

AGREEMENT AND MUTUAL RELEASES

This is an Agreement and Mutual Release ("Agreement") by and between Mr. Eric D. Ely (hereinafter referred to as "Mr. Ely"), Superintendent of the Schools of the Schenectady City School District, employed by the Board of Education of the Schenectady City School District (hereinafter referred to as the "District," or the "Board" or "Releasees").

WHEREAS, the Board and Mr. Ely entered into an employment agreement on June 30, 2009, (hereinafter "Employment Agreement"), wherein the Board agreed to employ Mr. Ely as Superintendent for its District, and;

WHEREAS, pursuant to said Employment Agreement, Mr. Ely's term of employment as Superintendent for the District would terminate on June 30, 2012, and;

WHEREAS, certain irreconcilable differences have arisen between the Board and Mr. Ely, and;

WHEREAS, the Board and Mr. Ely have arrived at a mutual understanding that it is in the best interests of the District and Mr. Ely that the aforesaid Employment Agreement be terminated effective June 30, 2010, subject to certain terms and conditions, and;

WHEREAS, (i) Mr. Ely has been represented by and has consulted with the appropriate 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 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;

NOW, THEREFORE, in consideration of the said mutual undertakings and promises contained in this Agreement and other good and valuable considerations, 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. Ely's employment with the District may be terminated at the Board's sole option, effective close of business on June 30, 2010, based upon its acceptance of the Superintendent's irrevocable letter of resignation effective June 30, 2010 (Attached as Appendix "A" hereto). Effective July 1, 2010, Mr. Ely acknowledges that he has, by this Agreement, relinquished all right, title and interest in any position in the District, including, but not limited to, the position of Superintendent of the District. The District shall be entitled to appoint a Superintendent of the District effective July 1, 2010.

- a. Effective July 1, 2010 Mr. Ely shall receive continuation of compensation payments equal to \$175,000 per annum, less deductions required by law or authorized by the Superintendent, paid in equal installments, or as modified by this Agreement.
- b. Mr. Ely shall be under a duty of due diligence, effective July 1, 2010, to secure comparable employment as a Superintendent of Schools or Deputy Superintendent of Schools or Assistant Superintendent of Schools or District-wide Director of Curriculum and Instruction, or Assistant Superintendent for Personnel, or District-wide Director of Personnel, at a salary of not less than \$150,000.00 in any public school district or BOCES in the United States. The Board agrees to support Mr. Ely's efforts in this regard and specifically agrees to provide favorable recommendations in this regard in accordance with Paragraph 23 below. Due diligence efforts shall be deemed fulfilled by Mr. Ely by his making extensive efforts to make application for such advertised positions.
- c. In the event that Mr. Ely becomes professionally employed in any school district or BOCES in any position that pays an annual salary of less than \$150,000, the District will only be obligated to pay him the difference between the new salary and \$150,000 not to exceed an amount of \$25,000 pro-rated on a monthly basis, through June 30, 2011, or paid in a lump sum at the District's option in lieu of any obligation to make continuation of compensation payments as stated in Paragraph 2(a).
- d. Mr. Ely shall maintain a file, on a monthly basis, of the advertisements to which he has responded and shall notify the District when he has received a job offer, or when he has advanced as a finalist for any position. In the event that the Superintendent secures such other comparable employment at any time during the 2010-2011 school year, the District's obligations to make continuation of compensation payments, shall cease, becoming null and void except with respect to rights provided in Paragraphs 3-6, below.
- e. The District shall make a non-elective direct employer contribution to a tax sheltered annuity of the Superintendent's choice in the amount of Fourteen Thousand Eight Hundred and Ninety-Nine Dollars (\$14,899) within thirty (30) days of the effective date of Mr. Ely's resignation.

3. Mr. Ely shall be entitled to a continuation of the benefits in paragraph 7(A) of his Employment Agreement, through and including June 30, 2011. In the event that the Superintendent secures other comparable employment with comparable benefits to those in paragraph 7(A) of his Employment Agreement, prior to June 30, 2011, the District's obligations under paragraph 7(a) of his Employment Agreement dated June 30, 2009, shall cease, becoming null and void except with respect to rights provided in Paragraphs 4-6.

4. In the event that the Superintendent secures comparable employment, as described in Paragraph 2(b) above, on or before September 30, 2010, the District shall make a payment to Mr. Ely of \$100,000.00 payable in the following manner:

- a. \$26,652 on October 1, 2010 to be deposited into Mr. Ely's Section 403(b) IRC tax sheltered annuity account as a non-elective direct employer contribution, without a cash option, to the limits permitted by law; and
- b. The remainder shall be paid to Mr. Ely on October 1, 2010, in a lump sum payment, less all applicable State and federal taxes and withholdings (e.g. FICA, Medicare).

5. In the event that the Superintendent secures comparable employment, as described in Paragraph 2(b), above, on or before January 1, 2011, the District shall make a payment to Mr. Ely in the amount of \$50,000 payable in the following manner:

- a. \$49,000 on January 4, 2011 to be deposited into the Superintendent's Section 403(b) IRC tax sheltered annuity account as a non-elective direct employer contribution, without cash option; and
- b. The remainder shall be paid to Mr. Ely on January 4, 2011, in a lump sum payment, less all applicable State and federal taxes and withholdings (e.g. FICA, Medicare).

6. In the event that Mr. Ely secures comparable employment, as described in Paragraph 2(b), above, on or before April 1, 2011, the District shall make a payment to Mr. Ely in the amount of \$25,000 payable in the following manner:

- a. \$25,000 on April 1, 2011 to be deposited into the Superintendent's Section 403(b) IRC tax sheltered annuity account as a non-elective direct employer contribution, without cash option, to the limits permitted by law.

7. In the event that the Board exercises its option as described in Paragraph 2, above, and should the Superintendent of Schools, after having exercised due diligence as described in Paragraph 2(c), above, fails to secure comparable employment on or before June 30, 2011, all obligations of the District to the Superintendent shall cease on and after June 30, 2011.

8. The District shall, to the maximum extent permitted by New York State Education Law and/or Public Officers Law, indemnify Mr. Ely and hold him harmless against any loss arising out of any demand, claim, suit, action or legal proceeding brought against Mr. Ely, in either his individual capacity or his official capacity as agent and employee of the District, arising out of incidents which occurred while Mr. Ely was acting within the scope of his employment or under the direction of the Board. Such indemnification shall include the provision, at the District's sole cost and expense, of a complete defense to any such demand, claim suit, action or legal proceeding and payment of the amount of any judgment or award including damages, costs, expenses and interest contained therein or imposed thereon, or of the amount of any settlement agreed to, as a result of or in connection with any such demand, claim, suit, action or legal proceeding while Mr. Ely was acting in his official capacity.

9. Mr. Ely agrees that he will cooperate with the Board in connection with any litigation which may occur concerning events which arose during his employment with the District. Said

cooperation shall include, but not be limited to, his appearance as a witness in any future proceeding, as well as any necessary preparation for such appearance. After July 1, 2011, if Mr. Ely must return to the District as necessary in the defense of any claim, suit, action of legal proceeding brought against Mr. Ely, he will be paid a per diem amount of 1/240th of his annual 2009-2010 salary. The District shall reimburse Mr. Ely for all reasonable and necessary travel expenses, including mileage at the IRS rate when he is required to perform duties pursuant to this paragraph.

10. For purposes of this Agreement the word "Releasees" shall include the Schenectady City School District, its members, officers, employees, agents, and independent contractors, the Board of Education of the Schenectady City School District, its members, individually and in their official capacities, its officers, employees, agents and/or independent contractors.

11. Mr. Ely covenants that he has not filed any action, complaint, proceeding, charge, grievance or arbitration or any other proceeding, administrative or judicial, against the Releasees. Mr. Ely hereby covenants and agrees not to file any action, complaint, proceeding, charge, grievance or arbitration nor commence any other proceeding, administrative or judicial, against the Releasees in any court of law, admiralty or equity or before any administrative agency or arbitrator seeking damages or other remedies on Mr. Ely's own behalf, with respect to his relationship with the Releasees, his employment with the Releasees, his separation from employment from the Releasees, or respecting any matters which were or could have been claimed, or otherwise arising on or prior to the date of execution of this Agreement, except to the extent that any such claim concerns an allegation that the Releasees have failed to comply with any obligations created by this Agreement.

12. Both parties do not admit, and specifically deny, any liability, wrongdoing or violation of any law, statute, regulation, agreement or policy, and are entering into this Agreement solely for the purposes of (a) amicably resolving any and all matters in controversy, disputes, causes of action, claims, contentions and differences of any kind whatsoever between the Releasees and Mr. Ely, and (b) avoiding the attorneys' fees and other expenses that will result from litigation. No findings of any kind have been made or issued by any mediator, arbitrator, administrative agency or court of law, and Mr. Ely acknowledges that he is not the prevailing party in any action which he has filed against the Releasees, or in any action or putative action which may have been filed against him.

13. Mr. Ely, for and in consideration of the 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 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. Ely agrees that he knowingly and voluntarily waives all rights he has or may have (or that of anyone on his behalf) to commence or prosecute any lawsuit, charge, claim, complaint, or other legal proceeding or action against Releasees, whether 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, §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.

14. Mr. Ely specifically agrees that he knowingly and voluntarily releases and forever discharges, and by this instrument does release and forever discharge the 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 claims brought under 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. Ely, his heirs, executors, administrators, successors and assigns up until the date of execution of this Agreement.

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

- a. Mr. Ely understands the terms of this Agreement;

- b. Mr. Ely 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. Ely does not waive any rights or claims under the ADEA that may arise after the date of execution of this Agreement;
- d. Mr. Ely is receiving consideration beyond anything of value to which he is already entitled in exchange for his execution of this Agreement;
- e. Mr. Ely 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. Ely 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. Ely chooses to exercise his option to revoke this Agreement, Mr. Ely shall notify the Board in writing of said revocation, no later than 5:00 P.M. of the last day of the revocation period.

16. Mr. Ely specifically acknowledges that he understands that this Agreement is a legally binding document and that by signing this Agreement, he is prevented from filing, commencing or maintaining any action, complaint, charge, grievance, arbitration or other proceeding against Releasees, except as expressly permitted by the terms of this Agreement.

17. The District, for and in consideration made by Mr. Ely, as set forth herein, and other good and valuable consideration, hereby releases and forever discharges, and by this instrument does release and forever discharge Mr. Ely 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 Mr. Ely, known or unknown claims, and excluding claims which arise from any criminal or illegal act, defalcation, false claim, receipt of monies, or any other act involving the illegal or unauthorized receipt of monies or things of value of the District by Mr. Ely, by his own acts.

18. This Agreement shall not be effective or binding upon Mr. Ely and/or Releasees unless and until it is approved by the Board, by formal resolution.

19. Mr. Ely 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.

20. Mr. Ely 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 been given an opportunity to fully discuss the terms of this Agreement with legal counsel of his own choosing. Mr. Ely 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, that he has consulted with legal counsel 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.

21. 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.

22. Mr. Ely's letter of resignation, which letter shall not be subject to reconsideration or recall by Mr. Ely, shall be held by the District in escrow, pending final approval by the Board of this proposed Agreement and, in the event that the Board declines to approve the same, Mr. Ely's resignation and this Agreement shall be of no force and effect.

23. Mr. Ely shall designate two current or former Board members from the District to offer employment information to prospective employers for future employment opportunities. These individuals may give employment-related information at the Superintendent's discretion and request. If any Board members other than the individuals selected by the Superintendent are contacted for information concerning his employment with the School District, such individuals shall be directed to the designated Board members who shall provide an agreed upon letter of reference, signed by either one of them.

24. Mr. Ely agrees that, if asked about the School District and its governing body, he shall not make derogatory comments about individual school officials, the district, its employees, students and school related organizations. The members of the Board of Education, agree that individually and collectively they shall make no derogatory comments about the Superintendent with respect to his professional reputation, and/or his performance of duties as Superintendent of the District, and shall each, if asked for information about the Superintendent of Schools refer the requesting party to the two Board members identified by the Superintendent in paragraph "19" above.

25. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York. Venue for any action or proceeding concerning this Agreement shall be in Schenectady County, New York.

26. The parties agree to cooperate fully and execute this Agreement and all supplementary documents and take any and all additional action which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

27. 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.

Dated: 6/28/10

By: Eric D. Ely
Eric D. Ely

**BOARD OF EDUCATION, SCHENECTADY
CITY SCHOOL DISTRICT**

Dated: 6/30/10

By: Maxine I. Brisport
Maxine Brisport, President

STATE OF NEW YORK)
COUNTY OF Schenectady) SS.:

On the 28 day of June in the year 2010, before me, the undersigned, personally appeared Eric D. Ely, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed said instrument.

Christine A. Kochem
Notary Public

Christine A. Kochem
Notary Public, State of New York
Qualified in Schenectady County
No. 01KO4989609
Commission Expires Dec: 09 2013

STATE OF NEW YORK)
COUNTY OF Schenectady) SS.:

On the 30 day of June in the year 2010, before me, the undersigned, personally appeared Maxine Brisport, President of the Board of Education of the Schenectady City School District, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacities, and that by his/her signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

Christine A. Kochem
Notary Public

Christine A. Kochem
Notary Public, State of New York
Qualified in Schenectady County
No. 01KO4989609
Commission Expires Dec. 09 2013