

## **FORMULA FOR DISTRIBUTION OF SETTLEMENT FUNDS**

### **Exhibit 1 to the Settlement Agreement**

Pursuant to a settlement reached between the Class and the Department of Defense Education Activity (“DoDEA/Agency”) in this matter, the Agency has agreed to pay up to \$7,713,000 to pay all claims to members of the Class, agreed upon attorney’s fees, and all costs associated with the administration of the settlement. The Distribution Formula describes how the monetary relief will be distributed.

In order to process and effectuate the settlement process, the Agency and Class Counsel are required to share information with each other and any administrative support contractor assisting the parties with the settlement process. Any Potential Class Member who submits a claim for relief in this case by timely submitting a Proof of Claim and Release thereby authorizes the Agency and Class Counsel to communicate information about that Potential Class Member’s claim with the parties and any administrative support contractor assisting the parties, and thereby waives any claim that the Agency or Class Counsel should not have shared the information.

#### **I. SUBMITTING A TIMELY CLAIM**

Only Potential Class Members who timely submit a Proof of Claim and Release are eligible to receive monetary relief under the Settlement Agreement. Potential Class Members who do not follow these procedures will not be eligible for any monetary relief under the Settlement Agreement in this matter.

In order to be considered timely, a Proof of Claim and Release must be submitted via email and/or postmarked within 75 days of the date that the Notice of Right to File a Claim for Class Action Settlement Award is issued.

If a Potential Class Member is no longer living or has been determined to be legally incompetent, the Potential Class Member’s authorized legal representative may obtain a recovery on behalf of the Potential Class Member so long as the Potential Class Member would have been eligible for an award if living or is eligible and could have filed a claim himself or herself if competent. The authorized legal representative of such Potential Class Members must timely submit the following: 1) a Proof of Claim and Release; 2) documentation to support the representative’s status; and 3) evidence to support the factual assertions made below. If the three (3) items listed above are submitted, then the claim will be processed in accordance with the terms of the Settlement Agreement.

#### **II. ELIGIBILITY**

Only those found to be Class Members are eligible to receive compensation as part of the Settlement Agreement in this case. This determination is based on the definition of the Class, as set forth in the Settlement Agreement.

The Class is comprised of all current and former employees of DoDEA, who beginning March 11, 2002 until December 31, 2009: (1) requested a reasonable accommodation for a disability and were required to complete the Agency’s Reasonable Accommodation Request Form; (2) because of the medical records release requirements of the Agency’s Reasonable Accommodation Request Form, did not request a reasonable accommodation for a disability ; or (3) requested a reasonable accommodation for a disability but refused to complete the Agency’s Reasonable Accommodation Request Form as presented and did not receive the requested

reasonable accommodation.

It will be presumed that a Potential Class Member was a DoDEA employee during the Class time period if the information provided by the Agency indicates that the Potential Class Member was a DoDEA employee during the Class period. It will be presumed that a Potential Class Member was not a DoDEA employee during the Class time period if the information provided by the Agency indicates that the Potential Class Member was not a DoDEA employee during the Class period. No payment will be made to potential class members whose employment cannot be verified or proven. Potential Class Members whom the initial information provided by the Agency indicates they were not DoDEA employees during the Class period must provide additional documentation to overcome the presumption. For example, the Potential Class Member may provide a copy of payment records from DoDEA from the Class period, or a sworn statement from another individual who can establish that the Potential Class Member meets the Class definition.

## **II. DAMAGES POOL AWARD POINTS**

For the purposes of determining an eligible Class Member's monetary award, Damages Points shall be determined based on the following criteria:

1. A Class Member who requested a reasonable accommodation during the Class period and was required to complete the Agency's Reasonable Accommodation Request Form shall be awarded 10 Damages Points.
2. A Class Member who because of the release requirements of the Agency's Reasonable Accommodation Request Form did not request a workplace accommodation during the Class period shall be awarded 30 Damages Points.
3. A Class Member who requested a reasonable accommodation but refused to complete the Agency's Reasonable Accommodation Request Form as presented and did not receive a reasonable accommodation shall be awarded 30 Damages Points.

A Class Member can only receive Damages Points for one of these categories. If a Class Member is eligible for Damages Points in more than one category (for example, if the Class Member refused to complete the Form on one occasion, and on another occasion completed the Form), the Class Member will receive a total of 30 Damages Points.

Only one claim will be considered for each Potential Class Member.

## **III. CONTRIBUTION AWARD POINTS**

The Settlement Agreement provides for compensation to Class Members who positively contributed to Class Counsel's litigation of this matter. The assistance, guidance, and time provided by contributing Class Members strengthened the legal position of the Class as a whole, and supported Class Counsel's work toward successfully resolving this matter. A total of \$100,000 of the total settlement amount has been allocated for compensating Class Members with Contribution Pool awards. Class Counsel will submit information to the Agency regarding known contributions by individual Class Members.

To the extent that a Class Member seeks an award from the Contribution Pool that is not supported by the information provided by Class Counsel, the Class Member must submit sufficient information to justify the level and extent of their contribution to the litigation of this matter. This

information must include any of the following that apply: provision to DoDEA of any sworn statement presented by the Class Member in this case; identification of any deposition that the Class Member attended; and/or provision of evidence to DoDEA of participation in the mediation that took place between 2022-2023.

Contribution Pool awards shall be determined based on the following criteria:

1. A Class Member who, on or before February 13, 2020, completed the online survey distributed by Class Counsel during discovery in this case shall be awarded one (1) Contribution Point.
2. A Class Member who participated in the mediation in this case that took place in 2022-2023 shall be awarded fifty (50) Contribution Points for each day of mediation in which the Class Member participated.
3. A Class Member who submitted a sworn statement on or before January 1, 2023 in this case shall be awarded ten (10) Contribution Points.
4. A Class Member who was a witness in a deposition conducted by Agency Counsel in this case shall be awarded one hundred (100) Contribution Points.

#### **IV. NOTIFICATION OF ELIGIBILITY DETERMINATION AND POINT ALLOCATIONS**

Based on the eligibility requirements set forth above and in the Settlement Agreement, and the formulas for assigning Damages Points and Contribution Points, presented above, each Potential Class Member will be notified about the preliminary determination of the Potential Class Member's eligibility to receive an award, and if the Potential Class Member is found to be eligible, the Damages Points and Contribution Points that have been allocated to the Potential Class Member. Each Potential Class Member's point allocation notice will include: (1) the determination on the Potential Class Member's eligibility to receive an award, (2) a total number of Damages Points and Contribution Points allocated, (3) the date on which the point allocation notice is issued, and (4) a description of the process available for seeking correction of the eligibility determination and/or point allocations.

If a Potential Class Member believes that the eligibility determination and point allocation set forth in the notice are correct, then no further action is required by the Potential Class Member – the Potential Class Member's monetary award (if any) will be based on the eligibility determination and point allocations contained in the notice.

#### **V. CORRECTION PROCESS**

If a Potential Class Member believes that a determination made in the notice requires correction, the Potential Class Member may seek correction pursuant to the following process:

The Potential Class Member must submit his request for correction by U.S. mail or e-mail to the Administrative Support Contractor within 45 calendar days of the issuance of the notice of the relevant determination. Timeliness of the Potential Class Member's submission will be based on the date of the postmark or date the email was sent. The Potential Class Member must include a written explanation of the correction sought by the Potential Class Member with any evidentiary support.

The parties will review any request for correction and attempt to seek consensus regarding

the appropriate application of the Settlement Agreement. To the extent that the parties are unable to reach consensus regarding a request for correction, a final determination on the correction request will be made by an EEOC Administrative Judge, based on application of the Settlement Agreement and the Distribution Formula.

## **VI. PAYMENTS UNDER THE SETTLEMENT AGREEMENT**

Once all Damages Points and Contribution Points have been allocated pursuant to the formulas presented above, and after all timely requests for corrections have been determined, the monetary award for each Class Member will be determined based on the number of points held by the Class Member as further specified paragraphs c and d below.

### **a. Administrative Support Contractor Fee**

An administrative support contractor will be paid by the Agency for all services based on the awarded contract amount up to \$75,000. The administrative support contractor will be paid and deducted from the \$7,713,000 total settlement amount. The administrative support contractor will submit an invoice to the Agency pursuant to the terms of the contract, with a copy to Class Counsel. The Agency will review the invoice and make a determination on its approval.

### **b. Attorney's Fees and Costs**

Pursuant to the Settlement Agreement, \$2,443,375.55 from the total settlement amount has been allocated to pay Class Counsel's attorney's fees and costs for work associated with this case. Payment of Class Counsel's proven attorney's fees and costs (in the amount of \$2,443,375.55) shall be made by the Agency within sixty (60) days of the final approval of the Settlement Agreement..

### **c. Damages Award Determination**

The total available for Damages awards will be determined by taking the total available settlement amount of \$7,713,000 and subtracting the costs of the administrative support contractor up to \$75,000, then subtracting \$2,443,375.55 for attorney's fees and costs be paid to Class Counsel, and then subtracting \$100,000 for Contribution Pool awards. The remaining amount is the maximum amount available for all Damages awards under the Settlement Agreement. In no case will the agency commit or pay more than total available settlement amount as described in the preceding sentence for the sum of Damages Points awarded

The monetary value for each Damages Point will be determined based on the total monetary amount available for Damages awards divided by the total number of Damages Points awarded to all Class Members pursuant to the Settlement Agreement and the Distribution Formula.

**The value of one Damages Point shall not exceed \$500 (Five Hundred Dollars).** If the computation of the value of a Damages Point exceeds \$500, the value of a single Damages Point will be reduced to \$500.<sup>1</sup>

A total Damages pool recovery for each Class Member will be based on the monetary value

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<sup>1</sup> Therefore, the maximum value of 10 Damages Points is \$5,000 (10 points x \$500 maximum value per point), and the maximum value of 30 Damages Points is \$15,000 (30 points x \$500 maximum value per point). The value of a Damages point is dependent on the calculation described herein and may also be less than \$500 per Damages Point.

of one Damages Point multiplied by the number of Damages Points assigned to the Class Member.

All payments made to a Class Member of a Damages award are to be considered compensatory damages, and shall not be considered back pay or back wages.

**d. Contribution Award Determination**

The monetary value for each Contribution Point will be determined based total monetary amount available for all Contribution awards, which is \$100,000 divided by the total number of Contribution Points awarded to all Class Members pursuant to the Settlement Agreement and the Distribution Formula. The value of an individual Contribution Point will depend on the total amount of Contribution Points awarded, but in no case will the value of the sum of all Contribution Points awarded exceed \$100,000.

A total Contribution award will be determined for each Class Member, based on the monetary value of one Contribution Point multiplied by the number of Contribution Points assigned to the Class Member.

Payments of a Contribution Pool award shall not be considered back pay or back wages.

**e. Payment of Awards.** Defense Finance Agency Services (“DFAS”) shall administer monetary awards based on the Distribution Formula agreed to by the parties in the Settlement Agreement, subject to all applicable tax deductions and withholdings. DFAS shall issue appropriate tax forms to Class Members who receive a monetary award.

**f. Commitment and Obligation of Funds.** The Agency will commit the funds for purposes of settlement prior to the determination of monetary awards. Any amount remaining will be decommitted after all claims have been paid, and available to the Agency to use for other purposes.