

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is an agreement by and between MR. VITO DIBIASI (hereinafter referred to as "MR. DIBIASI"), a tenured teacher employed by the PORT JERVIS CITY SCHOOL DISTRICT, MR. THOMAS BONGIOVI, SUPERINTENDENT OF SCHOOLS (hereinafter referred to as "SUPERINTENDENT" or "RELEASEE"), and the BOARD OF EDUCATION of the PORT JERVIS CITY SCHOOL DISTRICT (hereinafter occasionally referred to as "THE DISTRICT", or the "BOARD" or "RELEASEE"), and

WHEREAS, MR. DIBIASI has asserted that he is suffering from a medical condition which precludes him from reporting for work and performing his duties as a tenured teacher; and

WHEREAS, MR. DIBIASI has submitted medical evidence showing that he is suffering from a medical condition which precludes him from reporting for work and performing his duties as a tenured teacher until December 12, 2016; and

WHEREAS, MR. DIBIASI has exhausted his personal accumulation of sick leave and had previously submitted an application to the DISTRICT'S Sick Leave Bank Committee (hereinafter "SLB Committee") requesting the grant of sixty-six (66) sick bank days to cover his absence through December 12, 2016; and

WHEREAS, the DISTRICT'S representative on the SLB Committee denied the request pursuant to the applicable collective bargaining agreement between the BOARD and the PORT JERVIS TEACHERS' ASSOCIATION (hereinafter "CBA"); and

WHEREAS, said denial has resulted in the filing of a grievance by the PJTA (hereinafter the "Grievance"); and

WHEREAS, the parties are desirous of resolving their differences and avoiding litigation, the parties have had all the terms and conditions of the instant Settlement Agreement and General Release (hereinafter "Agreement") clearly explained, and now freely consent to enter into this Agreement, such consent not having been induced by fraud, duress or any other undue influence; and

WHEREAS, no person not a party to this proceeding has an interest in its outcome, and no party to this proceeding is an infant or incompetent person for whom a committee has been appointed, and,

WHEREAS, (i) MR. DIBIASI has been represented by his union representative and/or has been given an opportunity to consult with legal counsel of his choice; (ii) has been given a reasonable period within which to consider this Agreement; and (iii) understands that in executing this Agreement he is, inter alia, giving up any and all rights and claims which he has, had, or may have had in law or in equity under all federal, state, county or local statutes, laws, rules and regulations pertaining to employment, as well as any and all claims under tort law, or which were or could have been alleged by him, except for the rights and claims otherwise set forth in this Agreement, including those rights and claims which are to survive this Agreement pursuant to its terms;

NOW, THEREFORE, in consideration of the said mutual undertakings and promises contained in this Agreement and other good and valuable consideration, the parties agree and covenant as follows:

1. The above recitations of facts and circumstances set forth in all of the preceding "Whereas" clauses are expressly incorporated herein and form a part of the terms of this Agreement.

2. MR. DIBIASI herewith submits his irrevocable resignation for purposes of retirement from his position as a tenured teacher, effective December 12, 2016. Said letter of resignation is attached hereto as Exhibit "A". For the period of time between the date of execution of this Agreement until December 12, 2016, the following shall be applicable:

- a. MR. DIBIASI shall be granted sixty-six (66) days from the sick leave bank, shall continue to be paid his regular salary in effect from the date of execution of this Agreement until his resignation on December 12, 2016 and shall continue to receive all applicable fringe benefits subject to and in accordance with the CBA. All salary and fringe benefits shall be prorated for the 2016-17 school year through December 12, 2016.
- b. MR. DIBIASI shall not be required to report for work pursuant to the medical documentation previously submitted to the DISTRICT.
- c. MR. DIBIASI shall be eligible for the same retiree benefits as similarly situated bargaining unit retirees, including but not limited to health insurance coverage into retirement in accordance with and subject to the applicable CBA.

d. Effective the close of business on December 12, 2016, MR. DIBIASI acknowledges that he has, by this Agreement, relinquished all right, title and interest in any position of the PORT JERVIS CITY SCHOOL DISTRICT, including, but not limited to the position of tenured teacher.

3. Other than as set forth in the foregoing paragraph "2", the parties specifically agree that there shall be no additional monies or benefits paid to MR. DIBIASI in connection with this Agreement and/or his separation from employment with the PORT JERVIS CITY SCHOOL DISTRICT.

4. For purposes of this Agreement the word "RELEASEES" shall include the PORT JERVIS CITY SCHOOL DISTRICT, its members, officers, employees, agents, and independent contractors, the SUPERINTENDENT of SCHOOLS of the PORT JERVIS CITY SCHOOL DISTRICT, individually and in his official capacity, the BOARD OF EDUCATION OF THE PORT JERVIS CITY SCHOOL DISTRICT, its members, individually and in their official capacity, its officers, employees, agents, and independent contractors.

5. MR. DIBIASI, for and in consideration of the promises and/or payments made by RELEASEES as set forth herein and other good and valuable consideration, hereby releases and forever discharges, and by this instrument does release and forever discharge the PORT JERVIS CITY SCHOOL DISTRICT and RELEASEES of and from all actions, causes of action, suits, charges, complaints, proceedings, grievances, obligations, costs, losses, damages, injuries, attorneys' fees, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements and promises of any form whatsoever (collectively referred to as "claims") including, but not limited to, any claims in law, equity, contract, tort or those claims which were or could have been alleged up until the date of execution of this Agreement, or any claims arising under any and all federal, state, county or local statutes, laws, rules and regulations pertaining to employment, as well as any and all claims under state or federal contract or tort law against RELEASEES, whether known or unknown, unforeseen, unanticipated, unsuspected, or latent which he, his heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of execution of this Agreement, except a claim that RELEASEES have failed to comply with any obligations created by this Agreement.

Without limiting the generality of the foregoing, MR. DIBIASI agrees that he knowingly and voluntarily waives all rights he has, had or may have had (or that of anyone on his behalf) to commence or prosecute any lawsuit, charge, claim, complaint, or other legal proceeding or action against RELEASEES, with the exception of any lawsuit, charge, claim, complaint, or other legal proceeding that may arise after the execution of this Agreement, whether as an individual or class action, with any administrative agency, court or other forum, including, but not limited to claims brought under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., the Pregnancy Discrimination Act of 1978, 42 U.S.C. §2000e(k), the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991), 42 U.S.C. §1981, the Fair Labor Standards Act, 29 U.S.C. §201 et seq., the National Labor Relations Act, 29 U.S.C. §151 et seq., the Equal Pay Act of 1963, 29 U.S.C. §206(d), the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq., the Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq., the New York State Human Rights Law, N.Y. Executive Law §290 et seq., Title IX, 20 U.S.C. §1681 et seq., the New York Civil Rights Law, N.Y. Civil Rights Law §79-e et seq., the New York Equal Pay Law, N.Y. Labor Law §§194-198, the New York Workers' Compensation Law, N.Y. Workers' Compensation Law §1 et seq., under any and all other federal, state and local equal employment, fair employment and civil or human rights law (whether statutory, regulatory or decisional), under the statutory, regulatory or common law of any jurisdiction, including, but not limited to, any and all tort claims (e.g., assault, battery, false imprisonment, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, wrongful termination, negligent hiring, supervision and/or retention, conversion, interference with contract, abusive discharge) and under any and all federal, state and local laws relating to employment and/or gender discrimination, pregnancy discrimination, sexual and/or other harassment, retaliation, benefits, labor or employment standards, or retaliation, with the exception that MR. DIBIASI does not waive any right he has or may have, or that anyone on his behalf may have, to commence or prosecute any lawsuit, charge, claim, complaint, or other legal proceeding or action against the RELEASEES, or any of them, based on the failure or refusal of the RELEASEES, or any of them, to comply with any obligations created by this Agreement.

Nothing herein shall be interpreted to suggest that MR. DIBIASI waives any rights he may have to commence or prosecute any lawsuit, charge, claim, complaint, or other legal proceeding or action against RELEASEES that may arise subsequent to the execution of this Agreement.

6. MR. DIBIASI specifically agrees that he knowingly and voluntarily releases and forever discharges, and by this instrument does release and forever discharge the PORT JERVIS CITY SCHOOL DISTRICT and RELEASEES of and from all actions, causes of action, suits, charges, complaints, proceedings, grievances, obligations, costs, losses, damages, injuries, attorneys' fees, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements and promises of any form whatsoever (collectively referred to as "claims"), specifically in relation to the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621 et seq., which were or could have been alleged by MR. DIBIASI, his heirs, executors, administrators, successors and assigns up until the date of execution of this Agreement. It is understood that this paragraph and the release herein is limited to the Age Discrimination in Employment Act of 1967.

To comply with the Older Workers Benefit Protection Act of 1990 (OWBPA), this Settlement and Release has advised MR. DIBIASI of the legal requirements of the Act, and fully incorporates the legal requirements by reference into this Agreement as follows:

- a) MR. DIBIASI understands the terms of this Agreement;
- b) MR. DIBIASI has been advised of his right to consult with an attorney to discuss the terms of this Agreement, and specifically acknowledges that he has fully discussed the terms of this Agreement with legal counsel of his own choosing and understands the meaning and effect of his waiver of all rights and claims under the ADEA;
- c) MR. DIBIASI does not waive any rights or claims under the ADEA that may arise after the date of execution of this Agreement;
- d) MR. DIBIASI is receiving consideration beyond anything of value to which he is already entitled in exchange for his execution of this Agreement;

- e) MR. DIBIASI acknowledges that RELEASEES have afforded him the opportunity to consider the terms of this Agreement for a period of twenty-one (21) days;
- f) The parties acknowledge that MR. DIBIASI may revoke this Agreement within seven (7) days after the Agreement has been executed by all parties and that the Agreement shall not become effective until the eighth (8th) day after the execution of this Agreement. In the event MR. DIBIASI chooses to exercise his option to revoke this Agreement, MR. DIBIASI shall notify the SUPERINTENDENT in writing of said revocation, no later than 5:00 P.M. of the last day of the revocation period.

7. This Agreement shall not be effective or binding upon MR. DIBIASI and/or RELEASEES unless and until it is approved by the BOARD, by formal resolution.

8. MR. DIBIASI represents and acknowledges that no representation, statement, promise, inducement, threat or suggestion has been made by RELEASEES and/or the attorneys for RELEASEES, to influence him to sign this Agreement, except such statements as are expressly set forth herein.

9. MR. DIBIASI acknowledges and agrees that he has been given a sufficient time period within which to consider this Agreement, that he has read this Agreement, that he has fully discussed the terms of this Agreement with his union representative and that he has fully reviewed with his union representative the claims and rights which are being released and his obligations under this Agreement. MR. DIBIASI further acknowledges and agrees that, in deciding to execute this Agreement, he has had the opportunity to ask any questions that he may have of anyone, including legal counsel and other personal advisors of his own choosing and that he has executed this Agreement freely, voluntarily, and of his own will, and with full and complete understanding of its terms and effects.

10. The parties acknowledge that this Agreement represents the full, final, and complete resolution of this matter; so that this Agreement supersedes all prior agreements, written or oral, if any, between the parties. This Agreement may not be changed except by an instrument in writing signed by the parties.

11. Except as required by law, or except pursuant to the direction of the Commissioner of Education or pursuant to an order of a court of competent jurisdiction, the

existence and terms of this Agreement, the consideration paid hereunder, the identity of the parties released under this Agreement and the documents and correspondence between the parties and the discussions and negotiations concerning the settlement are deemed confidential, and shall not be disclosed by any party to any individual or entity not a party to this Agreement. Without limiting the generality of the foregoing, each party to this Agreement shall not initiate, nor respond to, nor in any way participate in, nor contribute to any discussion, public, private or otherwise, nor take part in any other form of publicity concerning, nor in any way relating to, the execution and terms of this document and the disputes between the parties that led to any of the differences and/or disputes between them.

12. If any provision of this Agreement is determined to be contrary to law by a court of competent jurisdiction, it is understood and agreed that such provision shall be deemed deleted and the balance of this Agreement without such deleted provision, if otherwise lawful, shall remain in full force and effect. If any such deleted provision involves compensation or a monetary or fringe benefit, the undersigned parties agree to negotiate, as part of this Agreement in place of such deleted provision, a substitute of comparable value thereto, and in the event the undersigned parties are unable to agree on a substitute for a period exceeding forty-five (45) days from the date of the declaration of illegality, either party hereto may submit the issue for final disposition to arbitration by the American Arbitration Association pursuant to its Rules for Voluntary Labor Arbitration. The arbitrator appointed to hear the matter shall be empowered to make an award of comparable value or compensation as reasonably fulfills the intent of the parties under the deleted provision.

13. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

14. MR. DIBIASI herewith acknowledges that, upon the execution of this Agreement by all parties, the above-referenced Grievance filed by the PJTA on his behalf will be withdrawn by the PJTA with prejudice.

SIGNATURE PAGE TO FOLLOW

Dated:

By: _____
VITO DIBIASI

On the _____ day of September, 2016, before me personally came VITO DIBIASI, to me known and known to be the individual described herein.

Notary Public

Dated:

By: _____
THOMAS BONGIOVI
Superintendent of Schools

On the _____ day of September, 2016, before me personally came THOMAS BONGIOVI, to me known and known to be the individual described herein.

Notary Public

Sure

BOARD OF EDUCATION of the PORT
JERVIS CITY SCHOOL DISTRICT

Dated:

By: _____
DEBBIE LASCH
Board President

On the _____ day of September, 2016, before me personally came DEBBIE LASCH, to me known and known to be the individual described herein.

Notary Public

EXHIBIT A

September , 2016

Dear Superintendent Bongiovi:

I herewith submit my resignation for the purposes of retirement from the position of tenured teacher. My resignation shall be effective on December 12, 2016. I understand, acknowledge and agree that this letter of resignation is irrevocable.

My resignation is subject to and contingent upon the execution of a certain Agreement by the Board of Education of the Port Jervis City School District ("Agreement"). My resignation is also subject to and contingent upon, as specifically set forth in Article 2(c) of the Agreement, my receipt of the same retiree benefits as similarly situated bargaining unit retirees, including but not limited to health insurance coverage into retirement in accordance with and subject to Article XII(H) of the CBA.

VITO DIBIASI