

## SEPARATION AGREEMENT

by and between

**THE HILTON CENTRAL SCHOOL DISTRICT**

and

**KIRK ASHTON**

**WHEREAS**, Kirk Ashton is a tenured administrator employed by the Hilton Central School District ("District") and is a member of the Hilton Administrators Association ("Association"); and

**WHEREAS**, the District and the Association are parties to a collective bargaining agreement, with the most recent agreement effective January 1, 2019 through December 31, 2021 ("CBA"); and

**WHEREAS**, Mr. Ashton has been criminally charged with multiple counts of abuse of minors to which he has plead "not guilty"; and

**WHEREAS**, despite such pending criminal charges, Mr. Ashton maintains his tenure rights and can only be terminated through a disciplinary proceeding held pursuant to Education Law § 3020-a which would involve witness testimony, including the witness testimony of multiple minors; and

**WHEREAS**, the parties have agreed to the following terms relative to the separation of Mr. Ashton from his District employment with Mr. Ashton waiving his right to a hearing on the charges.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH BELOW, IT IS HEREBY AGREED AS FOLLOWS:**

1. By the document annexed hereto as Exhibit "A", Mr. Ashton has submitted an irrevocable letter of resignation from any and all positions he holds with the District, effective as of the close of business on August 31, 2021.

2. As consideration for this Agreement, the District will pay Mr. Ashton the following, with all such amounts being subject to authorized deductions or any deductions required by law:

- a. 61.5 days of accrued vacation at the daily rate of 1/240<sup>th</sup> of his salary.
- b. 210 accrued sick days at a rate of \$58.00 per day.
- c. A separation payment of five months' salary in the amount of Sixty Five Thousand Seven Hundred Twenty Nine Dollars (\$65,729.00).

All amounts due will be paid in five equal installments with such payments made no later than the last business day of each month, starting in September 2021 and continuing through January 2022.

3. Mr. Ashton understands that, except as explicitly set forth in this Separation Agreement, he is not eligible for any other payments and/or benefits accorded to administrators through the CBA or under District policy, during employment or upon separation from the District.

4. Mr. Ashton agrees that he is permanently prohibited from entering District property including attending District events, whether held on or off school property. In addition, Mr. Ashton agrees that he will not apply for any future employment opportunities with the District, including as an independent contractor or employee of a temporary or leased employment agency, nor seek to provide volunteer service with or for the District in any capacity following his separation.

5. Mr. Ashton understands that his resignation is irrevocable and that acceptance of this Agreement by the Board of Education constitutes acceptance of his letter of resignation.

6. In consideration of the mutual covenants, promises and consideration set forth herein, Mr. Ashton releases the District, its Board of Education, Administrators, Employees and Agents, Heirs and Assignees in both their official and individual capacities (referred to collectively throughout this provision as the "District"), from all claims of any kind or nature including grievance, charges, actions, suits, contracts and agreements (except as otherwise set forth in this Agreement), which are in any way related to Mr. Ashton's employment and separation from the District as of the date of this Agreement (hereinafter "Claims"), including, but not limited to:

- a) proceedings before the Public Employment Relations Board;
- b) appeals to the Commissioner of Education pursuant to Education Law § 310;
- c) grievances pursuant to Article 14 of the CBA;
- d) claims of discrimination arising under Federal, State or Local laws, which Mr. Ashton, his heirs, executors, administrators, successors and assigns have or may have against the District at any time prior to the date of the execution of this Agreement, including, but not limited to:
  - the Americans with Disabilities Act ("ADA"), which prohibits discrimination on the basis of disability;
  - the Age Discrimination in Employment Act ("ADEA"), which prohibits age discrimination in employment;

- Title VII of the Civil Rights Act of 1964, as amended, which prohibits retaliation and discrimination in employment based on race, color, national origin, religion or sex;
- the Older Worker's Benefit Protection Act;
- the Family and Medical Leave Act ("FMLA");
- the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended;
- the Fair Labor Standards Act ("FLSA");
- the New York Human Rights Law ("NYHRL");
- the New York Executive Law;
- any other federal, state or local law or regulation prohibiting employment discrimination;
- claims for defense and/or indemnification, including, but not limited to, claims pursuant to the New York Education Law and/or New York Public Officers law;
- claims for wrongful discharge, whether based on claimed violations of statute or based on claims in contract or tort, common law or equity;
- claims for failure to pay wages due or other moneys owed (including claims for unpaid vacation pay);
- claims of fraud, misrepresentation, defamation, interference with prospective economic advantage;
- claims of intentional or negligent infliction of emotional distress; and
- claimed violations of any other federal, state, civil or human rights law, or any other alleged violation of any local, state or federal law, regulation or ordinance, and/or public policy, contract, or tort, or common law having any bearing whatsoever on the terms and conditions and/or cessation of employment with the District, including but not limited to, any allegations for costs, fees or other expenses, including attorneys' fees, incurred in these matters which he ever had, now has, or may have as of the date of this release.

Mr. Ashton understands that although he waives any substantive claims he may have by virtue of this Agreement, this Agreement shall not affect his right to sue solely to challenge the validity of the ADEA waiver, as provided by applicable law.

The parties agree that this release is intended to be as complete and inclusive as may be permitted under law with respect to claims arising from Mr. Ashton's employment or his separation from employment with the District.

7. Except as provided herein, Mr. Ashton agrees not to initiate any legal action, charge or complaint ("action") against the District with respect to any Claims released as stated above in any forum whatsoever and to immediately discontinue any such action previously commenced; further, to the extent any such action has been or is brought, Mr. Ashton expressly waives any claim to any form of monetary or other damages or any other form of recovery or relief in connection with any such action, or in connection with any action brought by a third party, but not to participation in an investigation for any action brought by a third party.

Mr. Ashton understands, however, that nothing in this Agreement shall be construed to prohibit or prevent him from participating in any EEOC investigation or proceeding and/or from communicating with or filing a charge with the EEOC, to the extent that such right is protected under the law. Notwithstanding the foregoing, Mr. Ashton acknowledges that he shall not be entitled to any legal or equitable relief therefrom.

Further, nothing in paragraphs 6 or 7 in this Agreement prohibits either party from commencing an action to enforce the terms of this Agreement or, in Mr. Ashton's case, to test the validity of the release of ADEA claims.

8. Mr. Ashton understands that he has twenty-one (21) days to consider this Agreement. He may use as much of this period as he chooses. If he elects to accept the terms of this Agreement, including the release and waiver included in Paragraphs 8 and 9, he will sign and date this Agreement and sign the irrevocable letter of resignation attached hereto as Exhibit "A". Once Mr. Ashton signs this Agreement and the letter of resignation, the Agreement will become effective, enforceable, and irrevocable upon the expiration of seven (7) calendar days following the date of his signature. If Mr. Ashton decides to revoke this Agreement, he must deliver a written notice of revocation to the Office of the Superintendent of Schools, located at 225 West Avenue, Hilton, NY 14468, which must be received within seven (7) calendar days after he signs the Agreement and no later than 5:00 p.m. on the seventh day.

9. Mr. Ashton acknowledges that he has had the opportunity to consult with a representative or attorney of his choosing in all deliberations leading up to this Agreement, that he has personally read the Agreement, that he had all terms and conditions herein thoroughly explained, and now freely consents to enter this Agreement, such consent not having been induced by fraud, duress or any other undue influence. Mr.

Ashton acknowledges that he has been advised by counsel as to the full meaning and consequences of his irrevocable submission to the Board of Education of the letter of resignation attached hereto as Exhibit "A" including the fact that approval of this Agreement by the Board of Education constitutes Board acceptance of his letter of resignation.

10. This Agreement constitutes the entire Agreement between Mr. Ashton and the District and may not be modified, altered or changed orally.

11. This Agreement shall be interpreted under the laws of the State of New York.

12. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining provisions shall not be affected thereby and the illegal or invalid provision shall be severed from this Agreement, provided severance of the invalid or illegal provision does not defeat the intent of the parties as reflected in this Agreement.

13. This Agreement may be executed by facsimile, portable document format (.pdf) or similar technology signature, and such signature shall constitute an original for all purposes.

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THIS AGREEMENT AND MR. ASHTON'S RESIGNATION ARE SUBJECT TO APPROVAL BY THE DISTRICT'S BOARD OF EDUCATION. BY SIGNING THIS AGREEMENT, MR. ASHTON STATES THAT: HE HAS READ THE AGREEMENT; HE UNDERSTANDS THE AGREEMENT; HE WAIVES ANY DUE PROCESS RIGHTS HE MAY HAVE HAD PURSUANT TO N.Y. EDUCATION LAW OR OTHERWISE; AND THAT HE HAS SIGNED THE AGREEMENT KNOWINGLY AND VOLUNTARILY.

THEREFORE, Mr. Ashton and the District now voluntarily and knowingly execute this Agreement as of this 8<sup>th</sup> day of September 2021.

HILTON CENTRAL SCHOOL  
DISTRICT

By:



Edmund C. Kosiorek  
Superintendent of Schools



Kirk Ashton