment to Class Members in accordance with Paragraph 4.

7. **Attorneys Fees to be paid by Defendant.** The Defendant agrees to pay attorneys fees to the Public Interest Law Center of Philadelphia (“Class Counsel”) of \$147,000.00 for its services as counsel to the Plaintiffs and the Class, which figure includes reimbursement of out-of-pocket expenses incurred in the course of litigation. Pepper Hamilton LLP, which also served as counsel to Plaintiffs and the Class agrees not to seek any fees for its services, or to recover its out of pocket costs. The Public Interest Law Center of Philadelphia agrees not to seek, and will not be entitled to, any fees for monitoring disbursement of The Class Fund to class members. Payments under this paragraph shall be made within 30 days after Court approval of this Agreement.

8. **Class Action Settlement Approval.** In consideration of the foregoing, Plaintiffs and the Class agree to cause to be filed a Petition for Approval of Class Action Settlement, to effectuate the dismissal, with prejudice, of the claims in the Federal Class Action and to otherwise prosecute the approval process for such settlements, to include the submission of a

form of notice to the Class under Fed. R. Civ. P. 23 as required by rule and/or other Order of the Court in the Federal Class Action. Defendant shall have the opportunity to review the petition and form of notice prior to their being submitted to the Court in the Federal Class Action and agrees to cooperate in the filing. Defendant agrees to provide individual first class mail notice at the last address on record with Defendant to all persons who can be identified as class members from the records of the AOPC. Defendant will also publish notice of the class settlement hearing once a week for two weeks in the Lebanon Daily News in a prominent position, and shall post such notice and this Agreement on its website. All notices will be in Spanish as well as English, shall provide that further information may be obtained from Class Counsel or Counsel for Defendant, and shall provide that any person objecting to the settlement must notify the Court in writing at least three business days prior to the date of the hearing.

9. Identification, Notice and Payment Procedures for Class Members. Upon approval by the Court of this Agreement as fair, reasonable and adequate to the Class and to all parties, Defendant shall expeditiously undertake an effort to identify and locate all class members. Toward that purpose, Defendant agrees that it shall send first class mail notice to all persons who can be identified as class members from the AOPC records whose mail notice of the class hearing were not returned, identifying the amount that the AOPC records evidence they are entitled to as reimbursement for fines paid in excess of \$300 per citation (less any amounts credited by the magisterial district courts prior to execution of this Agreement to reduce another truancy fine owed by the class member to the Defendant), and providing a simple claims form with a postage paid return envelope if the putative class member agrees with the amount, or a place to indicate that it has records evidencing additional amounts entitled to reimbursement. Defendant shall prominently publish notice in the Lebanon Daily News once a week for two

weeks informing class members that such mail notices were sent and that a person who believes he or she is a class member may submit a claims form with a current address to Defendant and class counsel for the parties to investigate. The claims form shall be available and prominently placed on Defendant's web site, along with the notice, in both English and Spanish. For persons identified on the AOPC records as a class member whose mail was returned, Defendant shall retain Heffler to try to locate them through the fourth level of search that Heffler provides. Any costs in excess of the cap on Defendant's costs set forth in Paragraph 6 shall be approved of as appropriate by Class Counsel. Defendant shall send first class mail notice to any such persons at addresses provided by Heffler or at addresses provided by any person claiming to be a class member. All claims must be submitted within 6 months following the date the Court approves this agreement (the "claims period"). Thereafter, Defendant shall issue payments to all claimants within 45 days provided that sufficient funds may be reserved for disputed claims, and if disputed claims exceed the amount which may be reserved within 45 days of final resolution of all disputed claims in the manner set forth in Paragraph 10. If the amount of the Class Fund is reduced pursuant to Paragraph 6 and the amount of the claims presented to Defendant total more than the funds thereafter remaining in the Class Fund, then and only then shall the amounts paid to each claimant be reduced, pro rata. Counsel for each party shall discuss any pro rata reductions prior to disbursement under this Paragraph. All notices and forms required by this Settlement Agreement shall be subject to approval by Class Counsel, and such approval shall not be unreasonably withheld.

10. Resolution of Disputes with Class Members. The records of the AOPC will be prima facie valid evidence of the identity of class members and the amounts of restitution they are entitled to. Receipts, docket entries or other records from the magistrate district courts

provided by persons claiming to be class members or disputing the amounts they are entitled to shall be submitted to Defendant within the claims period. If the Defendant determines that the records are insufficient to overcome the AOPC records and the claimant disagrees, Defendant shall submit the records to Class Counsel for review and attempted resolution. If the Claimant and Defendant are unable to reach agreement, Class Counsel shall submit the matter to this Court which shall designate a Magistrate Judge for determination.

11. Cooperation. The parties agree to cooperate with each other with respect to the preparation and filing of all motions, notices or other papers as may be required to carrying out this Agreement.

12. Releases. Plaintiffs, and the members of the Plaintiff Class, and their heirs, successors and assigns, upon approval by the Court of this Agreement, do remise, release, quitclaim and forever discharge Defendant, and its employees and agents, of and from all and any manner of actions, causes of actions, judgments, suits, debts, accounts, and claims for services or funds, monies, fees, expenses and/or other amounts, that were asserted in the Federal Class Action. Nothing in this Paragraph waives any rights created under this Agreement.

13. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

14. Effective Date. Paragraphs 6(a), 8 and 11 of this Agreement will become effective and binding upon all parties on the date of its execution and all other provisions upon approval by the Court of this Agreement. The “date of execution” or “execution date” of this Agreement shall be defined as the date of execution by the party last executing this Agreement and Release, which may be executed in counterparts.

15. **Severance.** If any term, condition, clause or provision of this Agreement shall be determined or declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement, and in all other respects, this Agreement shall be valid and continue in full force, effect and operation.

16. **Interpretation.** In the event any dispute arises between the parties with regard to the interpretation of any term of this Agreement, the parties agree that the drafting of this Agreement shall not be deemed the act of any one party or its agent, and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable.

17. **Retention of Jurisdiction.** The Court shall retain jurisdiction for the purpose of enforcing the terms of this Agreement until 30 days after the accounting called for in paragraph 5 is filed by the District, unless any disputes over implementation of this Agreement are pending before it, in which case the court shall retain jurisdiction until such disputes are resolved.

18. **Acknowledgements of Plaintiffs.** Individual plaintiffs, on behalf of themselves and as representatives of the Plaintiff's Class, hereby acknowledge and agree that (a) they are represented by experienced counsel, have been fully informed of their respective rights, fully understand those rights and are satisfied with representation by counsel; (b) they have read and understand the terms of this entire Agreement, consisting of 19 paragraphs.

19. **Acknowledgements of Defendant.** The District hereby acknowledges and agrees that: (a) it is represented by experienced counsel, has been fully informed of its respective rights, fully understands those rights and is satisfied with representation by counsel; (b) it has read and understands the terms of this entire Agreement, consisting of 19 paragraphs.

Wherefore, the parties have executed this Settlement Agreement and Release on the

dates set forth next to their signatures.

Omary Rodriguez-Fuentes

Date

Madeline Echevarria

Date

Lenora Hummel

Date

Pennsylvania State Conference of NAACP Branches
By: J. Whyatt Mondesire, President

Date

President, School Board
Lebanon School District

Date

Dr. Marianne T. Bartley, Superintendent,
Lebanon School District

Date