

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into between The School Board of Miami-Dade County, Florida ("Respondent") and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel").

WHEREAS, on September 8, 2014, the Office of Special Counsel opened an independent investigation (DJ# 197-18-255) (the "Investigation") into whether Respondent engaged in unfair documentary practices in violation of 8 U.S.C. § 1324b of the Immigration and Nationality Act (the "Act").

WHEREAS, the Office of Special Counsel concluded that there is reasonable cause to believe that Respondent committed a pattern or practice of unfair documentary practices in violation of the Act.

WHEREAS, Respondent, without admitting liability, and the Office of Special Counsel, wish to resolve the matter without the need for litigation and hereby acknowledge that they are voluntarily entering into this Agreement.

WHEREAS, Respondent understands its obligation under 8 U.S.C. § 1324b to 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.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and to fully and finally resolve the Investigation as of the date of this Agreement, it is agreed as follows:

1. Respondent shall pay a civil penalty to the United States Treasury in the total amount of ninety thousand dollars (\$90,000), paid in three installments, each in the amount of thirty thousand dollars (\$30,000).
2. Respondent shall pay the installment payments described in paragraph one by three checks made payable to the United States Treasury. The first payment shall be due within forty-five (45) days from the effective date of this Agreement. The second payment shall be due by September 1, 2016. The third payment shall be due by September 1, 2017. Respondent shall forward each check to the attention of Liza Zamd at the Office of Special Counsel via Federal Express or other overnight courier.
3. Respondent shall set aside a fund of one-hundred and twenty five thousand dollars (\$125,000) to compensate individuals, if any, who suffered economic damages, periods of lost work or loss of seniority, as a result of alleged discrimination in Respondent's employment eligibility verification practices. To compensate individuals with economic damages, Respondent shall complete the following steps:
 - (a) Within ninety (90) days following the effective date of this Agreement, Respondent shall (i) notify by electronic mail and parcel post, all

individuals who were offered employment or who received a conditional job offer but were not hired, on or after September 8, 2012, that they may be entitled to compensation for lost wages and/or restoration of seniority as a result of alleged discrimination in Respondent's employment eligibility verification practices, and (ii) provide the Office of Special Counsel with contact information within Respondent's possession including if available, home address, telephone number, date of conditional job offer, date of formal hire (if any), termination date (if any), mobile number, and email address, for all individuals notified;

- (b) The language of the notice required under paragraph 3(a) is set forth in Attachment A. Any communication between Respondent and potential claimants regarding this fund must be approved in advance by the Office of Special Counsel. Respondent must direct any individuals who contact Respondent regarding this fund to the Office of Special Counsel through the means outlined in Attachment A. Individuals will be given sixty (60) days from the day the notice is sent to contact the Office of Special Counsel if they wish to make a claim for compensation;
- (c) Within two hundred and ten days (210) days from the effective date of this Agreement, the Office of Special Counsel will: (i) determine the amount of lost wages, seniority, and/or benefits it believes each individual is owed who contacted the Office of Special Counsel pursuant to paragraph 3(b); and (ii) notify Respondent of the compensation it believes each individual is owed. The Office of Special Counsel will make its determination based on an evaluation of each individual's circumstances and available proof, if any. The Office of Special Counsel will disclose the basis of its determination of any individual's lost wages, seniority and/or other benefits with Respondent.
- (d) Within two hundred and seventy (270) days from the effective date of this Agreement, Respondent will notify the Office of Special Counsel if it disagrees with any lost wages, benefits, or seniority award as determined by the Office of Special Counsel pursuant to paragraph 3(c), and the Office of Special Counsel may in its sole and ultimate discretion modify the award amounts pursuant to information Respondent provides supporting its position;
- (e) Within two hundred and ninety (290) days from the effective date of this Agreement, Respondent will send all individuals entitled to economic damages a notice in the form of Attachment B indicating the award of back pay, benefits, and/or restoration of seniority to be received, as determined by the Office of Special Counsel. All communication between Respondent and potential claimants regarding this award must be approved in advance by the Office of Special Counsel;

- (f) Within three hundred and thirty (330) days following the effective date of this Agreement, Respondent shall pay the amount of lost wages owed, provide the benefits, and/or restore the loss of seniority to all individuals with economic damages as determined by the Office of Special Counsel;
 - (g) Respondent must submit to the Office of Special Counsel for approval all language relating to the release of claims any individual may sign in connection with this matter. The release of claims must be limited to the violations of the Act that relate to the payment of lost wages and/or restoration of seniority;
 - (h) Any monies used to compensate individuals pursuant to this paragraph shall be paid by check payable to each individual and sent via U.S. mail or another method as agreed upon by the parties. Respondent shall follow the applicable instructions contained in IRS Publication 957;
 - (i) Within five (5) days of the payment of lost wages, the provision of benefits, and/or the restoration of seniority, Respondent shall provide to the Office of Special Counsel a certified record of the name of and compensation received by each individual; and
 - (j) If the fund described in this paragraph is insufficient to cover the claims of individuals with economic damages, Respondent shall compensate these individuals a pro rata share of the fund as determined by the Office of Special Counsel. Under no circumstances will Respondent be obligated to pay more than the total amount of the fund to resolve the claims of such individuals.
4. Within thirty (30) days following the effective date of this Agreement, Respondent shall send the Office of Special Counsel a current list of all high schools in Respondent's jurisdiction, including the name of the high school and its location. For each high school that the Office of Special Counsel selects, Respondent shall arrange for its students to receive Office of Special Counsel one-hour trainings regarding worker rights under 8 U.S.C. § 1324b. The Office of Special Counsel may not select more than 10 high schools to receive such trainings. All of the trainings shall occur on or before June 1, 2018, 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 Office of Special Counsel employees to enter onto Respondent's premises to conduct the live training sessions.
5. Within thirty (30) days following the effective date of this Agreement, Respondent shall send the Office of Special Counsel 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, and a list of the native languages spoken by enrolled students (if known). The Office of Special Counsel, in its discretion, shall select up to 5 adult ESOL locations at which to present a live or recorded one-hour training regarding worker rights under 8 U.S.C. § 1324b. For each ESOL location that the Office of Special Counsel

selects Respondent shall arrange for its students to receive a live or recorded one-hour training regarding worker rights under 8 U.S.C. § 1324b. The Office of Special Counsel may not select more than 5 adult ESOL locations to receive such trainings. All of the trainings shall occur on or before October 30, 2018, 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 Office of Special Counsel employees to enter onto Respondent's premises to conduct the live training sessions.

6. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in the investigation conducted by the Office of Special Counsel or for the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. Respondent shall post the Office of Special Counsel "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 11" x 14", an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in the District Human Resource Department. The OSC Poster will be posted within fourteen (14) days from the effective date of this Agreement and will remain posted for three (3) years thereafter. The OSC Poster shall be posted in English and any other available language that is the preferred language of Respondent's employees, if that language is known.
8. Beginning not more than fourteen (14) days from the date that Respondent receives a fully signed copy of this Agreement, Respondent will provide a link to OSC's website on all hard copy and electronic offer letters, and Respondent will continue to do so for three (3) years thereafter.
9. For three (3) years from the effective date of this Agreement, Respondent shall ensure that all individuals who have duties relating Form I-9 or E-Verify employment eligibility verification, including all employees who train, create policies, or otherwise play any role in employment eligibility decisions ("Human Resources Personnel"), are in possession of 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-9Central, 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 ninety (90) days from the effective date of this Agreement, Respondent shall revise its employment policies and training materials as they relate to nondiscrimination and provide them for review and approval by the Office of Special Counsel. The employment policies and training materials shall be revised to:
 - (a) Prohibit (i) requesting employment eligibility verification documents from any individual prior to making an offer of employment; (ii) discrimination on the basis of citizenship status or national origin in the recruiting, hiring,

and firing process; and (iii) discrimination on the basis of citizenship status or national origin, during the employment eligibility verification and re-verification process;

- (b) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or employment eligibility verification and re-verification process immediately to the Office of Special Counsel by directing the affected individual to the Office of Special Counsel's worker hotline and website, and advise the affected individual of his or her right to call the Office of Special Counsel's hotline or file a charge of discrimination with the Office of Special Counsel; and
 - (c) 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.
- 11. During the three years following the effective date of this Agreement (the "Reporting Period"), Respondent shall provide any changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to the Office of Special Counsel for review at least thirty (30) days prior to the proposed effective date of such revised policies.
- 12. Within ninety (90) days of the effective date of this Agreement, all Human Resources Personnel shall join the Office of Special Counsel's email distribution list, and the Office of Special Counsel shall provide all such persons with training on their obligation to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and re-verification process.
 - (a) The training will consist of viewing a remote webinar presentation or in-person presentation, at no cost to Respondent. Participants shall register for the webinar presentation through a link that the Office of Special Counsel will provide.
 - (b) All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all employee-related costs associated with these training sessions.
 - (c) For a period of three (3) years from the effective date of this Agreement, all new Human Resources Personnel hired by Respondent after the training described in this paragraph has been conducted shall attend an Office of Special Counsel Employer/HR webinar within sixty (60) days of hire or promotion. Any individuals who have not been so trained within sixty (60) days of commencing duties pursuant to this sub-paragraph shall


not be permitted to perform any employment eligibility verification functions.

- (d) Respondent shall compile attendance records listing the individuals who attend the training described in this paragraph in the form of an attachment, including their full name, title, signature, and the date of the training, and send them via email to Liza.Zamd@usdoj.gov within ten (10) days of the training session.
- 13. During the Reporting Period, the Office of Special Counsel reserves the right to make reasonable inquiries of Respondent necessary to determine Respondent's compliance with this Agreement. As a part of such review, the Office of Special Counsel may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.
- 14. Every four (4) months during the Reporting Period, Respondent shall provide the Office of Special Counsel with a list of the full name, hire date, and citizenship status of all individuals it hired during the preceding four (4) months. The Office of Special Counsel will select up to 150 individuals from that list, and Respondent will submit electronic copies of the selected individuals' completed Forms I-9, including attachments, within thirty (30) days of when the Office of Special Counsel sends the list of individuals.
- 15. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel may in its sole discretion notify Respondent of the purported violation without opening an investigation. Respondent will then be given thirty (30) days from the date it is notified by the Office of Special Counsel in which to cure the violation to the satisfaction of the Office of Special Counsel before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
- 16. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent's employment practices.
- 17. The provisions of paragraph 1 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for the unfair documentary practices that are the subject of the OSC investigation through the date this Agreement is signed by all parties.
- 18. Any action to enforce or interpret this Agreement may be enforced in the United States District Court of the Southern District of Florida or any other court of competent jurisdiction.

19. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that the Office of Special Counsel believes 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.
20. 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 thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and the Office of Special Counsel shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement invalid.
21. The Office of Special Counsel and Respondent shall bear their own costs, attorneys' fees and other expenses incurred in this action.
22. 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 shall be bound by facsimile signatures.
23. The effective date of this Agreement shall be the date on which it is executed by the last party.

The School Board of Miami-Dade County, Florida

By:


Alberto Carvalho
Superintendent of Schools

Dated:

10/16/15

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:


Alberto Ruisanchez
Deputy Special Counsel

Dated:

10-22-2015

C. Sebastian Aloot
Special Litigation Counsel

Liza Zamd
Trial Attorney