

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”), the terms of which are set forth in part II below, is made and entered into by and between The School Board of Palm Beach County (“Respondent”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”)(Respondent and IER hereinafter collectively, the “Parties”).

I. BACKGROUND

WHEREAS, IER notified Respondent by letter dated December 18, 2019 that it had initiated an investigation of Respondent under 8 U.S.C. § 1324b(d)(1), identified as DJ #197-18-429 (“Investigation”), to determine whether Respondent engaged in any unfair documentary practices prohibited under the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b (“Act”);

WHEREAS, IER concluded based on the Investigation that there is reasonable cause to believe that Respondent engaged in a pattern or practice of unfair documentary practices in violation of U.S.C. §1324b(a)(6). Specifically, the Investigation found that since at least January 1, 2019, Respondent required non-U.S. citizens to present documentation issued by the Department of Homeland Security for employment eligibility verification because of their citizenship or immigration status, even if the individuals had other acceptable documentation they wished to present, such as an identification and unrestricted Social Security card. The Investigation found that Respondent did not make such requests of U.S. citizens. IER seeks to resolve the findings of its Investigation through settlement and the Parties have agreed to resolve the Investigation through settlement negotiations;

WHEREAS, by resolving the Investigation, entering into this Agreement, and negotiating its terms, the Respondent makes no admissions, of any kind including, but not limited to, admissions of liability and nothing contained herein can, should, or is intended to be construed as an admission of liability by Respondent or on its behalf. Respondent expressly and implicitly denies all liability;

WHEREAS, the Parties wish to resolve the Investigation without further delay, expense, or protracted litigation and hereby acknowledge that they are voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the Investigation as of the date of the latest signature below, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the latest signature on the dually-signed Agreement, which date is referenced herein as the “Effective Date.” The “term of this Agreement” shall be three years following the Effective Date.

2. Respondent shall pay a civil penalty to the United States Treasury in the amount of ninety thousand dollars (\$90,000)(hereinafter the “Monetary Penalty”).
3. Within 10 days of the Effective Date, IER will send attorneys for Respondent the official FedWire electronic fund transfer instructions to process the Monetary Penalty. Respondent shall transfer the Monetary Penalty within 15 days of receiving IER’s FedWire Instructions, and Respondent shall send an email notification to Liza.Zamd@usdoj.gov (or any other individual IER designates) on the day the transfer is made.
4. Within 30 days of the Effective Date, Respondent shall send IER a current list of all adult English for Speakers of Other Languages (ESOL) education centers operated by Respondent, including the name of the center, its location, the number of students enrolled, and the list of the native languages spoken by enrolled students (if known). IER in its discretion, shall select up to 15 ESOL locations, and Respondent shall arrange for the students in these locations to receive a live one-hour training (either in-person or through a webinar) regarding worker rights under 8 U.S.C. §1324b that IER will conduct. All of the trainings shall occur during the term of the Agreement, on dates and at times mutually agreed upon by the Parties. Respondent will designate a point of contact to facilitate the training sessions and will permit designated IER employees to enter onto Respondent’s premises to conduct any live training sessions. If IER conducts an in-person presentation on Respondent’s premises, IER will comply with Respondent’s Covid-19 protocols, if any.
5. In accordance with 8 U.S.C. §1324b(a)(6), Respondent shall treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing and employment eligibility verification and re-verification process and will not retaliate against any individual in violation of §1324b(a)(6).
6. If not already posted, within 14 days from the Effective Date, Respondent shall post an English and Spanish version of IER’s “If You Have The Right to Work” poster (“IER Poster”), in color and measuring no smaller than 8.5” by 11”, an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in the front office of the District’s Human Resources Department and it will remain posted for at least the term of this Agreement.
7. Throughout the term of this Agreement, Respondent shall post an 8.5” by 11” copy of the Form I-9 Lists of Acceptable Documents for employees to see when individuals complete Forms I-9 on Respondent premises, and provide individual copies at the same time as Respondent provides individuals with a) onboarding instructions, and b) notice regarding expiring Form I-9 documentation pursuant to Form I-9 rules relating to Section 3.
8. During the term of the Agreement, Respondent will state the following on all hard copy and electronic onboarding communications to new employees: “If you have any questions about citizenship status discrimination in hiring, firing, or recruitment, including issues relating to the Form I-9 or E-Verify processes, you can get more information about your rights at www.justice.gov/ier or by calling 800-255-7688 Monday-Friday, 9am-5pm.”

9. During the term of this Agreement, Respondent shall ensure that all employees who are involved in preparing and/or conducting internal training on the I-9 and/or E-Verify processes or are otherwise responsible for performing Respondent's I-9 and/or E-Verify processes, or implementing the Respondent's employment eligibility verification policies (hereinafter collectively referred to as, "Human Resources Personnel"), shall know how to access and have access to the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9, and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf. Copies of these documents and future revisions of the Form I-9, Handbook, and Manual can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.
10. Within 60 days of the Effective Date, Respondent will review any existing employment policies, internal handbooks, and training materials and revise them to reflect correct Form I-9 and E-Verify procedures. Respondent shall provide its proposed revised policies, internal handbooks, and training materials to IER for review and approval under §1324b(a)(6), and Respondent shall initiate its rulemaking procedures within 90 days after receiving notice from IER of IER's approval to implement such policies, handbooks, and training materials.

The proposed revisions to employment policies, internal handbooks, and training materials shall:

- A. prohibit discrimination on the basis of citizenship or immigration status (as appropriate), and national origin (1) in the hiring and firing process; (2) during the Form I-9 employment eligibility verification and re-verification process; and (3) in the E-Verify process;
- B. include citizenship (as appropriate), immigration status (as appropriate), and national origin as prohibited bases of discrimination in Equal Employment Opportunity (EEO) statements and policies;
- C. provide applicants and employees who complain of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process with the following written statement: "The Immigrant and Employee Rights Section (IER) can help you with concerns about citizenship status or national origin discrimination in hiring, firing, or recruitment. IER can also help with possible discrimination relating to the Form I-9 or E-Verify processes. You can find more information about IER by going to its website at www.justice.gov/ier. You can also speak to someone anonymously by calling IER's toll-free number at 800-255-7688. If you think you have been the victim of employment discrimination or retaliation relating to citizenship status or national origin (including with the Form I-9 or E-Verify processes), you must file a charge with IER within 180 days of the discriminatory act."

- D. prohibit any reprisal action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.

During the term of this Agreement, Respondent shall provide any revisions to employment policies relating to nondiscrimination on the basis of citizenship, immigration status or national origin to IER for approval at least 30 days prior to the proposed effective date of such revised policies.

11. Respondent shall reserve a total of \$100,000 dollars to compensate individuals who can demonstrate to IER's satisfaction that they suffered economic damages or periods of lost work as a result of alleged discrimination in Respondent's employment eligibility verification processes, hereinafter referred to as the "Backpay Fund":

Within 60 days following the Effective Date:

- A. Respondent will generate a list of names of those individuals who at any point since January 1, 2018 received a conditional offer letter and/or email of employment from the Respondent with Onboarding Paperwork but ultimately were not hired (hereinafter referred to as, "List of Possible Back Pay Recipients"). The List of Possible Back Pay Recipients will contain the individuals' name, home address, telephone number, cell number, date conditional job offer letter or email was sent, date of hire (if any), termination date (if any), and email address (if on file). Respondent will provide this List of Possible Back Pay Recipients within 10 days of generating the complete list.
- B. Within 30 days following the date Respondent generates the complete List of Back Pay Recipients, the Respondent or its agent will send Attachment A, which is the "Notice of Potential Rights to Opt-in to the Backpay Fund" through regular mail with the United States Postal Service ("USPS") to the last known address on record with Respondent to each individual listed on the List of Possible Back Pay Recipients. Respondent or its agent will also send Attachment A via email to all individuals on the List of Possible Back Pay Recipients using the email address(es) it has on file.
- C. Individuals will be given 120 days from the date Respondent mails Attachment A to Opt-In to the BackPay Fund to ("Opt-In Period"):
- i. Contact IER and notify it that they intend to opt-in;
 - ii. Provide accurate contact information to IER; and
 - iii. Furnish IER with necessary information to determine the individual's entitlement to compensation under the BackPay Fund. IER will request all relevant documentation to make this determination, such as unemployment filings, and other relevant documentation/testimony.
- D. Subsections 11(C)(i)-(iii) are collectively referred to as "Opt-In Procedures"; recipients who timely Opted-In and timely completed the Opt-In procedures are hereinafter, collectively referred to as "Qualified Backpay Recipients."

- E. Subject to the exception below, any recipient of the Notice who does not contact IER and complete the Opt-In Procedures by the 121st day will not be entitled to receive any compensation from the BackPay Fund and will effectively forfeit their rights to back pay as set forth in this Agreement.
- F. Every 30 days during the 121 day Opt-In Period (approximately 4 times), IER will send Respondent a list of those Qualified BackPay Recipients from whom it has received an eligible inquiry and will provide Respondent with the amount of wage mitigation (if any) IER has determined for each Qualified BackPay Recipient. IER will ask Respondent for any information necessary to determine the appropriate back pay amount, such as payroll records of comparable employees. Respondent shall have 21 days from IER's request to provide IER with responsive documents and information.
- G. Within 290 days from the Effective Date, IER will:
- (i) review the List of Qualified BackPay Recipients to determine the amount of lost wages and/or benefits believed to be owed to each Qualified BackPay Recipient. IER will make this determination based on the starting hourly wage/entry level salary (as applicable) earned by employees employed in the same job code and/or comparable job code during the period of the Qualified BackPay Recipient's period of unemployment, minus any interim earnings and/or periods when the Qualified BackPay Recipient was not actively seeking employment (if applicable).
 - (ii) Within 10 days of IER's review and determination of back pay owed to the Qualified BackPay Recipients (300 days from the Effective Date), IER will provide the name, mailing address, and back pay amount to Respondent in the form of the "List of Qualified BackPay Recipients."
 - (iii) Respondent avers that individuals who did not perform work for the School Board are not entitled to receive a contribution to the Florida Retirement System ("FRS"). Respondent also avers that, individuals who have worked for the School Board are not, and would not, be eligible to receive any share of the employer's contribution to FRS because such contributions do not vest for eight years following the first date of employment. Based exclusively on the aforementioned, the funds distributed to the Qualified BackPay Recipients are not eligible under FRS. Respondent will pay an additional \$40.00 to each Qualified BackPay Recipient, on top of the back pay amount believed by IER to be owed to the Qualified BackPay Recipients. The \$40.00 shall not be calculated as part of the BackPay Fund for purposes of Subsection H. The monies paid pursuant to this paragraph shall be in exchange for the Qualified BackPay Recipients execution of a

Release of Claims in the form attached as Attachment C. These monies are not intended, to be nor should they be construed, as a retirement benefit, retirement pay, or subject to an FRS credit. The Release of claims is limited to the subject of the Investigation.

- H. The total amount of money that Respondent shall be required to reserve in the BackPay Fund and ultimately pay out to the Qualified BackPay Recipients shall not exceed one hundred thousand dollars and/zero cents (\$100,000). Respondent is solely entitled to all BackPay Fund monies that are not disbursed pursuant to this Agreement.
- I. Within 330 days of the Effective Date, Respondent will notify Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates) if Respondent disagrees with the lost wages and/or benefits IER determines should be paid to each Qualified BackPay Recipient and shall provide any supporting evidence Respondent may possess. IER may, in its sole discretion, modify the amounts pursuant to Respondent's objection. IER will notify Respondent's counsel by email of its determination within 21 days (on or before 351 days of Effective Date) of receiving Respondent's objection (hereinafter, "Final List of Qualified BackPay Recipients").
- J. If the BackPay Fund is insufficient to cover the claims of the Qualified BackPay Recipients, Respondent shall compensate these individuals a pro rata share of the BackPay Fund as determined by IER. Under no circumstances will Respondent be obligated to pay more than \$100,000 in back pay pursuant to this Agreement.
- K. Within 15 days of receiving from IER the Final List of Qualified BackPay Recipients (on or before 366 days of Effective Date), Respondent will send via first class USPS and/or email (in accordance with the information the Respondent has on file) the Qualified BackPay Recipients a Notice of Determination on Entitlement to back pay (hereinafter, "Notice of Determination"), Attachment B, indicating the specific amount of back pay the Qualified BackPay Recipient will receive as reflected on the Final List of Qualified BackPay Recipients, and Attachment C (release of claims).
- L. Subject to the exception below, if the individual does not return an executed Attachment C to IER on or before 441 days from Effective Date, the individual will not receive any back pay and will forfeit their right to back pay under the BackPay Fund.
- M. Within 460 days of the Effective Date, IER will send Respondent every executed Release of Claims that it has received from the Qualified BackPay Recipients.
- N. Within 475 days of the Effective Date, Respondent or its agent will issue checks in the amounts listed on the Final List of Qualified BackPay Recipients and will mail the checks to the Qualified BackPay Recipients at the address on the Final List of Qualified BackPay Recipients, or any updated address that IER sends to Respondent (hereinafter, the "Mailing Date"). Respondent or its agent shall follow the applicable instructions contained in IRS Publication 957.

- O. Upon good cause shown, IER may determine that individuals who did not Opt-In during the Opt-In Period are entitled to back pay from the BackPay Fund if those individuals contact IER within 275 days of when Respondent mailed Attachment A to the List of Possible BackPay Recipients.
 - P. Each Qualified BackPay Recipient will have 180 days to cash or deposit the check from the Mailing Date.
 - Q. Within 490 days of the Effective Date, Respondent shall file a special report to the Social Security Administration (SSA) allocating the payment made to each individual for the appropriate periods.
 - R. Within 10 days of the Mailing Date, Respondent shall provide IER with email confirmation that the checks were mailed to all Qualified BackPay Recipients.
 - S. Other than the Attachments outlined in this paragraph, if Respondent wishes to send other written communication to any individuals on the List of Possible Back Pay Recipients, Respondent will send the proposed written communication to IER at least 10 days in advance to allow IER to review, suggest reasonable revisions, and otherwise approve such written communication.
12. Within 90 days of the Effective Date, Respondent shall train all Human Resources Personnel on 8 U.S.C. § 1324b, and the employment eligibility verification and reverification process as it relates to discrimination on the basis of citizenship, immigration status, and national origin.
- (a) In IER's discretion, the training will consist of one or more remote IER webinar presentations and/or free live IER presentations at a time and location mutually agreed upon by the Parties.
 - (b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all of its own costs associated with these training sessions.
 - (c) During the term of the Agreement, all new Human Resources Personnel who are hired or promoted after the training described in this paragraph has been conducted shall attend an IER Employer/HR webinar training within 60 days of hire or promotion.
 - (d) Respondent shall compile attendance listing the individuals who attend the training described in this paragraph, including the individual(s)' full name, job title, signature, and the date of the training, and send the record via email to Liza.Zamd@usdoj.gov (or any other individual IER designates) within 15 days of each training.

13. Within 30 days of compiling the IER training outlined above, the Human Resources Personnel will take a training assessment tool (Attachment D). Human Resources Personnel may refer to the Form I-9 and its instructions, the Handbook, the Manual, and/or USCIS's I-9 Central Website, when answering the questions. Respondent shall review and score each individual's responses to the questions. If any individual answers a question incorrectly, Respondent shall, within five days, require the individual who answered incorrectly to read one or more of the government resources outlined in paragraph 7 and answer the question(s) again until the individual answers the question(s) correctly.
 - a. Within 30 days after each individual's completion of the measurement and assessment tool, Respondent will provide via email to Liza.Zamd@usdoj.gov (or any other individual IER designates) all training assessment tool responses, including any versions with incorrect answers.
14. Within 30 days of the Effective Date, Human Resources Personnel shall register for all email updates from IER and the following email updates from USCIS relating to:
 - (a) Federal Register Announcements;
 - (b) Temporary Protected Status; and
 - (c) I-9 Central.

Human Resources Personnel can register for USCIS updates by visiting: <https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new>

15. During the term of this Agreement, IER can make such reasonable inquiries it believes necessary or appropriate to assess Respondent's compliance with this Agreement, including but not limited to, requiring written reports from Respondent concerning its compliance; inspecting Respondent's premises at a mutually agreeable date and time; interviewing Respondent's Human Resources Personnel in the presence of Respondent's counsel; and requesting copies of Respondent's documents relating to the I-9, E-Verify, or employment eligibility verification processes. Respondent shall comply with IER's requests for documents, interviews or inspection of the premises within 30 days unless Respondent and IER mutually agree to a different period of time to comply.
16. Every four months during the term of this Agreement, Respondent shall provide IER with: (1) an E-Verify User Audit Report with all available fields in Excel format, and (2) at IER's discretion, all Forms I-9 where Respondent completed Section 2 or Section 3 within the previous four-month period, or an Excel spreadsheet with all available Form I-9 and E-Verify fields for all individuals hired or re-verified within the previous four months.
17. If IER has a good faith basis to believe that Respondent is in violation of any material provision of this Agreement, IER may, in its discretion, notify Respondent's General Counsel of the alleged violation rather than initiate a new discrimination investigation or seek to judicially enforce the Agreement. If IER has exercised its discretion to notify

Respondent of the purported violation, Respondent shall have 30 days from the date it is notified by IER of the purported violation(s) to cure the violation(s) to IER's satisfaction.

18. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with IER, IER's authority to investigate Respondent or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices occurring after the Effective Date or outside the scope of the Investigation.
19. This Agreement resolves any and all differences between the Parties relating to the Investigation through the Effective Date. Aside from the Monetary Penalty set forth in the Agreement, IER shall not seek from Respondent any additional civil penalty for the violations of 8 U.S. C. § 1324b that are the subject of the Investigation through the Effective Date.
20. This Agreement may be enforced in the United States District Court for the Southern District of Florida for any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce the Agreement in a court of competent jurisdiction. This paragraph, or the initiation of a lawsuit to enforce the Agreement under this paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement.
21. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
22. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
23. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
24. This Agreement, with the Attachments A-D, sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter herein.
25. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the Parties, their respective successors and permitted assigns and


potential Qualified BackPay Recipients, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

26. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Agreement. The Parties agree to be bound by facsimile signatures.

School Board of Palm Beach County

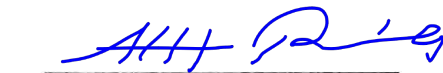
By: 
[Name]
Superintendent of Schools

Dated: 10-22-20

By: 
Chairman of the Palm Beach
County School Board.

Dated: 10-22-20

Immigrant and Employee Rights Section

By: 
Alberto Ruisanchez
Deputy Special Counsel

Dated: 11-16-20

C. Sebastian Aloat
Special Litigation Counsel

Liza Zamd
Senior Trial Attorney