

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

*Truby Pete, et al. v. Tacoma School District*  
U.S. District Court Cause No. 3:16-cv-05403-RJB

This Settlement Agreement and Release of All Claims ("this Agreement") is entered into by and between the parties to the Agreement, to wit: Sheila Gavigan, Kathy McGatlin, Truby Pete, III Branches Law, PLLC, Joan Mell, and the Tacoma School District.

### I. RECITALS

- A. Lawsuit.** On May 12, 2016, Sheila Gavigan, Kathy McGatlin, and Truby Pete (collectively "Plaintiffs") filed a Complaint against the Tacoma School District ("District"), and several current and former employees, including Shannon McMinimee, Lynne Rosellini, Lisa Nolan, Gayle Elijah, Rosemarie Burke, Susie Askew, Patrick Erwin, and Carla Santorno (collectively "Defendants") in Superior Court for the County of Pierce under Cause No. 16-2-07850-3. The case was removed to the U.S. District Court by Defendants on May 25, 2016. Thereafter, the Plaintiffs filed an Amended Complaint. In the Amended Complaint, Plaintiffs assert claims against the Defendants, including, but not limited to: 1) Deprivation of Constitutional Rights under 42 USC § 1983, Free Speech and Due Process, 2) Invasion of Privacy/Defamation/False Light, 3) Constructive Discharge in Violation of Public Policy, 4) Breach of Contract, 5) Outrage, 6) Violations of the Washington Law Against Discrimination, RCW 49.60, and 7) Violations of the Public Records Act, RCW 42.56 ("Lawsuit").
- B. Other Matters.** The parties to this Agreement are also engaged in other litigation and non-litigation matters they wish to address in this Agreement ("Matters"). Matters includes all claims, arbitrations, appeals, PRA requests, and disputed issues through the dates of this Agreement. This Agreement covers ALL Matters brought, to be brought, that could have been brought, as well as those related thereto, including but not limited to those listed below:
- a. Declaratory Judgment action initiated in Pierce County Superior Court against III Branches Law, PLLC, Sheila Gavigan, Kathy McGatlin, and Truby Pete, as Civ. No. 14-2-12979-9, and currently pending appeal in Division II of the Court of Appeals for the State of Washington as No. 48836-1-II.
  - b. Actions for relief under RCW 28A.405.310, initiated with JAMS by Plaintiffs Sheila Gavigan, Kathy McGatlin, and Truby Pete as Ref. Nos. 1160020409, 1160020452, 1160020450, respectively, and currently pending as a consolidated appeal in Division II of the Court of Appeals as No. 47724-6-II.

- c. Action for relief under RCW 28A.405.310, initiated with JAMS by Plaintiff Truby Pete as Ref. No. 1160021271.
- d. All Public Records Requests under RCW 42.56, as served by Joan Mell of and concerning Sheila Gavigan, Kathy McGatlin, and Truby Pete, inclusive of, but not limited to: Nos. 2030 and 2037.

**C. Full and final settlement.** The parties to this Agreement desire to settle and resolve, fully and finally, all claims and matters of all parties to this Agreement which have been or could have been alleged, whether in the Lawsuit or in other Matters, and whether against the District or other individuals or entities.

**D. Settlement of Disputed Claims and Matters; No admission of liability.** Sheila Gavigan, Kathy McGatlin, Truby Pete, Joan Mell, and III Branches Law, PLLC, acknowledge that the District, its officers and directors, current and former, have adamantly denied and continue to deny all of the allegations made by them in the Lawsuit or in connection with the above-described Matters, and that the settlement of the above and below-described claims, related claims, Lawsuit, and Matters, the payment of the below-described sums, the non-cash consideration offered, and any other actions taken by the District in connection therewith, shall not be deemed to be or construed as an admission of liability or an admission of the truthfulness of any of the allegations made by them therein, but instead is solely intended to efficiently resolve disputed claims and avoid further litigation. The District, its officers and directors, current and former, acknowledge that Sheila Gavigan, Kathy McGatlin, Truby Pete, Joan Mell, and III Branches Law, PLLC adamantly denied and continued to deny all of the allegations made by the District and its officers and directors, current and former in the Lawsuit and Matters. This Agreement and the actions taken in connection with the Agreement shall not be deemed to be or construed as an admission of liability or an admission of the truthfulness of any of the allegations made against them.

## II. AGREEMENTS

Based on the foregoing recitals, the parties to this Agreement hereby, individually and mutually, agree as follows:

**A. Release.** In consideration of the payment listed below, the parties do hereby release and fully discharge each other and all officers and directors, insurers, agents, lawyers, employees and former employees, or any such released persons or entities ("Released parties") from any and all manner of claims, demands, liabilities, obligations, damages, causes of action or suits, whether known or unknown, whether suspected or unsuspected, which the parties, their heirs, executors, administrators, legatees, representatives, successors, transferees and assigns may have as against the released parties herein, arising from, related to, or in any way connected with the above-described Lawsuit or Matters. This release includes, but is not limited to, all claims, demands, PRA requests, liabilities, obligations, damages, causes of action or suits, whether known or unknown, and whether

suspected or unsuspected, which have been or could have been alleged in the Lawsuit or Matters or otherwise arise from the events described in the Lawsuit or Matters.

This release covers any and all future damages or losses that arose during the pendency of the Lawsuit or Matters, or that were not known to the parties to this Agreement, but that may later be discovered, which the parties, their heirs, executors, administrators, legatees, representatives, successors, transferees and assigns can or may have alleged in the Lawsuit or Matters or that otherwise arise from the events described in the Lawsuit or Matters; and it specifically covers any losses that the parties may at any time incur that they claim are the result of non-disclosure in whole or in part by any released person or entity, or that their claims are the result of each other's actions or inactions, or the actions or inactions of any of its current or past employees, and which relate to any matters that have been or could have been alleged in the Lawsuit or Matters or otherwise arise from the events described in the Lawsuit or Matters.

**B. Payment and Consideration.** In consideration of the Release set forth above, the following will be paid to the order of the Three Branches Law, PLLC Trust Account on behalf of Plaintiffs, the sum of Three Hundred Thousand and no/100ths dollars (\$300,000.00), said sum to include any and all of Plaintiffs' legal fees and costs, and any out-of-pocket expenses incurred in relation to the Lawsuit, Matters or in relation to any claims alleged. Such payment shall be made within ten business days of the date the plaintiffs execute the Agreement. Further consideration includes:

- Paid administrative leave for the remainder of the 2016-17 contracted school year and the entirety of the 2017-18 school year for Kathy McGatlin and Truby Pete, as per the governing TEA Bargaining Agreement for applicable earnings, withholdings, and schedule of payments. Their pay shall be based upon the salary schedule applicable to them for the 2016-17 and 2017-18 contract years, including their professional responsibility stipends. During their administrative leave, the District shall continue its contributions to insurance benefits as required by the TEA Bargaining Agreement and the law. The last paychecks will be in August 2018, as per regular pay period and schedule.
- Sheila Gavigan to be credited 100 days of sick leave for the remainder of the 2016-17 contracted school year. The District shall allow Gavigan, as previously agreed to on November 28, 2016, and confirmed by letter on December 8, 2016, "to use appropriate sick leave for heightened symptoms related to disability, as permitted in accordance with the TEA Bargaining Agreement."
- Sheila Gavigan to be credited additional days of sick leave for the 2017-18 contracted school year up to the maximum balance of 180 days. The District shall allow Gavigan, as previously agreed to on November 28, 2016, and confirmed by letter on December 8, 2016, "to use appropriate sick leave for heightened symptoms related to disability, as permitted in accordance with the TEA Bargaining Agreement."

- All plaintiffs to be credited for all sick leave hours previously debited between January 1, 2016 through November 10, 2016.
- Sheila Gavigan will be provided the reasonable accommodations as agreed to on November 28, 2016, and confirmed by letter on December 8, 2016, which included: a planning period in the afternoon; permission to wear ear plugs for sound sensitivity; excusal from assemblies when the volume becomes unreasonably loud; and use of appropriate leave, as permitted in accordance with the TEA Bargaining Agreement.
- Written notification to OPP of the OSPI that the District has resolved all concerns regarding Truby Pete, Kathy McGatlin, and Sheila Gavigan to its satisfaction, and does not intend to pursue further the professional misconduct allegations against them.
- Withdrawal with prejudice of the letters of probable cause, to wit:
  - Letters to Sheila Gavigan, Kathy McGatlin, and Truby Pete dated October 31, 2014.
  - Letter to Sheila Gavigan, Kathy McGatlin, and Truby Pete dated March 2, 2015.
  - Letter to Truby Pete dated December 11, 2015.

The District agrees further to remove the above-referenced letters of probable cause from the personnel files of Sheila Gavigan, Kathy McGatlin, and Truby Pete and to retain them in a separate file at the District administrative offices pursuant to the District's retention policies.

### C. Required Terms and Additional Consideration.

In further consideration of the Payment and consideration set forth above:

1. Plaintiffs Kathy McGatlin and Truby Pete shall submit, simultaneously with the execution of this agreement, irrevocable letters of retirement effective at the end of the 2017-18 contracted school year.
2. Joan Mell shall withdraw with prejudice all requests for public records made under the Public Records Act, RCW 42.56, *et seq.* ("PRA"), including but not limited to those identified by the District as PRR Nos. 2030 and 2037. The withdrawal shall be effective immediately and without further action on the signing of this Agreement and acts as a complete release of any claims that have been or could have been made as to the District's response or lack of response or alleged compliance or alleged non-compliance with the PRA.

### D. Other Terms.

**1. Indemnification.** It is further agreed and understood that Plaintiffs, their heirs, executors, administrators and assigns, in consideration of the settlement of the above-referenced action, agree to hold Defendants harmless from any and all claims that may be asserted for any liens, including but not limited to insurance liens, tax liens, State subrogation and lien claims, Federal or Social Security subrogation and lien claims, or any agency or program claims, including Medicare, Medicaid, Veterans Administration or Workman's Compensation programs, or state and/or federal taxes. It is expressly understood that any outstanding liens, including for payment related to past medical treatment, therapy, or benefits, are to be paid by and are the responsibility of Plaintiffs, their heirs, executors, administrators or assigns, and are not the responsibility in any fashion of Defendants or their insurer.

**2. Taxes.** Plaintiffs agree that: (i) Plaintiffs are solely responsible for reporting the payment made and for any tax liability and consequence that may result therefrom; (ii) Defendants bear no responsibility whatsoever for any such tax liability or consequence; (iii) Defendants are not required to pay any further sum even if any tax liability or consequence to Plaintiffs resulting from the payment is ultimately assessed in a fashion that is not presently anticipated. Defendants, however, agree that they will not dispute the characterization of the payment as emotional distress damages. Neither Defendants nor any of their representatives have provided Plaintiffs with any advice as to the taxability of the proceeds they will receive under this agreement. Should Plaintiffs require such advice, they shall seek it independently.

**3. Attorneys' Costs and Fees.** The Parties hereto shall bear their own fees, costs, and expenses incurred in connection with the disputes between the Parties, which are the subject of, or related to, this Agreement including, without limitation, the negotiation, drafting, and consummation of this Agreement.

**4. Media Notification.** The Parties agree not to initiate any discussions or contact with the media or others regarding the settlement or its terms.

**5. Medicare Secondary Payer Act.** Plaintiffs understand that pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y) and its accompanying regulations, and as a condition of the settlement of the subject claim, the Released Parties must consider and protect the interests of Medicare. Plaintiffs and their counsel certify that at the time of the execution of this settlement agreement they are not currently receiving Medicare benefits and that Medicare has not made any conditional payments arising from or related to injuries stemming from the facts at issue in this case. This certification is supported by an executed Medicare compliance form, attached as **Exhibit A** hereto, which the Released Parties may reasonably rely on in not reporting this settlement within the meaning of Section 111 of the Medicare Medicaid SCHIPS Extension Act of 2007 (42 U.S.C. § 1395y(b)(8)).

**a.** In the event any Medicare reimbursement claim does arise, Plaintiffs understand that all of Medicare's claims arising from treatment for the subject

injuries must be paid from the settlement proceeds of this case. It will remain an obligation of Plaintiffs to ensure proper reimbursement.

b. Plaintiffs agree to indemnify and hold harmless the Released Parties, their insurers, and their attorneys from any and all actions, claims, liens, penalties or demands of any nature that are filed or will be filed in connection with Medicare's reimbursement claims for the subject injuries. In case any suit or other proceeding shall be brought on account of Medicare's reimbursement claims, Plaintiffs agree to pay all costs, expenses, and attorneys' fees incurred in the Released Parties', their insurers', and their attorneys' defense of such claim/action and agree to pay all judgments, which may be incurred or claimed against the Released Parties, their insurers, and their attorneys.

**6. Older Workers' Benefits Protection Act Provisions.** In accordance with the Requirements of the Older Workers' Benefits Protection Act, Plaintiffs, current employees of the District, expressly acknowledge the following:

a. Plaintiffs are hereby advised to consult with an attorney prior to accepting this Agreement.

b. Plaintiffs understand that they have twenty-one (21) days from the time in which they are first presented with this Agreement to consider whether or not to accept it. Plaintiffs also understand that, while it is their right to decide to accept, enter into, and execute the Agreement before the end of that twenty-one (21) day period, that they are under no obligation to do so. Plaintiffs also understand that by returning the signed Agreement prior to the end of the review period they have voluntarily waived all or a portion of that period.

c. Plaintiffs also understand that for a period of seven (7) days following the execution of this Agreement, they may revoke the Agreement in writing. Any such written revocation should be delivered to counsel for the Defendants, Patricia K. Buchanan, before the seven-day period expires. Plaintiffs further understand that if they do not revoke the Agreement in writing within the seven (7) day period, this Agreement will be enforceable seven (7) days after the date of acceptance. Accordingly, Plaintiffs and Defendant agree that no payment of benefits, services, or compensation promised under this Agreement shall be delivered until the seven (7) day revocation period has lapsed.

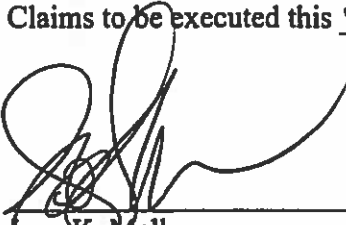
**7. Stipulation and Order of Dismissal with Prejudice.** It is further understood that upon disbursement of the proceeds under this release, Plaintiffs and District shall, via their duly authorized counsel, execute a stipulation and order of dismissal with prejudice and without costs of the Lawsuit in its entirety, and this stipulation and order shall be filed with the Court.

District further agrees that it shall advise Division II of the Court of Appeals of the satisfaction of the matters currently pending as 47724-6-II Consl. and 48836-1-II and shall

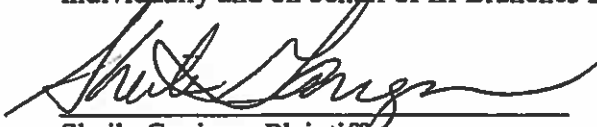




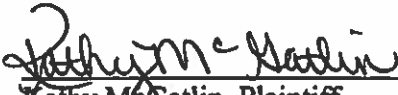
IN WITNESS WHEREOF, I have caused this Settlement Agreement and Release of All  
Claims to be executed this 5<sup>th</sup> day of January, ~~2016~~  
2017



Joan K. Mell,  
individually and on behalf of III Branches Law, PLLC



Sheila Gavigan, Plaintiff



Kathy McGatlin, Plaintiff



Truby Pete, Plaintiff



SUBSCRIBED AND SWORN TO before me this 5<sup>th</sup> day of January, ~~2016~~ <sup>2017</sup>.



Print Name: Joseph A. Fonseca



Notary Public in and for the State  
of Washington, residing at  
Pierce County.  
My commission expires Nov. 8, 2020.

I attest that I have been authorized to sign this agreement on behalf of the Tacoma School District and Superintendent.

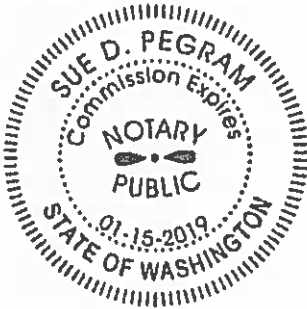
IN WITNESS WHEREOF, I have caused this Settlement Agreement and Release of All Claims to be executed this 6<sup>th</sup> day of January, 2018. 7<sup>th</sup>

Susan Schreurs  
Susan Schreurs, Counsel,  
Tacoma School District

SUBSCRIBED AND SWORN TO before me this 6<sup>th</sup> day of January, 2018. 7

Sue D Pegram

Print Name: Sue D Pegram



Notary Public in and for the State of Washington,  
residing at Pierce County.

My commission expires January 15, 2019.

**Mrs. Truby Pete**

Guidance Counselor  
Birney Elementary School  
1202 S. 76th  
Tacoma, WA 98408  
ph. 253-571-4600  
tpete@tacoma.k12.wa.us

By E-Mail: [sschreu@tacoma.k12.wa.us](mailto:sschreu@tacoma.k12.wa.us)

August 31, 2018

General Counsel  
Central Administration Building  
Tacoma School District  
PO Box 1357  
601 S 8th St  
Tacoma, WA 98405-4614

RE: Irrevocable Letter of Retirement Per Terms of Settlement Agreement  
dated January 5, 2017

Dear General Counsel:

I retire from Tacoma Public School District effective August 31, 2018 pursuant to the terms and conditions of the Settlement Agreement and Release of All Claims dated January 5th, 2017, and subject to satisfaction of the District's obligations set forth in the Agreement.

Sincerely yours,

  
Mrs. Truby Pete, M.Ed., NBCT-SC'11

cc: Joan K. Mell, Attorney