

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the United States Department of Justice, through the United States Attorney's Office for the District of New Jersey and on behalf of the United States Department of Agriculture (collectively the "United States"); the State of New Jersey Department of Education, Office of Fiscal Accountability and Compliance ("OFAC"); the State of New Jersey Department of Agriculture, Division of Food and Nutrition ("NJDA"); and the Elizabeth Board of Education (the "District"), through their authorized representatives - (each is a "Party" and all collectively referred to herein as, the "Parties").

RECITALS

1. The District participates in the National School Lunch Program (the "Program"), 7 C.F.R. § 210, a federal assisted meal program that provides reimbursement payments to ensure low-cost or free meals (breakfast, lunch and snacks) for certain qualifying students. The United States Department of Agriculture, Food and Nutrition Services administers the program on a federal level, however, oversight, compliance and general administration is done on the state level (in this case, by OFAC and NJDA). See 7 C.F.R. § 210.
2. The Program requires certain state revenue matching of federal funds. 7 C.F.R § 210.17. Thus, the District receives both federal and state funds designated specifically for the Program. All Program funds received by the

District, whether federal or state, must be used solely for approved Program purposes. 7 C.F.R. §210.

3. Pursuant to the Program, the District must maintain a Food and Nutrition Service ("FNS") that complies with applicable federal and state regulations. Id. Among other requirements, the District must maintain a separate and independent financial budget and account for all Program funds. Id. The District is permitted to create revenue for its FNS. Id. This includes, but is not limited to, providing catering services so long as all money used for and earned from these services is reimbursed to the District's FNS and used for approved Program purposes. Id.

4. While the District has provided certain funding to FNS between July 1, 2008 and June 30, 2014, the United States contends that it has certain civil, administrative, and equitable claims against the District to collect, reimburse, and/or apply \$182,242.61 to its FNS for catering services and other expenses provided to the District's Board and \$90,567.14 for catering services provided to various schools, principals, and administrators within the District for other special functions for a six-year period between July 1, 2008 and June 30, 2014, (hereinafter referred to as the "Covered Conduct"), thereby depriving the District's FNS of the use of \$272,809.75.

5. While the District does not acknowledge or admit any wrongdoing related to the way it accounted for these expenditures, which it maintains were

proper, it has reimbursed FNS and has fully cooperated with the United States in resolving this matter.

6. To avoid the delay, expense, inconvenience, and uncertainty of litigation of these claims, the Parties agree to settle, compromise, and resolve all existing or potential claims the United States may have against the District based on the Covered Conduct pursuant to the Terms and Conditions below.

7. This Agreement is neither an admission of liability by the District, nor is it a concession by the United States that its claims are not well founded. In consideration of the mutual promises, covenants, and obligations set forth in this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

8. As of the Effective Date of this Agreement, the District has transferred/credited to its FNS the sum of \$272,809.75 (the "FNS Credit") for the alleged Covered Conduct. The District's FNS shall have full use and benefit of the FNS Credit for Program approved purposes.

9. Within ten (10) business days of the Effective Date of this Agreement, the District shall pay to the United States the sum of \$49,500.00 ("Settlement Amount") for the above described Covered Conduct that is alleged to have occurred within the District of New Jersey.

10. The Settlement Amount shall be paid by certified check made out to the "United States Department of Justice" and tendered to 970 Broad Street, Suite 700, Newark, NJ 07102, or, the payment may be made by electronic funds transfer

to the United States Department of Justice. Failure to make timely payment may, at the option of the United States, result in the entire debt being declared in default and declared due and owing in full thereafter.

11. The District agrees to three (3) years of monitoring and oversight of its FNS program and all Program related funds (the "Monitoring"). The Monitoring shall be conducted by OFAC and/or NJDA; shall take place between the Effective Date of this Agreement and June 30, 2018; shall be conducted at the request of OFAC and/or NJDA with 30 days notice to the District; and no more than two (2) Monitoring reviews in total between and amongst OFAC and NJDA shall occur within a given school year (between July 1st – June 30th). The Monitoring pertains to this Agreement only and shall in no way limit, change, or otherwise affect any standard or routine monitoring and compliance as regulated and/or defined by state and federal guidelines. The Monitoring described herein shall be in addition to any standard or routine monitoring and compliance.

12. The District agrees to a one day training/technical support and guidance session (the "Training") to be coordinated and conducted by OFAC and NJDA for the District's Chief Budget and Finance Officers and FNS Administrators. The Training shall occur between the Effective Date of this Agreement and on or before September 30, 2015, or on an otherwise mutually agreed date, time and location as determined between the District, OFAC, and NJDA.

13. OFAC will prepare and issue a "Report of Examination – April 2015, Elizabeth School District – Food Services Expenditure Review" (the "ROE")

regarding the Covered Conduct and applicable New Jersey State regulations. The ROE will require the District to submit a Corrective Action Plan ("CAP") to address the Covered Conduct and OFAC's findings regarding same within the timeframe mandated by N.J.A.C. 6A:23A-5.6. This Agreement in no way limits OFAC's ability to seek proper redress under applicable laws and regulations should the District fail to submit the CAP or otherwise comply with the ROE. This Agreement in no way limits the District's right to seek a review of the findings, recommendations, or questioned costs (if any) set forth in the ROE and/or to file an appeal in accordance with applicable laws and regulations.

14. Subject to the exceptions in Paragraph 17 below, in consideration of the obligations and undertakings of the District set forth in this Agreement, conditioned upon the District's payment of the full FNS Credit and Settlement Amount, the United States agrees to settle and relinquish all civil, administrative, and equitable claims it has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law against the District for the Covered Conduct. The United States does not release any individuals by this Agreement.

15. In consideration of the obligations and undertakings of the District set forth in this Agreement, conditioned upon the District's payment of the full FNS Credit and submission of the CAP, OFAC and NJDA agree to settle and relinquish all civil, administrative, and equitable claims they have or may have under applicable New Jersey State law against the District for the Covered Conduct.

Accordingly, OFAC and NJDA will seek no further financial recovery or penalties for the Covered Conduct outside of those provided for and agreed to in this Agreement. OFAC and NJDA do not release any individuals by this Agreement.

16. The District fully and finally releases the United States, OFAC, NJDA, and their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which it has asserted, could have asserted, or may assert in the future against the United States, OFAC, NJDA, and their agencies, employees, servants, and agents, related to the investigation, prosecution and settlement of this matter.

17. Notwithstanding any term of this Agreement, specifically reserved and excluded from its scope and terms as to any entity or person are the following:

- A. Any potential criminal liability;
- B. Any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Service);
- C. Any liability of individuals, including officers and employees of the District;
- D. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- E. Any liability under applicable state laws and regulations for failure to submit the CAP and/or otherwise comply with the ROE; and
- F. Any liability and/or claims based on such obligations as are created by this Agreement.

18. The District agrees that any and all costs it has or will incur in connection with this matter -- including payment of the FNS Credit and Settlement Amount under this Agreement, attorney's fees, costs of investigation, negotiation, and remedial action -- shall be unallowable costs for federal government contract accounting.

19. This Agreement is not intended by the Parties to be, and shall not be interpreted to constitute a release of any person, any claim, or any entity not identified or referred to herein.

20. This Agreement shall be governed by the laws of the United States. If a dispute arises under this Agreement between the Parties, exclusive jurisdiction and venue shall lie in the federal judicial district of District of New Jersey and to the extent that state law applies to the dispute, the law of the state of New Jersey shall apply.

21. The Parties agree that this Agreement does not constitute evidence or an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact.


22. This Agreement constitutes the entire agreement between the Parties, and cannot be amended except in writing and when signed by all the Parties to this Agreement.

23. The District acknowledges that its authorized representatives have read and approved this Agreement and understand that as of its Effective Date, it will be a matter of public record.

24. Each person who signs this Agreement in a representative capacity warrants that he or she is fully authorized to do so.

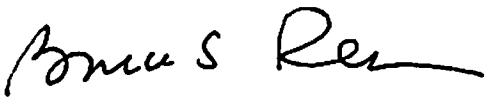
25. This Agreement shall become effective (i.e., final and binding) on the date of signing by the last signatory (the "Effective Date"). It may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

On Behalf of Elizabeth Board of Education



Marvin Lehman, Esq.
Supervising General Counsel/ Board Attorney

Dated: 4/17/15



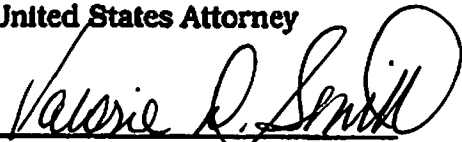
By: Bruce S. Rosen
Attorney for Elizabeth Board of Education

Dated: 4/17/15

**On Behalf of the United States and
The United States Department of Agriculture:**

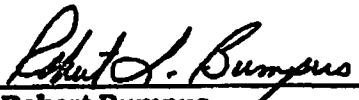
PAUL J. FISHMAN
United States Attorney

Dated: 4/20/15



By: Valorie D. Smith
Assistant U.S. Attorney

**On Behalf of State of New Jersey Department of Education, Office of Fiscal
Accountability and Compliance**



By: Robert Bumpus
Assistant Commissioner

Dated: 4/17/15

**On Behalf of State of New Jersey Department of Agriculture, Division of Food
and Nutrition**



By: Rose Tricario
Director, Division of Food & Nutrition

Dated: 4/20/15

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BOARD OF EDUCATION
RESOLUTION
SETTLEMENT OF CLAIMS

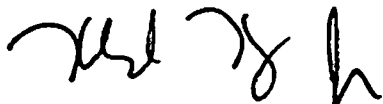
WHEREAS, the attorney on behalf of the Elizabeth Board of Education has recommended settlement of claims between the United States Department of Agriculture, et al. and the Elizabeth Board of Education; and

WHEREAS, the Board has determined it to be in the best interest to settle this matter as recommended, and in accordance with the terms as set forth in the Settlement Agreement; and

NOW, THEREFORE, BE IT RESOLVED that the Board hereby accepts and approves the terms of the settlement agreement and that the foregoing claims are resolved and approved for a settlement; and it is

FURTHER RESOLVED, that the attorney of record for the Elizabeth Board of Education is authorized to resolve the matter and sign the settlement agreement which shall be filed in the Office of the School Business Administrator/Board Secretary.

TRUE COPY APPROVED AND ADOPTED AT
THE BOARD OF EDUCATION MEETING
HELD ON APRIL 16, 2015



Harold E. Kennedy, Jr.
School Business Administrator/Board Secretary
Elizabeth, New Jersey
April 16, 2015

14-198

Resolution – Settlement Agreement

A motion was made by Mrs. Castillo-Ospina, seconded by Mr. Perreira, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Ms. Bathelus, Mrs. Castillo-Ospina, Messrs. Monteiro, Neron, Perreira, Rodriguez, Trujillo, Mrs. Amin – 8

Abstain: Mrs. Carvalho – 1

Negative: None