

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made in the State of Arizona by and between Arizona Christian University, a private university, on behalf of itself and its students (“ACU”), and Washington Elementary School District #6 (“District”), Nikkie Gomez-Whaley, Jenni Abbott-Bayardi, Kyle Clayton, Lindsey Peterson, and Tamillia Valenzuela, in their individual and official capacities (“Governing Board Members”) (the District and the Governing Board Members are collectively referred to herein as the “Defendants” and all parties to this Agreement are collectively referred to herein as the “Parties” or individually as a “Party”).

RECITALS

WHEREAS, ACU and the District entered into a Student Teacher Placement Agreement (the “Agreement”) on February 23, 2018; and

WHEREAS, the terms of the Agreement permitted renewal on a year-to-year basis by written agreement of the parties not to exceed a period of five years; and

WHEREAS, on February 23, 2023, at a duly noticed Governing Board Meeting, the District's Governing Board voted not to renew the Agreement for the 2023-2024 school year; and

WHEREAS, ACU has alleged certain matters relating to the non-renewal of the Agreement give rise to legal claims; and

WHEREAS, ACU filed a civil action alleging various causes of action against the District and the Governing Board Members, in the United States District for the District of Arizona, case no. CV-23-413-PHX-SPL (“the Litigation”), on March 9, 2023; and

WHEREAS, the Defendants expressly deny any and all liability by any defendant to Plaintiff on any basis or any improper or unlawful conduct or wrongdoing; and

WHEREAS, the parties mutually desire to resolve ACU's claims rather than engage in protracted and expensive litigation; and

WHEREAS, the parties have agreed to a full settlement of ACU's claims;

AGREEMENT

NOW THEREFORE, in consideration of the promises and the mutual agreements, covenants, and provisions contained in this Agreement, the parties agree and declare as follows:

1. Payment For Release Of Claims. Within thirty (30) days of this fully executed Agreement and submission of required tax identification information from Alliance Defending Freedom, a check will be issued, made payable to Alliance Defending Freedom in the amount of \$25,000 for attorneys' fees and costs.

2. Student Teacher Agreement. The Parties agree to enter into a revised student teacher agreement for the 2023-2024 school year, attached as Exhibit A.

ACU acknowledges that it is not the District's usual policy to provide the consideration set forth in this Agreement, and that it would not necessarily be entitled to that consideration if it were not entering into this Agreement.

3. Waiver And Release Of Claims.

a. ACU, on behalf of itself and its students, board members, employees, insurers, reinsurers, representatives, affiliates, agents, directors, officers, members, attorneys, assigns, and related entities, waives, releases, and discharges all claims and all existing rights to any relief of any kind (known and unknown) against all Defendants—including the Governing Board members, the District, its former board members, employees, insurers, affiliates, agents, attorneys, and their assigns (all of whom are referred to collectively in this Agreement as "Releasees")—that arise out of the facts that are alleged in the Litigation. ACU understands that it is not waiving rights or claims that may accrue after this Agreement is signed.

b. ACU acknowledges and agrees that the waiver, release, and discharge in this Agreement is a general release of all existing claims, known and unknown, that arise out of the facts alleged in the Litigation. ACU acknowledges that it may hereafter discover claims, facts, or causes of action presently unknown, unsuspected, or different from those that it now suspects or believes to be true. ACU expressly waives and assumes the risk that the facts or law may be other than it believes them to be. ACU further agrees that it is accepting the consideration under this Agreement as a complete compromise of matters involving disputed issues of law and fact. ACU intends by the execution of this Agreement to fully, finally, and forever release all known and unknown claims that arise out of the facts alleged in the Litigation, notwithstanding the discovery or existence of any additional or different facts or claims at any time after it signs this Agreement.

4. Covenant Not To Sue. ACU will not file or maintain any charge, claim, or action of any kind, nature, or character whatsoever against the Releasees, or cause or permit any such charge, claim, or action to be filed or maintained, in any federal, state or municipal court, administrative agency, or other tribunal arising out of any claim arising out of the facts alleged in the Litigation; provided, however, that this paragraph will not prevent ACU from testing the “knowing and voluntary” nature of this Agreement in court or from seeking a judicial determination of the validity of the waiver and release of claims contained in this Agreement if it should choose to do so.

5. Notice of Dismissal. Promptly upon execution of this Agreement, Plaintiff shall file with the United States District Court the Proposed Order and Notice of Dismissal of the Litigation with prejudice and on the merits, and with Plaintiff's claims for attorneys' fees and costs resolved as set forth in this Agreement, attached as Exhibit B.

6. Payment Of Taxes. The Defendants make no representation or warranty to ACU regarding the tax treatment or consequences of the payments to it under this Agreement. ACU will be solely responsible for the payment of all taxes of whatever kind that may be due or payable in connection with the payments set forth in Paragraph 1 above, and will indemnify and hold Releasees harmless from all liens, actions, or claims on the part of the Internal Revenue Service or any other tax authority in connection with the payments under this Agreement. This indemnity and hold harmless agreement will apply as to the full amount of all such liens, actions, or claims, and all expenses incurred in connection therewith.

7. Legal Representation. The Parties acknowledge they have had sufficient opportunity to consult with their own attorneys, and have done so, prior to executing this Agreement.

8. No Admission Of Wrongdoing. This Agreement does not constitute an admission that any person or entity violated any constitution, local, state, or federal ordinance, regulation, ruling, statute, rule of decision, or principle of common law, or that any person or entity engaged in any improper or unlawful conduct or wrongdoing.

9. Statements By Releasees. ACU acknowledges that in deciding whether to sign this Agreement, it has not relied upon any statements, representations, or promises made by the Releasees, other than the statements made in this Agreement.

10. Authority. ACU represents and warrants that it has the authority to enter into this Agreement, that it has not assigned any claims to any person or entity, and that it has not filed for bankruptcy or been involved in any bankruptcy proceedings between the accrual of any claims and the execution of this Agreement.

11. Invalidity. In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or unenforceable in any respect, such a determination will not affect the validity, legality, or enforceability of the remaining provisions of this Agreement, and the remaining provisions of this Agreement will continue to be valid and enforceable.

12. No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement will be construed to give any rights or benefits in this Agreement to anyone other than ACU and the Releasees. All duties and responsibilities undertaken under this Agreement will be for the sole and exclusive benefit of the Parties and their respective students, board members, employees, insurers, re-insurers, representatives, affiliates, agents, directors, officers, members, attorneys, successors, assigns, and related entities, and not for the benefit of any other party.

13. No Rule Of Strict Construction. All parties have approved the language of this Agreement, and no rule of strict construction will be applied against any party.

14. Entire Agreement. The parties intend for this Agreement to define the full extent of their legally enforceable undertakings. The parties do not intend that any representations or statements made in any prior conversations, discussions, negotiations, correspondence, or writings between them be legally enforceable, and all other agreements and understandings between them relating to the subject matter of this Agreement are superseded by this Agreement. The parties will execute and deliver to each other any and all such further documents and instruments, and shall perform any and all such other acts, as reasonably may be necessary or proper to carry out or effect the purposes of this Agreement

15. Headings. The descriptive headings of the paragraphs and subparagraphs of this Agreement are intended for convenience only, and do not constitute parts of this Agreement.

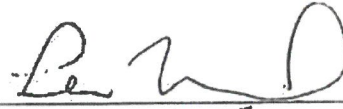
16. Governing Law. This Agreement will be construed in accord with, and any dispute or controversy arising from any breach or asserted breach of this Agreement will be governed by, the laws of the State of Arizona.

17. Counterpart. This Agreement may be signed in counterparts which, when taken together, shall constitute a single integrated agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated by their signature below.

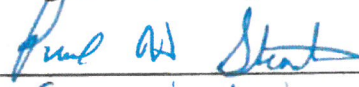
DATED this 3 day of May, 2023.

Arizona Christian University

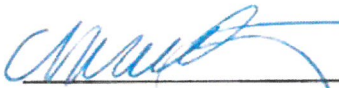
By 
Its PRESIDENT

DATED this ___ day of ___ 2023.

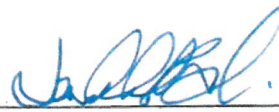
Washington Elementary School District #6

By 
Its Superintendent

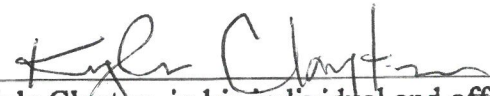
DATED this ___ day of ___ 2023.


Nikkie Gomez-Whaley, in her individual and official capacities

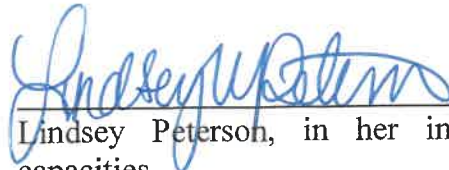
DATED this ___ day of ___ 2023.


Jenni Abbot-Bayardi, in her individual and official capacities

DATED this ___ day of ___ 2023.


Kyle Clayton, in his individual and official capacities

DATED this ___ day of ___ 2023.



Lindsey Peterson, in her individual and official capacities

DATED this ___ day of _____ 2023.

Tamillia Valenzuela, in her individual and official capacities

EXHIBIT A

STUDENT PLACEMENT AGREEMENT
Between
ARIZONA CHRISTIAN UNIVERSITY
and
Washington Elementary School District

This Agreement is entered into by and between the Arizona Christian University, located in Glendale, Maricopa County, Arizona (“University”), and Washington Elementary School District of Maricopa County (“District”) located in Glendale, Arizona.

I. DURATION

This agreement takes effect July 1, 2023, and will remain in effect through June 30, 2024, and may be renewed, revised, or modified by a written amendment signed by both parties for up to four additional one-year terms. After five years, a new Agreement is required.

II. PURPOSE

The purpose of this Agreement is to establish a relationship between the University and the District, to allow students from the University to participate in an optional educational experience at District sites that may qualify for academic credit as determined by the University.

III. GENERAL TERMS

1. Either party may terminate this Agreement by providing at least thirty (30) days prior written notice to the other party, except that, when applicable, to the extent a student is currently participating in an educational experience contemplated by this Agreement at the time of receipt of the termination notice, the parties shall comply with such applicable provisions in the Agreement to allow such student to complete the educational experience provided such completion does not extend beyond one hundred twenty (120) days from the date of receipt of such notice.
2. The University and the District will agree on a schedule for student participation at the District.
3. The student’s participation should complement the service and educational activities of the District. The District will provide a supervisory level staff member to coordinate the program experience of participating students, direct student’s day-to-day experiences, and facilitate the exchange of information between the University and District staff.
4. Each student is expected to perform with high standards at all times and comply with all written policies and regulations of the District.
5. Either the District or the University may require withdrawal or dismissal from participation at the District of any student whose performance record or conduct does not justify continuance.

6. Neither the University nor the District is obligated to provide for the student's transportation to and from the District or for health insurance for the student.
7. An in-person meeting or telephone/e-mail conference between representatives of the University and the District will occur at least once each semester to evaluate the educational program and review this Agreement.
8. Statements of performance objectives for this educational experience will be the joint responsibility of University and District personnel.
9. Each student must adhere to the District's established dress, performance and professionalism standards.
10. Each student will obtain prior written approval from the University and the District before publishing or presenting any materials describing or commenting on District students, staff, facilities or operations outside the normal educational setting of the University.

IV. DISTRICT'S OBLIGATIONS

1. District agrees to appoint a coordinator in its Human Resources Department who is responsible for the educational activities and coordination of University students participating under this Agreement.
2. The District agrees to assist the University in its evaluation of each student's progress. If the University/College wants the District to submit feedback in a specific format, it will develop a form or guidelines in consultation with the District.
3. The District is responsible for the acts and omissions of its employees and agents and must maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of the District's employees and agents. The District is not responsible for maintaining insurance to cover liability arising from the acts and omissions of the employees, students or agents of the University. Students placed pursuant to this Agreement are not deemed to be employees or agents of the District by virtue of this Agreement.

V. UNIVERSITY'S OBLIGATIONS

1. The University will provide an administrative framework, including designating a University faculty or other representatives to coordinate scheduling, provide course information and objectives, and assist in advising students.
2. The University will be responsible for developing and carrying out procedures for student selection and admission.
3. The University will ensure all students are aware that the District requires the students to complete and submit District on-boarding forms, complete the District's fingerprinting process and follow the District's procedures for background clearance. These requirements

are in addition to Paragraph V., section four (4), below regarding the requirement that all students being placed at the District have a valid fingerprint clearance card.

4. The University assures the District and will verify that all students placed in a District school have and will maintain a valid Arizona IVP Level One fingerprint clearance card. The University will provide a copy of the card or the IVP number at the time of the request for placement. The University will conduct periodic checks on the IVP card throughout the student's placement to ensure the continued validation of the fingerprint clearance card. The University will immediately notify the District and remove a student whose card has lapsed, been suspended or becomes invalid.
5. The University is responsible for the acts and omissions of its employees, students and agents and must maintain at all times during this Agreement a commercial general liability policy with limits of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate and will provide District a certificate of insurance naming District as additional insured in order to cover liabilities arising from the acts and omissions of the University's employees, students, and agents participating under this Agreement. The University is not responsible for maintaining insurance coverage for liability arising from the acts and omissions of the District's employees and agents.
6. Nothing in this Agreement is intended to modify, impair, destroy, or otherwise affect any common law, or statutory right to indemnity, or contribution that the District may have against the University by reason of any act or omission of the University or the University's employees and agents.
7. The University reserves the right to withdraw any student from the assigned internship rotation at the District when, in the University's judgment, internship experiences no longer meet the needs of the student, or should University consider the District is not meeting the obligations as set forth herein.

VI. GENERAL AGREEMENT

1. **Nondiscrimination.** Both parties shall comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal opportunity and non-discrimination, within the educational experience program.
2. **Conflict of Interest.** The District and the University may cancel this agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 38-511.
3. **Notice of Arbitration Statutes.** Pursuant to Section 12-158 of the Arizona Revised Statutes, the parties acknowledge and agree that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Agreement if required by Section 12-133 of the Arizona Revised Statutes.
4. **Failure of Legislature to Appropriate.** The parties recognize that the performance by District may be dependent upon the appropriation and allocation of funds by the State Legislature of Arizona. Should the Legislature fail to appropriate, allocate, or make available

the necessary funds or if the District's appropriation is reduced during the fiscal year, the affected party may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. No liability shall accrue to the canceling party in the event this provision is exercised and neither the party nor the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

5. **Student Educational Records.** The University and District recognize that student educational records are protected by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g) and corresponding Arizona law, A.R.S. § 15-141. Each party agrees to comply with FERPA and to not make any disclosures of student educational records to third parties without prior notice to and consent from the student and the party which has custody of the records or as otherwise provided by law. Both parties shall instruct the students who are placed pursuant to this Agreement regarding the requirements of FERPA.
6. **Representations Regarding Relationship and Use of University and District Marks.** Except as otherwise agreed in writing, each party acknowledges that its relationship with the other party is limited to the student internship or placement program contemplated herein. Neither party shall make any representations stating or implying that the parties engage in broader transactions or that the parties are otherwise associated with each other without first obtaining express written permission from the other party. In addition, neither party shall use any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by the other party without prior written authorization by the other party.
7. **Records and Audits.** Pursuant to A.R.S. §§ 35-214, 35-215, and 41-2548, all books, accounts, reports, files and other records relating to this Agreement shall be subject, at all reasonable times, to inspection and audit by the State during the term of this Agreement and for five years after the termination of this Agreement.
8. **Arizona Public Records Laws.** Any other provision of this Agreement to the contrary notwithstanding, the District and the University acknowledge that the District is a public institution, and as such is subject to Arizona Public Record laws, Title 39, Chapter 1, Article 2 of the A.R.S. §§ 39-121 through 39-127, et seq. Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law.

VII. MISCELLANEOUS

1. Neither party shall have the right to assign this Agreement without the prior written consent of the other party.
2. Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent ("force majeure event"), including but not limited to acts of God, war, civil disturbance, terrorism, disaster, fire, earthquakes, hurricanes, widespread illness, or government regulation. This Agreement may be terminated without further obligation or penalty of either party, or of the student, upon written notice from the affected party to the other party of such force majeure event.

3. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic means shall be deemed to be their original signatures for any purposes whatsoever.
4. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
5. Any notice to the parties shall be in writing and delivered by regular or certified mail, and addressed to the following contacts:

To District: Paul Stanton, Superintendent
 Washington Elementary School District
 4650 W. Sweetwater Avenue
 Glendale, AZ 85304

To University: Linnea Lyding, Ed.D.
 Arizona Christian University
 1 Firestorm Way
 Glendale, AZ 85306
6. This Agreement shall be governed by the laws of the State of Arizona, the courts of which state shall have jurisdiction over its subject matter.
7. Each party is an independent contractor and is independent of the other party. Under no circumstances shall any employees or students of one party be deemed the employees of the other party for any purpose. This Agreement does not create a partnership, joint venture or agency relationship between the parties of any kind or nature.

The individuals signing on behalf of the District and the University hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of the District and the University and that this Agreement is binding upon both parties in accordance with its terms.

Arizona Christian University

Washington Elementary School District

By: _____

By: Paul Stanton

Name: Linnea Lyding, Ed.D.
 Title: Dean, Shelly Roden School of Education

Name: Paul Stanton, Ed.D.
 Title: Superintendent

Date: _____

Date: 5-2-23

EXHIBIT B

1 Jeremiah J. Galus
AZ Bar No. 030469
2 Ryan J. Tucker
AZ Bar No. 034382
3 ALLIANCE DEFENDING FREEDOM
4 15100 N. 90th Street
Scottsdale, AZ 85260
5 (480) 444-0020
6 jgalus@adflegal.org
rtucker@adflegal.org
7 **Attorneys for Plaintiff**

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Arizona Christian University, on behalf of
11 itself and its students,

12 **Plaintiff,**

13 v.

14 Washington Elementary School District
15 No. 6; and Nikkie Gomez-Whaley; Jenni
16 Abbott-Bayardi; Kyle Clayton; Linsley
17 Peterson; and Tamillia Valenzuela, all in
their official and individual capacities,

18 **Defendants.**

No. 23-413-PHX-SPL

NOTICE OF DISMISSAL

19
20 Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiff hereby dismisses the above-
21 entitled action with prejudice. Plaintiff's claims for attorney's fees and costs are resolved
22 according to the parties' settlement agreement.

23 Dated: _____.

ALLIANCE DEFENDING FREEDOM

By: /s/Jeremiah J. Galus (with permission)

Jeremiah J. Galus
Ryan J. Tucker
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on _____, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF system for filing with electronic transmittal to the following:

Robert D. Haws
Brittany Reed
GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Telephone: 602-257-7422
Facsimile: 602-340-1538

/s/ _____

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Christian University, on behalf of
itself and its students,

Plaintiff,

v.

Washington Elementary School District
No. 6; and Nikkie Gomez-Whaley; Jenni
Abbott-Bayardi; Kyle Clayton; Lindsey
Peterson; and Tamillia Valenzuela, all in
their official and individual capacities,

Defendants.

No. 23-413-PHX-SPL

ORDER OF DISMISSAL

IT IS ORDERED granting the notice of dismissal.

IT IS FURTHER ORDERED that all claims in the above-captioned case are
dismissed with prejudice, with Plaintiff's claims for attorney's fees and costs resolved
according to the parties' settlement agreement.

IT IS FURTHER ORDERED that all hearings, trials, and deadlines are vacated,
and all pending motions are denied as moot.