

ELIZABETH PUBLIC SCHOOLS
Every Child, Achieving Excellence

Olga Hugelmeyer, Ed.D.
Superintendent of Schools

Harold E. Kennedy, Jr.
School Business Administrator/Board
Secretary

September 9, 2024

Ms. Maria E. Lorenz
opra+request-64801-cc32e33e@requests.opramachine.com

Dear Ms. Lorenz:

I am in receipt of your request for records pursuant to the State's Open Public Records Act ("OPRA").

1. Your request "Dates of Employment for Frank Cuesta" is denied as the District does not maintain retrievable records that are responsive to your request. This request as presently drafted does not identify with reasonable clarity a governmental record. Researching, compiling and creating such information falls outside the controlling authority of the Open Public Records Act. The law is settled that under OPRA government agencies "are required to disclose only 'identifiable' governmental records...[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein." *Burnett v. Cnty. Of Gloucester*, 415 N.J. Super. 506, 514 (App. Div. 2010) (quoting *MAG Entm't, LLC v. Div. of Alcoholic Bev. Control*, 375 N.J. Super. 534, 549 (App. Div. 2005)). OPRA "is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." *MAG Entm't*, 375 N.J. Super. at 546.
2. Your request "Positions held since employment" is denied as the District does not maintain retrievable records that are responsive to your request. This request as presently drafted does not identify with reasonable clarity a governmental record. Researching, compiling and creating such information falls outside the controlling authority of the Open Public Records Act. The law is settled that under OPRA government agencies "are required to disclose only 'identifiable' governmental records...[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein." *Burnett v. Cnty. Of Gloucester*, 415 N.J. Super. 506, 514 (App. Div. 2010) (quoting *MAG Entm't, LLC v. Div. of Alcoholic Bev. Control*, 375 N.J. Super. 534, 549 (App. Div. 2005)). OPRA "is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." *MAG Entm't*, 375 N.J. Super. at 546.
3. Your request "Job descriptions for the positions he held Salary history since employment" is denied as the District does not maintain retrievable records that are responsive to your request. This request as presently drafted does not identify with reasonable clarity a governmental record. Researching, compiling and creating such information falls outside the controlling authority of the Open Public Records Act. The law is settled that under OPRA government agencies "are required to disclose only 'identifiable' governmental records...[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein." *Burnett v.*

Cnty. Of Gloucester, 415 N.J. Super. 506, 514 (App. Div. 2010) (quoting MAG Entm't, LLC v. Div. of Alcoholic Bev. Control, 375 N.J. Super. 534, 549 (App. Div. 2005)). OPRA "is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." MAG Entm't, 375 N.J. Super. at 546.

4. Retrievable records for your request "Settlement agreement for Lester Dominguez, Donald Goncalves" are attached.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Kennedy, Jr.", with a stylized flourish at the end.

Harold E. Kennedy, Jr.
School Business Administrator/Board Secretary

Office of the School Business Administrator/Board Secretary

500 North Broad Street, Elizabeth, New Jersey 07208 • Ph: 908.436.5112 • Fax: 908.436.5158
Email: kennedha@epsnj.org • Website: www.epsnj.org

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THE SETTLEMENT AGREEMENT ("Agreement") AND GENERAL RELEASE ("Release"), dated February 6th, 2020, is entered into by and among **PLAINTIFFS MARVIN LEHMAN, DONALD GONCALVES, OSCAR OCASIO, ISMAEL ESTRADA, JOSEPH PADLO, LESTER DOMINGUEZ, GONZALO QUESADA, ROBERT STIGLIANO, AND MIGUEL JIMENEZ**, in the matter of **Dominguez v. Elizabeth Board of Education, 16-8929 (D.N.J.)** (collectively, the "Plaintiffs"), and **THE ELIZABETH BOARD OF EDUCATION, OLGA HUGELMEYER, JOSE RODRIGUEZ, STANLEY NERON, CHARLENE BATHELUS, MARIA CARVALHO, STEPHANIE GONCALVES, AND DANIEL NINA** ("Defendants"), and to settle all claims that either Plaintiff or Plaintiffs may have against the Board, any related entities, and any of its subsidiaries, affiliated companies, benefit plans or their respective predecessors, successors and assigns, as well as their respective past or present officers, directors, agents, representatives or employees, including, but not limited to, all claims asserted or contemplated in the above-captioned matters (the "Action").

Parties

"Plaintiffs" as used herein, includes either of their estates, heirs, representatives, privies, executors, administrators, assigns, successors-in-interest and predecessors-in-interest. "The Elizabeth Board of Education," or "the Board" or "EBOE" as used herein, means the Elizabeth Board of Education, its parents, subsidiaries, related, affiliated and predecessor entities, the present and former trustees, present and former directors, officers, attorneys, employees or agents of all of them, in their official and individual capacities, and any pension, welfare or other benefit plan applicable to the employees or former employees of the Board as defined herein, including but not limited to the New Jersey Schools Insurance Group, Summit Risk Services and its representative insurance carriers, and

the current and former trustees and administrators of any and all such plans. Plaintiffs and Defendants in the above-captioned matter are collectively referred to herein as the "Parties."

1. Assignment of Claims

The parties hereby warrant that they have not assigned any claims that any of them may have against each other to any other person or entity.

2. Consideration

In order for the Parties to avoid the expense and uncertainties of continued litigation, and without the admission of fault or liability by the Board or any Party or Parties, the Board shall pay to Plaintiffs a total gross amount of \$1.6 million, which includes counsel fees and costs, to the attorney trust account of Mark Frost and Associates, in exchange for Plaintiffs' voluntary dismissal with prejudice of the Action, and all terms and promises by Plaintiffs contained in this Agreement and Release. The consideration provided is for all damages alleged, including but not limited to emotional distress and physical manifestations of emotional distress. Payment shall be made by the Board of Education's insurance carrier.

Payment of the above-described sum will be mailed to Mark Frost and Associates no later than thirty () days after the Board formally approves the settlement at its meeting and receives: (1) this Agreement and Release, properly executed; (2) properly executed W-9 Forms and any other required tax or other forms, and (3) a Charles Jones child support judgment letter for each Plaintiff.

3. With regard to any and all sums of money paid to the Plaintiffs under the terms of this Agreement, the Plaintiffs agree and understand that the Board has not made any representations regarding the Federal and State tax treatment of these sums, and Plaintiffs agree that they are responsible for determining the tax consequences of such payment and for paying Federal and State taxes, if any, that may be owed with respect to such payment. In the event a

claim for such taxes, and/or penalties and interest, is asserted by any taxing authority, the Plaintiffs agree to and do hereby indemnify and hold the Board harmless against any and all tax liability, interest and/or penalties as due thereon from the Board or Plaintiffs, except for taxes that are solely the responsibility of the Board as Employers such as, for example, its share of FICA.

4. Non-Disparagement

Plaintiffs agree that they will not disparage or encourage or induce others to disparage the Board or its related entities in any way, and the Board and individual defendants agree not to disparage or encourage or induce others to disparage either Plaintiffs. For purposes of the Release, the term "disparage" includes without limitation, comments or statements to the press and/or media, and/or to any individual, customer, client or entity with whom the Board have or may have a business relationship, if such statement would adversely affect in any manner the conduct of business of the Board or the business reputation of the Board, or its employees, as applicable. Nothing in the paragraph is intended to prohibit or restrict Plaintiffs from providing truthful information to any government, regulatory or self-regulatory agency or pursuant to a valid subpoena or notice in lieu of subpoena lawfully issued.

5. Release

a. In consideration of the mutual promises and other consideration set forth in the Agreement, Plaintiffs waive, release and give up any and all claims and rights which they may have against the Board or its parent and any of its subsidiaries, affiliated companies, benefit plans or their respective predecessors, successors and assigns, as well as their respective past or present officers, directors agents, representatives or employees, and, to the extent not otherwise covered, any and all parties named in the Action (hereinafter referred to as "Releasees") from any and all manner of action

and actions, cause and causes of action, suits, claims, grievances, debts, sums of money, wages, compensation, bills, claims for attorneys' fees, interest, expenses and costs, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands of any nature whatsoever known and unknown, suspected or unsuspected, vested or contingent, which Plaintiffs ever had or now have against the Releasees arising out of Plaintiffs' employment relationship with the Board or any affiliated or related public or private entities or for any other reasons which were asserted or could have been asserted by Plaintiffs under any state or federal statute, Board ordinance, constitution, contract or the common law, including without limitation the following:

- i. Any claims of retaliation or harassment based upon any alleged acts of whistle blowing and any claims of retaliation under the New Jersey Conscientious Employee Protection Act ("CEPA");
- ii. Any claims of discrimination or harassment based upon race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, medical condition, disability or atypical hereditary cellular or blood trait, or genetic information and any claims of retaliation under the New Jersey Law Against Discrimination;
- iii. Any claims for violation of Title VII of the Civil Rights Act; the Civil Rights Act of 1991; the Americans with Disabilities Act; Sections 1981 through 1988 of Title 42 of the United States Code;
- iv. The National Labor Relations Act; the Employee Retirement Income Security Act; the Fair Credit Reporting Act; the Immigration Reform Control Act; the Rehabilitation Act; the Age Discrimination in Employment Act; the Occupational

Safety and Health Act; the Uniformed Services Employment and Reemployment Rights Act; the Federal Family Medical Leave Act; Worker Adjustment and Retraining Notification Act; the Employee Polygraph Protection Act; the Ledbetter Fair Pay Act; the Federal and State Equal Pay Acts;

- v. Any and all claims pursuant to CEPA, N.J.S.A. 34:19-1 et seq.; New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 et seq., New Jersey Wage and Hour Laws; New Jersey Equal Pay Act, New Jersey Laws Regarding Political Activities of Employees, Lie Detector Tests, Jury Duty, Employment Protections and Discrimination; any other federal, state or local civil rights law, whistleblower law or any other local, state or federal law, regulation or ordinance.

- vi. Plaintiffs expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs expressly accept and assume the risk of such unknown or underestimated losses or claims and acknowledge and agree that the benefits to be provided to them pursuant to this Settlement Agreement and General Release fully compensate them for such risks. Plaintiffs acknowledge that none of the benefits given to them pursuant to the Settlement Agreement and General Release have been assigned or are subject to alienation (i.e. personal bankruptcy).

b. The Settlement Agreement and General Release contains a waiver of claims that Plaintiffs know about and claims that they may not know about relating to their employment with the Board up to the date of the Settlement Agreement and General Release.

c. Plaintiffs agree not only to release and discharge the Board from any and all claims to the extent enforceable by law and that Plaintiffs could make on their own behalf, but also those that

may have been or may be made by any other person, organization or administrative agency on Plaintiffs' behalf regarding any acts or events occurring before the execution of the Agreement. Plaintiffs waive any right to become, and promises not to become, members of any class in a case in which a claim or claims are asserted against the Board involving any act or event occurring before the execution of the Agreement.

6. Covenant Not to Sue

Plaintiffs hereby represent and warrant to the Board that they have not: (A) filed, caused or permitted to be filed any pending proceeding (nor has either Plaintiff lodged a complaint with any governmental or quasi-governmental authority) against the Board, nor has either Plaintiff agreed to do any of the foregoing; (B) assigned, transferred, sold, encumbered, pledged, hypothecated, mortgaged, distributed, or otherwise disposed of or conveyed to any third party any right or Claim against the Board that has been released in this Agreement; or (C) directly or indirectly assisted any third party in filing, causing or assisting to be filed, any Claim against the Board. In addition, Plaintiffs represent and warrant that they shall not encourage or solicit or voluntarily assist or participate in any way in the filing, reporting or prosecution by themselves or any third party of a proceeding or Claim against the Board.

Plaintiffs agree not to assert any claims, charges or other legal proceedings against the Board in any forum, based on any events, whether known or unknown, occurring prior to the date of the execution of this Settlement Agreement and General Release, including, but not limited to, any events related to, arising out of, or in connection with their employment with the Board.

7. Entire Agreement

The Settlement Agreement, Mutual Non-Disparagement Agreement and Mutual General Releases contain the entire agreement between the parties. These documents completely and fully

supersede and replace any and all prior contracts, agreements, discussions, representations, negotiations, understandings and any other communications between the parties pertaining to the subject matter hereof. Plaintiffs represent and acknowledge in executing the Agreement that they have not relied upon any representation or statement not set forth in the Agreement made by the Board or their counsel or representatives with regard to the subject matter of the Agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to the Agreement.

8. Successors and Assigns

The Agreement is binding on, and is made for the benefit of, the Parties and all who succeed to their rights and responsibilities, such as any successors and/or assigns.

9. Confidentiality/Non-disclosure

The Parties, while acknowledging that this Agreement is a public document, agree that they will not discuss or disclose the facts and terms of this Agreement, except as provided for herein and as provided for by law. The Parties agree not to disclose this document, its contents or subject matter to any person other than their attorneys, accountants or income tax preparers and, where applicable to healthcare providers. This provision shall not prohibit any party from providing information regarding this matter to any person or regulatory body in response to a lawful request for information or government record, or prohibit either party from disclosing such information to the extent required by law.

10. Full Knowledge of Terms and Review Period

The Board advises Plaintiffs to consult with an attorney of their choice and at their expense prior to executing this Agreement. Plaintiffs hereby represent and warrant that, prior to executing this Agreement, they have fully discussed its meaning and effect with an attorney

of their choosing, or that they have waived any right to consult with an attorney, and that each Plaintiff fully understands its meaning and effect. Plaintiffs have twenty-one (21) days from the date this Agreement and Release is provided to them to consider it before signing it.

Plaintiffs represent and warrant that their attorney(s) has explained to them, and/or they fully comprehend the meaning of each of the provisions of this Agreement and that they have entered into this Agreement voluntarily. Either Plaintiff's signature also acknowledges that (1) the Board advised them to consult with an attorney before signing this Agreement; (2) they have up to twenty-one (21) days from the date they receive this Agreement to consider it before signing it; and (3) if either Plaintiff or the Plaintiffs sign this Agreement less than twenty-one (21) days after receiving it, they do so knowingly and voluntarily, and waive any right they might have under the Age Discrimination in Employment Act, as amended, to the full twenty-one (21) days to consider this Agreement.

Plaintiffs have seven (7) days after signing this Agreement in which to revoke their acceptance by delivering written notice via email or U.S. Mail revoking their acceptance to Robert Varady, counsel for the Board. Accordingly, this Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. If either Plaintiff does not revoke this Agreement during the seven (7) day revocation period, it shall be deemed accepted. Both Plaintiffs agree that they each made an informed and voluntary decision to sign this Agreement on the date they have done so, because they did not need any additional time to decide whether to sign this Agreement. Notwithstanding any revocation, the Parties agree that the confidentiality provisions of this Agreement, set forth in paragraph 10 above, shall remain in full force and effect.

11. Severability

The parties agree that if any court declares any portion of the Agreement unenforceable, the remaining portions shall be fully enforceable.

12. Incorporation of Prior Release

The attached settlement term sheet (Attached as **Exhibits A**) in the above-captioned matter is incorporated by reference to this agreement as if fully set forth herein.

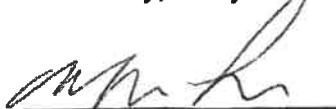
13. Counterparts and Applicable Law

The Agreement may be executed in counterparts and shall be construed and interpreted in accordance with the laws of the State of New Jersey. The Parties agree that any action to enforce or interpret the Agreement shall only be brought in a court of competent jurisdiction of the State of New Jersey.

YOU HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THE SETTLEMENT AGREEMENT AND GENERAL RELEASE. BY SIGNING THE SETTLEMENT AGREEMENT AND GENERAL RELEASE YOU GIVE UP AND WAIVE IMPORTANT LEGAL RIGHTS.

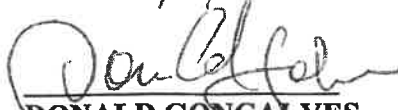
BY SIGNING THE AGREEMENT, the Parties state that they have carefully read the Agreement, fully understand it and are signing it voluntarily.

THEREFORE, the Parties to this Settlement Agreement and General Release now voluntarily, freely and knowingly execute the Agreement.



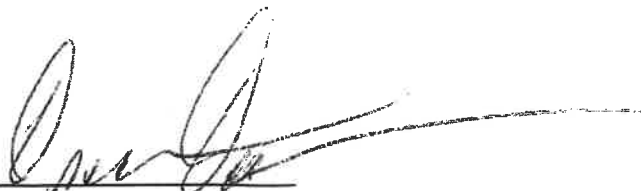
MARVIN LEHMAN

Dated: 2/6/2020



DONALD GONCALVES

Dated: 2/6/2020



OSCAR OCASIO

Dated: 2/6/2020



ISMAEL ESTRADA,

Dated: 2/6/2020



JOSEPH PADLO

Dated: 2/6/2020



LESTER DOMINGUEZ

Dated: 2/6/2020



GONZALO QUESADA

Dated: 2/6/2020



ROBERT STIGLIANO

Dated:



Miguel Jimenez 2-6-2020

2-6-2020