

Wendy DiFruscio

From: hfb4444@comcast.net
Sent: Tuesday, June 07, 2011 4:53 PM
To: Ann Wright; ann and Michael Lane; Jim Kach; jocelyn O'Quinn; Krista Butts; Megan Turnbull
Subject: Fwd: Colter's final agreement
Attachments: CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE.CLEAN.06-02-2011.docx

This is for your information. Final draft of the agreement.

Henry

----- Forwarded Message -----

From: "Kim Memmesheimer" <KMemmesheimer@hpgrlaw.com>
To: avolinsky@bernsteinshur.com
Cc: hfb4444@comcast.net
Sent: Thursday, June 2, 2011 4:18:04 PM
Subject: Colter

Andy,

My crack team found two more typos in the settlement agreement (4th paragraph and #13) which I've corrected.

A concern has been expressed as to the whether the discussion of the financial funding of this agreement would be in violation of the Agreement if it is signed on June 15th. Would you agree to a slight revision to paragraph 11?

11. Communication Regarding Resignation: The parties and/or their counsel otherwise agree that they shall make no disclosure or further comment whatsoever to the media or any person or entity regarding the matters relating to Mr. Colter's retirement or this Agreement beyond the press release that is attached and incorporated hereto as Exhibit C, other than those communications that must occur to fund the financial aspects of this Agreement at the time of its approval.

Kim

Kimberly J.H. Memmesheimer, Esquire
Hoefle, Phoenix, Gormley & Roberts, P.A.
402 State Street - P.O. Box 4480
Portsmouth, NH 03802-4480
Tel: (603) 436-0666
Fax: (603) 431-0879
kmemmesheimer@hpgrlaw.com
Web site: www.hpgrlaw.com

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CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is made and entered into between HOWARD COLTER who [REDACTED] (hereinafter referred to as "Mr. Colter") and THE OYSTER RIVER COOPERATIVE SCHOOL DISTRICT, a New Hampshire cooperative school administrative unit with a principal place of business at Coe Drive, Durham, New Hampshire (hereinafter "ORCSD").

WHEREAS, Mr. Colter is employed by ORCSD as Superintendent of Schools and such employment is governed by an Employment Contract, dated December 9, 2008 and an Addendum to Employment Contract dated April 8, 2011, which are attached hereto and incorporated herein as Exhibits A and B;

WHEREAS, the Board of the ORCSD desires to accept the resignation and terminate the employment of Mr. Colter from the position of Superintendent of Schools; and

WHEREAS, Mr. Colter and ORCSD desire to compromise, settle, buy complete peace from, and terminate any and all known and unknown disputes, claims, controversies, demands, actions, causes of action, and litigation as may have accrued to Mr. Colter arising from or in any way related to her employment with ORCSD, and any damages, costs, expenses, and/or injuries that he sustained or may sustain as a result thereof, and in order to avoid the nuisance, time, and expense of litigation;

NOW, THEREFORE, in consideration of the recitals stated above, which are hereby incorporated into this Agreement and made a part hereof, and in consideration of the mutual promises, covenants, agreements, representations and warranties contained herein, the receipt and sufficiency of which are hereby acknowledged, it is agreed between Mr. Colter and ORCSD as follows:

1. Retirement: Mr. Colter hereby confirms that he is retiring from his employment with ORCSD as its Superintendent of Schools as of June 30, 2011 (the "Termination Date"), at which time he shall relinquish any and all responsibilities associated with the position of Superintendent.

2. Termination of Employment Contract and Addendum to Employment Contract: Upon fulfillment of the terms of this Agreement, the Employment Contract and the Addendum to Employment Contract by and between the parties will be terminated.

3. Consideration: ORCSD shall provide the following payments to or for the benefits of Mr. Colter:

(a) A single, lump sum payment to Mr. Colter of his current annual salary, in the amount of One Hundred Thousand Three Hundred Thirty-Three Four Hundred Forty Dollars and no cents (\$133,400.00) to be paid on the Effective Date of the Agreement;

(b) Payment to Mr. Colter, to be paid on or before the Effective Date of the Agreement, of all sick-time accrued by him as of the Termination Date in accordance with New Hampshire and federal law. As of the date of this Agreement, the amount of sick time accrued is 66 days and it is payable at \$120 per day for a total due of Seven Thousand Nine Hundred Twenty Dollars and no cents (\$7,920.00);

(c) Payment to Mr. Colter, to be paid on or before the Effective Date of the Agreement, of all vacation time accrued by him during this fiscal year as of the Termination Date in accordance with New Hampshire and federal law. As of the date of this Agreement, the amount of vacation time accrued is Eighteen (18) days and it is payable at \$505.52 per day for a total due of Nine Thousand Ninety Nine and 36/100 Dollars (\$9,099.36);

(d) ORCSD shall make, if it has not already done so, the Two Thousand Dollar (\$2,000.00) annual annuity contribution to Mr. Colter's deferred compensation plan in accordance with the Employment Contract. If the annual contribution has not already been made, ORCSD shall make the contribution on or before June 30, 2011.

(e) For twelve (12) months, beginning with the insurance premiums due and payable on July 1, 2011, ORCSD will either: (i) continue making its current contribution toward Mr. Colter's health insurance coverage(s), after the expiration of which Mr. Colter will be eligible to elect to continue coverage under the Consolidated Omnibus Budget Reduction Act ("COBRA"); or, (ii) should ORCSD's plan not provide for continued coverage, make payments equal to the amount of the insurance premiums due to ORCSD for continued insurance coverage under the COBRA, provided that Mr. Colter elects to continue such coverage under applicable New Hampshire and federal law; provided, however, that should Mr. Colter obtain insurance coverage through a new employer prior to the expiration of the twelve (12) month period provided herein, all payments under this Section 2(e) will cease; and

(f) The compensation payments due Mr. Colter under Section 2(a), (b) and (c) shall be subject to withholding for all applicable employee payroll taxes and effectuated no later than June 30, 2011.

4. General Release by Mr. Colter: In consideration of the payments to be made by ORCSD described in Section 3 herein and the mutual promises, covenants, agreements, and representations contained herein, Mr. Colter, on behalf of himself, his heirs, representatives, and assigns, fully releases ORCSD, its successors, assigns, subsidiaries, parent and sister governmental agencies, affiliates, insurers, past, present and future officers, directors, employees, agents, and trustees from all known and unknown claims, causes of action, suits, litigation, demands, and obligations of every kind, including claims for damages, wages, attorneys' fees and any other form of relief available at law or in equity, which Mr. Colter has or may have by means of any matter, cause, or thing whatsoever from the beginning of time to the Effective Date of this Agreement. Without limiting the generality of the foregoing, this release includes all matters arising out of or in connection with Mr. Colter's employment with ORCSD from the beginning of time to the date of this Agreement, including, but not limited to: (1)

employment discrimination under New Hampshire RSA Chapter 354-A, Title VII of the Civil Rights Act of 1964, as amended, age discrimination under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, claims brought through the Equal Employment Opportunity Commission, and any such claims under any relevant state or federal statutes or municipal ordinances; (2) disability discrimination under the Americans with Disabilities Act; (3) claims brought under the Human Rights Commission or like organizations; (4) disputed wages; (5) wrongful discharge and/or breach of any alleged employment contract; (6) claims based on any tort, such as invasion of privacy, defamation, fraud and infliction of emotional distress; and (7) any other causes of action that may be brought in state or federal court.

5. Termination of Employment: It is expressly agreed and understood that Mr. Colter's employment is terminated effective June 30, 2011 and that he will not be eligible for the consideration set forth in Section 3 unless and until he submits his resignation and upon the Effective Date of this Agreement

6. No Admission: The parties agree that any consideration given or paid with respect to this Agreement is in compromise of disputed claims and that the giving or payment of consideration in exchange for the general release of claims is not, and will not be construed as, an admission of liability or wrongdoing on the part of ORCSD, which denies any liability or wrongdoing as to each and every claim which has been or which may have been asserted against it.

7. Indemnity with Respect to Tax Treatment: Should the characterization of the payment set forth in Section 3 be found to be improper or unwarranted by the Internal Revenue Service or other taxing authority with the result that ORCSD is held obligated to pay taxes, additional taxes, penalties, or interest which should have been deducted from the gross amount of such payments, or if the Internal Revenue Service or other taxing authority otherwise finds the payment to be taxable or subject to tax, Mr. Colter agrees to fully indemnify ORCSD for all such taxes, penalties, or interest actually paid by them; and further agrees that he will not assert, file, or make any claims against ORCSD and/or its insurer for any such taxes, penalties, or interest he may be compelled to pay and the costs, including attorneys' fees, which he may have to pay in connection with any disputes between his and the Internal Revenue Service or other taxing authority.

8. Non-Disparagement: Each party agrees to refrain from any disparagement, defamation, slander or tortious interference with the contracts or relationships of the other.

9. References: ORCSD agrees that any inquiries from potential employers or state licensing agencies will be referred to the Human Resources office who will respond that as a matter of policy ORCSD provides only the dates of service, starting and ending salary and positions held for all employees.

10. Confidentiality: This Agreement and its terms and conditions are confidential to the extent permitted by the applicable laws of the State of New Hampshire and RSA 91-A. The parties and/or their counsel agree not to disclose or distribute any information concerning this Agreement to any person or entity other than those persons who are essential to the

consummation of the Agreement, or as may be required by law. The parties and/or their counsel may disclose information concerning this Agreement to their legal counsel, tax advisors, and the Internal Revenue Service, subject to their agreement to be bound by this confidentiality provision. If the parties and/or their counsel are required by law or a court of competent jurisdiction to disclose the information kept confidential by this paragraph, they agree to notify the parties reasonably in advance of the disclosure.

11. Communication Regarding Resignation: The parties and/or their counsel otherwise agree that they shall make no disclosure or further comment whatsoever to the media or any person or entity regarding the matters relating to Mr. Colter's retirement or this Agreement beyond the press release that is attached and incorporated hereto as Exhibit C.

12. Employment: Mr. Colter agrees that he will not seek employment with ORCSD at any time.

13. Acknowledgment: Mr. Colter knowingly, voluntarily, and specifically waives all rights under the federal Age Discrimination in Employment Act ("ADEA") arising out of or in connection with his employment with ORCSD from the beginning of time to the Effective Date of this Agreement, as defined herein. The parties acknowledge that this Agreement does not apply to any claim for events arising after the execution of this Agreement. Mr. Colter acknowledges that he has read and understands this Agreement. Mr. Colter further acknowledges that this Agreement provides him with consideration to which he is not otherwise entitled. In addition, Mr. Colter acknowledges that this Agreement is not induced by any representation or promise made by any party hereby released or their representatives other than the terms specifically recited in this document. Mr. Colter certifies that ORCSD has suggested and encouraged his to consult with an attorney of his choosing before executing this Agreement. Mr. Colter acknowledges that he has had up to twenty-one (21) days within which to consider this Agreement and that he has decided to accept the terms of this Agreement. The parties agree that this Agreement will not become effective or enforceable until the expiration of a period of seven (7) days following the execution of the Agreement by Mr. Colter, during which period Mr. Colter may revoke his consent to the Agreement by delivering a letter to ORCSD's legal counsel, Attorney Kimberly J.H. Memmesheimer, Hoefle, Phoenix, Gormley & Roberts, P.A., 402 State Street, P.O. Box 4480, Portsmouth, New Hampshire, 03801 advising of his revocation, said letter to be delivered on or before midnight of the seventh day following its execution. If the Agreement is not revoked during this seven (7) day period, this Agreement shall be irrevocable; and the business day following the expiration of the revocation period shall be deemed the Effective Date of the Agreement. It is further agreed and understood by Mr. Colter that in the event that he revokes the Agreement, ORCSD shall have no obligations hereunder. ORCSD agrees that it will provide Mr. Colter with a final version of this Confidential Settlement Agreement and Release on or before June 20, 2011, so that he may execute same with the parties' mutual intent that the Agreement, if not revoked, will become final and irrevocable on or before June 30, 2011.

During the twenty-one (21) day consideration period and the seven (7) day revocation period provided for in this Section, Mr. Colter will continue to be paid in accordance with the regular payroll schedule. If Mr. Colter does not accept this Agreement, or if he revokes the

Agreement, the ORCSD will take those actions available to it under the Employment Contract and Addendum to Employment Contract.

13. Effective Date: The parties agree that this Agreement will not become effective or enforceable until the expiration period of seven (7) days following the execution of the Agreement by Mr. Colter, during which seven (7) day period Mr. Colter may revoke his consent to the Agreement as described above in Section 12, but all time periods concerning health insurance, wage payments and other benefits shall run from June 30, 2011, the Termination Date.

14. Breach of Agreement: The parties acknowledge and agree that any party found to have breached this Agreement will be liable for the damages, reasonable attorneys' fees, and expenses resulting from any such breach, and also for equitable relief.

15. Integration Clause; Amendment; Successors; Governing Law: This Agreement contains the complete, final, and exclusive embodiment of the entire understanding between the parties. This Agreement is entered into without reliance on any promise, representation, agreement or understanding, oral or written, between and among the parties relating to the subject matter of this Agreement, other than those expressly contained herein. No amendment of this Agreement shall be valid or effective unless made in writing and executed by the parties hereto subsequent to the date of this Agreement. This agreement shall be binding on the parties and upon their heirs, administrators, representatives, executors, successors and assigns and shall inure to their benefit and to that of their heirs, administrators, representatives, executors, successors and assigns. This Agreement shall be enforced in accordance with the laws of the State of New Hampshire, and the parties agree that any litigation to enforce the provisions of this Agreement will take place in New Hampshire. In the event of litigation regarding this Agreement, the parties expressly submit to the jurisdiction of the federal and state courts located in New Hampshire.

16. Costs and Fees: Except as specifically set forth herein, the parties will bear their own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein.

17. Construction: The parties acknowledge that they each had an equal opportunity to control the language in this Agreement, and that this Agreement was mutually drafted. The parties agree that in no event shall this Agreement be presumptively construed against any party.

18. Severability: If any portion of this Agreement is void or deemed unenforceable for any reason, the remaining portions shall survive and remain in effect, with any necessary modification to become a part hereof and treated as though contained in this original Agreement.

19. Cooperation: The parties agree that to the extent any further documents need to be executed to carry out the purposes of this Agreement, the parties will cooperate in the execution of such documents. Mr. Colter agrees to cooperate with ORCSD's staff and any appointed interim superintendent from the Termination Date forward to answer questions regarding ORCSD's management and operations. Mr. Colter also agrees to cooperate fully with ORCSD in its defense of, or other participation in, any administrative, judicial or other proceeding arising from any charge, complaint or other action that has been or may be filed

against ORCSD that requires or would benefit from his cooperation insofar as any such proceedings relate to or are associated with the period of his employment with ORCSD.

IN WITNESS WHEREOF, the parties have duly authorized and caused this Agreement to be executed as follows:

Date: _____
Howard Colter

Oyster River Cooperative School District

Date: _____ By: _____
Henry Brackett, Duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Personally appeared before me on this _____ day of _____, 2011, Howard Colter, known to me or satisfactorily proven to be the person whose name appears in the within document and acknowledges that he executed the same for the purposes contained therein.

Notary Public/Justice of the Peace

Print or Type Name
My Commission Expires _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Personally appeared before me on this _____ day of _____, 2011, Henry Brackett, known to me or satisfactorily proven to be the person whose name appears in the within document and acknowledges that he executed the same for the purposes contained therein.

Notary Public/Justice of the Peace

Print or Type Name
My Commission Expires _____