

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE

_____)	
REGINA McKIERNAN, et al.,)	EEOC Hearing No. 570-2016-00292X
)	
Class Agent,)	Agency Case No. EU-FY08-044
)	
v.)	
)	Before Administrative Judge
LLOYD J. AUSTIN, III, SECRETARY,)	Maricia Woodham
U.S. DEPARTMENT OF DEFENSE,)	
)	
Agency.)	
_____)	

SETTLEMENT AGREEMENT

In the interest of fully resolving the issues raised in this class complaint, and in reliance on the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, Ms. Regina McKiernan (“Class Agent”), on behalf of herself and all others similarly situated, and the Department of Defense Education Activity (DoDEA) (“Agency”), collectively, the “Parties”, hereby stipulate and agree as follows:

I. GENERAL PROVISIONS

Jurisdiction: The parties acknowledge that the Equal Employment Opportunity Commission has jurisdiction over the parties and the subject matter. An EEOC Administrative Judge shall retain jurisdiction over this matter for purposes of monitoring and ensuring compliance with the Settlement Agreement.

Class Members: All persons who come within the Class definition are members of the Class. The Class includes all employees of the Department of Defense Education Activity who

had to complete or completed the Request for Reasonable Accommodation Form when requesting an accommodation at any time during the time period March 11, 2002, to December 31, 2009. The parties agree that the Potential Class Members include any person who was employed at the Department of Defense Education Activity at any time during the time period March 11, 2002, to December 31, 2009.

Opt Out Rights: If this Settlement Agreement receives final approval, the settlement encompasses all of the claims of the Class Members coming within the class action, and the Class Members may not “opt out” of the defined class. All Class Members will have the opportunity to object to the Settlement Agreement in accordance with the procedures set forth in 29 C.F.R. § 1614.204(g)(4).

Denial of Liability: The Agency expressly denies any wrongdoing or liability whatsoever. This Settlement Agreement represents the compromise of disputed claims. It reflects the parties’ recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time, resources, and money. The Settlement Agreement does not constitute an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the claims in this case. No ruling was ever made on the merits of the claims or allegations of the Class.

The terms of this Settlement Agreement will not establish any precedent and will not be used as a basis by either party or its representatives to seek or justify similar terms in any other case.

II. NOTICE OF RESOLUTION AND FAIRNESS PROCESS

Preliminary Approval: Prior to sending a notice as required by 29 C.F.R. § 1614.204(g), the Parties will request that the Administrative Judge review and grant Preliminary Approval of the Settlement Agreement and the Exhibits hereto.

Notice to Class: As soon as practicable after receiving Preliminary Approval, the Agency will send the Class Notice attached hereto as Exhibit 1 to all Potential Class Members. The Agency shall provide the Class Notice to the Class by reasonable means and in a manner consistent with 29 C.F.R. § 1614.204(e), including, but not limited to, sending the Class Notice to the last known address of all Potential Class Members via US Mail (including updated addresses provided by the Office of Personnel Management) and such email addresses as can be located for Potential Class Members. The Agency shall provide Class Counsel with all contact information relating to Potential Class Members, and Class Counsel shall cooperate with the Agency in the efforts to locate all Potential Class Members.

Objections to Settlement Agreement: Potential Class Members will be provided 50 calendar days from the date of the Notice of Right to File a Claim for Class Action Settlement Award is mailed to the last known address of all Potential Class Members via US Mail to submit any objections to the Settlement Agreement. Objections shall be submitted to the Administrative Judge.

Fairness Process: The Administrative Judge will consider the matter of final approval of the Settlement Agreement and all objections timely submitted by Potential Class Members. The Administrative Judge will determine the method for consideration of the fairness of the Settlement Agreement consistent with 29 C.F.R. § 1614.204(g)(4).

III. ADMINISTRATION OF RELIEF

Total Settlement Amount: The Agency will commit the funds for purposes of payment of settlement awards prior to the determination of monetary awards. The Agency will commit up to \$7,713,000 to pay all claims to members of the Class, all attorney's fees and costs, and all approved costs associated with the administration of the settlement – including the cost for mailing proof of claim and releases.

Distribution Formula: The distribution of all funds related to this Settlement Agreement shall be governed by the Distribution Formula, which is attached hereto as Exhibit 1 – Formula for Distribution of Settlement Funds.

Tax Consequences of Monetary Relief: Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of the Class Agent and Class Members who receive monetary relief pursuant to this Settlement Agreement. This Settlement Agreement is executed without reliance upon any representation by the Agency or the Class Agent or Class Counsel as to tax consequences, and the Class Agent and Class Members who receive monetary relief are responsible for the payment of all taxes that may be associated with the settlement payments.

Neither the Agency, Class Counsel, nor Class Agent make any representation nor express any opinion as to the taxability of the payments made to the Class Agent, any other Class Members, or any other recipient. Defense Finance Accounting Service ("DFAS") shall issue payment of monetary awards based on the Settlement Agreement and the Distribution Formula. Monetary awards will be distributed to the Class Agent and Class Members, subject to all applicable tax deductions and withholdings. DFAS shall issue appropriate tax forms to Class Members who receive a monetary award.

Payment of Attorney's Fees and Costs: Pursuant to the agreement of the parties, \$2,443,375.55 from the total settlement amount of \$7,713,000 shall be allocated to pay Class Counsel's attorney's fees and costs for work associated with this case. Payment of Class Counsel's attorney's fees and costs shall be made by the Agency within sixty (60) calendar days of the final approval of the Settlement Agreement.

Administrative Support Contractor: To support this administration of relief, the Agency will issue a contract for an independent administrative support contractor for up to \$75,000 as agreed to by both parties to perform the following functions:

1. Develop a process to receive Proof of Claim and Release (hereinafter "Proof of Claim and Release") submissions, using the Proof of Claim and Release provided in Exhibit 2-Proof of Claim and Release.
2. Receive Proof of Claim and Release submissions from Potential Class Members.
3. Provide recommendations on eligibility for each Potential Class Member in accordance with the Class definition. These recommendations will be submitted to Class Counsel for their review and concurrence, and to the Agency for approval.
4. Calculate the recommended points to be allocated under the Distribution Formula, attached hereto as Exhibit 1, to eligible Class Members. These recommendations will be submitted to Class Counsel for their review and concurrence, and to the Agency for approval.
5. Calculate the recommended distribution/payment amount for eligible Class Members based on the Distribution Formula, attached hereto as Exhibit 1. These recommendations will be submitted to Class Counsel for their review and concurrence, and to the Agency for approval.

The administrative support contractor will only be responsible only for performing ministerial acts to help ensure appropriate administration of the Distribution Formula, which is attached hereto as Exhibit 1, as part of the Settlement Agreement. If Agency Counsel and Class Counsel agree with the administrative support contractor's recommendations, then the awards process will proceed based on the administrative support contractor's recommended calculations. If Agency Counsel and/or Class Counsel disagree with any of the administrative support contractor's recommendations, the parties will confer. If the parties are unable to reach an agreement regarding the appropriate application of the Settlement Agreement and Distribution Formula, the parties will refer any unresolved issues to the EEOC Administrative Judge for appropriate resolution based on the terms of the Settlement Agreement and Distribution Formula, which is attached hereto as Exhibit 1.

The Agency will procure the administrative support contractor in accordance with the procedures provided in the Federal Acquisition Regulation ("FAR"). The Agency shall finalize a contract with the administrative support contractor within ninety (90) calendar days of final approval of the Settlement Agreement. The parties will review a list of proposed contractors to determine if a conflict exists beyond the conflicts normally reviewed by a warranted contracting officer in accordance with FAR subpart 9.5. For this review, in addition to other conflicts noted in the FAR, a conflict exists if counsel or any parties (including Class Counsel or Agency) to this agreement have a current or prior (within the last two years) financial or contractual relationship or interest, unless otherwise agreed to by the parties.

The Agency shall ensure that the relevant administrative support contract obligates the administrative support contractor to maintain all information and/or documentation submitted to the administrative support contractor as a part of their support for implementation of this

Settlement Agreement as a confidential record under the Consent Protective Order issued in this case on September 5, 2017.

Decommission of Unused Settlement Funds: Following distribution of all monetary awards to Class Members calculated pursuant to the Distribution Formula which is attached hereto as Exhibit 1, payment to the administrative support contractor of up to \$75,000, and payment of \$2,443,375.55 for attorney's fees and costs for work associated with this case to Class Counsel, any amount remaining will be decommitted and available to the Agency to use for other purposes.

IV. ENFORCEMENT

Enforcement of this Settlement Agreement will be consistent with 29 C.F.R. § 1614.504, subject to the jurisdictional restriction set forth in Part I above.

V. APPLICABLE CONTRACT PRINCIPLES

This Agreement represents the full and complete understanding for resolution of the class complaint between the Class Agent and the Class, and Agency.

The parties will cooperate and act in good faith to carry out the terms and provisions of this Agreement, including but not limited to, submitting a joint motion to approve the Settlement Agreement.

In the event this Settlement Agreement is challenged administratively or judicially, the Class Agent, Class Counsel and the Agency shall fully defend its lawfulness.

Class Agent and the Agency assert that they enter this Agreement freely and voluntarily, without duress or coercion, and with a complete and thorough understanding of its contents.

If any provision of this Agreement is determined by the EEOC, or any court of competent jurisdiction, to be unenforceable for any reason, such term shall be severed from this Agreement without affecting the remaining terms, which shall remain in full force and effect.

Nothing in this Agreement shall be binding or otherwise restrict the Agency in making any other required notifications to any other government agency as required by statute, regulation, or policy, as to the terms or amount of this Agreement.




This Agreement will be deemed to be fully executed on the date on which the last of the parties and their representatives affixes his/her signature hereto.

Complainant:



Regina M.  Verified by signNow
09/30/2023 00:27:40 UTC
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Regina McKiernan
Complainant


Date: 09/29/2023


Jeremy D.  Verified by signNow
09/30/2023 00:28:28 UTC
77c232e61e9b4de6ba56
Jeremy Wright
Kerrie D.  Verified by signNow
09/30/2023 00:28:28 UTC
77c232e61e9b4de6ba56
Jeremy Wright
Kator, Parks, Weiser & Wright, P.L.L.C.
1200 18th Street, NW, Suite 1000
Washington, D.C. 20036

Counsel for Class Agent and the Class

Date: 09/29/2023

For the Agency:

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Date: 2023.09.29 19:42:09 -04'00'
M.1020098100

THOMAS M. BRADY
Director, DoD Education Activity

Date: _____

RICHARDSON.JAMES.C.  Digitally signed by
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Date: 2023.09.30 02:00:40 +02'00'
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James C. Richardson, Jr.
General Counsel
Department of Defense Education Activity
Office of the General Counsel
4800 Mark Center Drive
Alexandria, Virginia 22350

Counsel for the Agency

Date: _____