

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

SETTLEMENT AND FULL AND FINAL RELEASE AGREEMENT

WHEREAS, the Houston Federation of Teachers, Local 2415 (“HFT”), Daniel Santos, Paloma Garner, Ivan Castillo, Andy Dewey, Joyce Helfman, Myla Van Duyn, Araceli Ramos, Debra Savage, and Alicia Montgomery, and the Houston Independent School District (“HISD”), collectively referred to as the “Parties,” wish to resolve any disputes between them in a mutually satisfactory and beneficial manner.

WHEREAS, the Parties voluntarily execute this Settlement and Full and Final Release Agreement (“Agreement”) with the express intention of settling and extinguishing all obligations, demands, claims, causes of action, and liability of whatever nature that were or could have been raised in the Lawsuit styled as *Civil No. 4:14-cv-01189; HFT, Local 2415, Daniel Santos, et al v Houston Independent School District; US District Court, Southern District of Texas, Houston Division* (hereinafter referred to as “the Lawsuit”) filed on April 30, 2014, asserting constitutional challenges to HISD’s use of EVAAS to make certain personnel decisions.

WHEREAS, HISD discontinued its contract with the vendor that provides EVAAS shortly after the 2015-2016 school year, and represents that since that time, it has used EVAAS for informational purposes only.

WHEREAS, on September 9, 2016, HISD moved for summary judgment, and on May 4, 2017, the Court granted summary judgment to HISD on all claims, but one.

WHEREAS, in order to avoid further costs and expenses of continued litigation, the Parties have agreed to settle all claims that they have or may have against one another without admission by either Party of the merits of the claims, demands, charges and/or contentions of the other Party.

WHEREAS, HISD specifically denies all Plaintiffs’ claims and allegations, including all allegations in Plaintiffs’ Lawsuit.

WHEREAS, this Agreement is entered into on behalf of HISD, its trustees, officers, employees, agents, attorneys, heirs, and successors; HFT, its officers, employees, agents, attorneys, heirs, and successors; Daniel Santos; Paloma Garner; Ivan Castillo; Andy Dewey; Joyce Helfman; Myla Van Duyn; Araceli Ramos; Debra Savage; and Alicia Montgomery.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Use of EVAAS: In consideration of Plaintiffs' promises set forth herein, HISD agrees it will not in the future use value-added scores, including but not limited to EVAAS scores, as a basis to terminate the employment of a term or probationary contract teacher during the term of that teacher's contract, or to terminate a continuing contract teacher at any time, so long as the value-added score assigned to the teacher remains unverifiable.

2. Formation of Instructional Consultation Subcommittee: HISD agrees to create an instructional consultation subcommittee for the purpose of discussing issues and making recommendations related to HISD's teacher appraisal process. The subcommittee shall be co-chaired by HISD's Superintendent, or his designee, and an employee representative chosen by the employee organization members of instructional consultation. Additional subcommittee members, if any, shall be chosen by the co-chairs. The subcommittee will meet at least 4 times during the 2017-2018 school year, with no obligation to meet thereafter. Neither the Superintendent nor the HISD Board of Education shall be bound by any discussions or recommendations arising from the subcommittee.

3. Attorneys' Fees and Costs: HISD agrees to pay the sum of two hundred thirty-seven thousand dollars and 00/100 cents (\$237,000) for attorneys' fees and expenses. This payment shall be made within twenty-one (21) days of the finalization of this Agreement and provision of any required W-9 forms to the District. The payment will be made to Texas AFT and the law firm of Deats, Durst & Owen, PLLC. Defendants shall not have any tax liability on this amount.

By tendering the above payment, HISD does not admit any liability as a result of the Lawsuit and denies that Plaintiffs are entitled to attorneys' fees or costs. Plaintiffs acknowledge that the issues of liability and amount of attorneys' fees and costs, if any, are matters in dispute between the Parties and that no court or government agency has determined that the amounts described above are owed to Plaintiffs. Plaintiffs acknowledge that the payment described in this paragraph is being provided by HISD in exchange for Plaintiffs' acceptance and signing of this Agreement and for Plaintiffs' agreement to dismiss, with prejudice, the Lawsuit.

4. Dismissal of Lawsuit: HFT, Daniel Santos, Paloma Garner, Ivan Castillo, Andy Dewey, Joyce Helfman, Myla Van Duyn, Araceli Ramos, Debra Savage, and Alicia Montgomery (the "Plaintiffs") agree to dismiss or cause to be dismissed with prejudice the Lawsuit by filing a Rule 41 stipulation of dismissal within 3 days of the execution of this Agreement. The Plaintiffs further agree that if, for any reason, they do not file the Rule 41 stipulation of dismissal as set forth above, HISD is excused from further performance under this Agreement.

5. Mutual Release: For and in consideration of the promises set forth herein, Plaintiffs and HISD, each for itself and its respective successors and assigns, releases acquits, forever discharges, and covenants not to sue, or bring any other legal or administrative action against the other and its respective affiliates, successors, predecessors, assigns, officers, directors, trustees, board members, employees, independent contractors, insurers and attorneys for any and all claims, demands, actions, controversies, causes of action, suits, debts, damages, losses, and injuries of whatever kind or nature, both past and present, foreseen or unforeseen, whether known or unknown at this time, whether

at law or in equity or otherwise, including, but not limited to, claims for violations of the United States Constitution, Texas Education Code, violations of civil rights, contract, tort, economic losses, or other injuries, which were asserted or could have been asserted, arising out of any actions, omissions, transactions, events, or occurrences which gave rise to or could have given rise to the Lawsuit. This Release specifically includes any claim that was raised or could have been raised in the Lawsuit.

6. No Pending Claims: The Plaintiffs promise not to sue or file any claim in any state of federal forum that relates to the claims released in Paragraph 5 of this Agreement. The Plaintiffs represent and confirm that, as of the date of the execution of this Agreement, other than the Lawsuit, they have not filed or otherwise initiated any lawsuit, complaint, charge, or other proceeding against the Released Parties in any local, state, or federal court, agency, board or governmental entity based upon events occurring prior to the date of execution of this Agreement. **Plaintiffs expressly waive any right to damages or other legal or equitable relief awarded by any governmental agency or court against HISD, its trustees, officers, employees, agents, attorneys, heirs, and successors relating to any lawsuit, complaint, charge, or other proceeding (regardless by whom filed) that is pending or that is filed in the future and which is based on events occurring prior to the execution of this Agreement and included within Plaintiffs' Release, except as specifically provided in this Agreement.**

7. No Admission of Liability: The Parties understand and acknowledge that by entering into this Agreement, neither Party admits any liability to any claim that was raised or could have been raised as part of the Lawsuit. HISD specifically denies any liability, and disputes Plaintiffs' claims and allegations in the Lawsuit. Furthermore, neither the agreements specified in this Agreement (including any payments) nor the statements made during negotiations for this Agreement by the Parties shall be considered admissions of liability or admissions of the truth or falsity of the claims made in the above-referenced lawsuit. No past or present wrongdoing shall be implied by such agreements or negotiations.

8. Governing Law: The Parties agree that Texas law shall govern the validity and interpretation of this Agreement insofar as federal law does not control. Venue shall be in Harris County insofar as 28 U.S.C. § 1391 does not control. The Parties further agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the Parties allege a breach of this Agreement or seek to enforce the Release contained in Paragraph 5. Other than these exceptions, the Parties agree that this Agreement will not be introduced as evidence in any proceeding, except as may be ordered by a court, administrative officer, or otherwise required by law.

9. Miscellaneous: This Agreement is intended to, and does, settle and release any and all claims for attorneys' fees and/or costs.

10. Entire Agreement: The Parties agree that the foregoing constitutes the entire Agreement between them. This Agreement supersedes any prior written or oral agreements. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any Party hereto which is not embodied in this Agreement, and no Party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth.

11. Modification and Waiver: This Agreement shall not be changed, modified, terminated, canceled or amended except by a written instrument signed by each Party. The failure to exercise, or a delay in exercising, any right, remedy or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power under this Agreement preclude any other or further exercise thereof.

12. Federal and State Law: Nothing in this Agreement prohibits either Party from complying with any federal or state law, as it currently exists or is hereinafter amended.

13. Signatories: The Parties expressly warrant that they are legally empowered and competent to execute this Agreement and that they have not and will not in the future assign, pledge, transfer, or otherwise convey any right, title, interest, or claim in this matter to any third Party.

14. Cooperation of the Parties: The Parties agree to cooperate fully to execute any supplementary documents necessary to effectuate this Agreement and to take all additional actions that may be necessary or appropriate to give force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms. Each Party shall bear his, her or its own attorneys' fees, costs, and expenses arising from the negotiation, preparation and implementation of this Agreement.

15. No Assignment of Claims: The Parties covenant and warrant that they have not assigned, transferred, or subrogated any portion of any claim they have or could have asserted in connection with the Lawsuit.

16. Construction: The Parties expressly understand and agree that the terms contained in this Agreement are contractual and not merely recitals, and that the provisions contained herein and the consideration transferred are to compromise disputed claims, to avoid litigation, and buy peace. Each Party and counsel have reviewed and approved this Agreement, and accordingly any presumption or rule of construction permitting ambiguities to be resolved against the drafting Party shall not be employed in the interpretation or application of this Agreement.

17. Authority to Execute Agreement: Each of the undersigned Parties represent that he or she is of legal age, is legally competent to execute this Agreement, and possesses the requisite legal authority.

18. Headings: The headings in each paragraph herein are for convenience and reference only and shall be of no legal effect in the interpretation of the terms hereof.

19. Effective Date: This Agreement will become effective and binding upon execution of all signatories listed below.

20. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one agreement.

ACCEPTED AND AGREED:

PLAINTIFFS

By: 
Houston Federation of Teachers,
Local 2415

September 18, 2017
Date

By: 
Daniel Santos

September 15, 2017
Date

By: _____
Paloma Garner

Date

By: 
Ivan Castillo

September 15, 2017
Date

By: 
Andy Dewey

September 15, 2017
Date

By: _____
Joyce Helfman

Date

By: _____
Myla Van Duyn

Date

By: _____
Araceli Ramos

Date

ACCEPTED AND AGREED:


PLAINTIFFS

By: _____
Houston Federation of Teachers,
Local 2415

Date

By: _____
Daniel Santos

Date

By:  _____
Paloma Garner

9/19/17
Date

By: _____
Ivan Castillo

Date

By: _____
Andy Dewey

Date

By: _____
Joyce Helfman

Date

By: _____
Myla Van Duyn

Date

By: _____
Araceli Ramos

Date

ACCEPTED AND AGREED:

PLAINTIFFS

By: _____
Houston Federation of Teachers,
Local 2415
Date _____

By: _____
Daniel Santos
Date _____

By: _____
Paloma Garner
Date _____

By: _____
Ivan Castillo
Date _____

By: _____
Andy Dewey
Date _____

By: _____
Joyce Helfman
Joyce Helfman
Date *Sept. 18, 2017*

By: _____
Myla Van Duyn
Date _____

By: _____
Araceli Ramos
Date _____

ACCEPTED AND AGREED:

PLAINTIFFS

By: _____
Houston Federation of Teachers,
Local 2415

Date

By: _____
Daniel Santos

Date

By: _____
Paloma Garner

Date

By: _____
Ivan Castillo

Date

By: _____
Andy Dewey

Date

By: _____
Joyce Helfman

Date

By:  _____
Myla Van Duyn

9/22/17
Date

By: _____
Araceli Ramos

Date

ACCEPTED AND AGREED:

PLAINTIFFS

By: _____
Houston Federation of Teachers,
Local 2415

Date

By: _____
Daniel Santos

Date

By: _____
Paloma Garner

Date

By: _____
Ivan Castillo

Date

By: _____
Andy Dewey


Date

By: _____
Joyce Helfman

Date

By: _____
Myla Van Duyn

Date

By: _____

Araceli Ramos

09/20/2017
Date

By: Debra Savage
Debra Savage

9/15/17
Date

By: _____
Alicia Montgomery

Date

DEFENDANT

Richard A. Carranza
Superintendent of Schools

Date

Wanda Adams
Board President

Date

Rhonda Skillern-Jones
Board Secretary

Date

APPROVED AS TO FORM:

COUNSEL FOR PLAINTIFFS

By: _____
Martha P. Owen

Date: _____

COUNSEL FOR HOUSTON INDEPENDENT SCHOOL DISTRICT

By: _____
Elneita Hutchins-Taylor
General Counsel

Date: _____

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By: _____
Debra Savage

_____ Date

By: Alicia Montgomery
Alicia Montgomery

9/20/17
_____ Date

DEFENDANT
Richard A. Carranza
Richard A. Carranza
Superintendent of Schools

10/2/17
_____ Date

Wanda Adams
Wanda Adams
Board President

10-2-17
_____ Date

Rhonda Skillern Jones
Rhonda Skillern Jones
Board Secretary

10/2/17
_____ Date

APPROVED AS TO FORM:

COUNSEL FOR PLAINTIFFS

By: Martha P. Owen
Martha P. Owen

Date: September 25, 2017

COUNSEL FOR HOUSTON INDEPENDENT SCHOOL DISTRICT

By: Elneita Hutchins-Taylor
Elneita Hutchins-Taylor
General Counsel

Date: 10-2-2017

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