

SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release (“Agreement”) is between William F. Clark (“Clark”) and the Board of Education of the City of New Haven (the “Board”).

Clark is employed by the Board as its Chief Operating Officer (“COO”).

Clark and the Board want to resolve on an amicable basis, all claims and potential claims Clark may have related to employment with the Board or resignation from such employment.

Clark and the Board therefore agree as follows:

1. **Resignation Date/Entitlements.** (a) Clark has voluntarily submitted a letter of resignation from employment with the Board. Clark acknowledges that Board is relying on his letter of resignation and that his resignation is irrevocable. Clark acknowledges that his employment with the Board will end on January 1, 2019 (“Resignation Date”).

(b) The Board will continue Clark’s salary, less applicable withholdings and deductions, through close of business on December 31, 2018. Clark acknowledges and agrees that his employment with the Board ends for all purposes on the Resignation Date.

(c) In addition, Clark agrees that in order to be eligible for the consideration set forth in Paragraph 2, through the Resignation Date, Clark will continue to perform the functions of the COO as may be reasonably changed by the Superintendent and will assist the Superintendent with any transition to a new COO as necessary during that time. Clark further agrees that should he engage in conduct warranting his termination for cause prior to the Resignation Date that he will no longer be entitled to enter into this Agreement and he will not be eligible to receive an will not receive any payments or benefits under this Agreement or corresponding severance payments (or any portion thereof) described in Paragraph 2. For purposes of this Agreement, “For Cause” shall be determined in the sole discretion of the Board and shall mean that Clark committed one or more acts or omissions constituting: (i) a felony; (ii) theft, misappropriation or embezzlement of Board funds; (iii) fraud or self-dealing committed in conjunction with his employment; (iv) a violation of laws or regulations applicable to the Board; (v) habitual intoxication or abuse of controlled substances; (vi) unauthorized extended and/or unexplained absences from the office (excluding any extended absence due to illness, injury, disability and/or any other absence pursuant to the Family Medical Leave Act); or (vii) repeated and willful failure to follow the Superintendent’s reasonable instructions.

2. **Consideration.** In consideration for Clark's execution of this Agreement, the Board will provide him with:

(a) Severance payment of \$97,716.29, to be paid in the same manner as regular payroll checks via direct deposit ("Severance Payment"). These payments will begin being made on the next payroll date after: (i) Clark's Resignation Date; (ii) the date that the Board receives the executed Agreement; and (iii) the seven (7) day Revocation Period referred to in Paragraph 17 below has expired. The Severance Payment will be offset by any amounts owed by Clark to the Board for personal expenses and/or failure to return the Board's equipment, subject to applicable law. The Board shall withhold all applicable federal and state deductions and income tax deductions as required by law, by deducting such amounts prior to issuance of each check to Clark.

(b) A one-time payment of \$5,081.25, which represents the 3% annual tax shelter annuity payment set forth in Clark's Employment Agreement Dated July 1, 2017. Pursuant to the Employment Agreement, Clark shall notify the Superintendent in writing on or before January 1, 2019 with the selected annuity fund information, including but not limited to the financial institution, mailing address and account number. This payment will be made on the next payroll date after: (i) Clark's Separation Date; (ii) the date that the Board receives the executed Agreement; and (iii) the seven (7) day Revocation Period referred to in Paragraph 17 below has expired.

(c) Maintain Clark on the Board's health insurance, with Clark paying the employee portion of the premium through payroll deductions, for the earlier of eighteen (18) months from the start of Clark's Resignation Date or the date Clark becomes eligible for coverage under the medical plan of another employer. Clark agrees to immediately advise the Board of such eligibility, which he presently believes will begin on February 1, 2019.

3. **No Prior Entitlement.** (a) Clark acknowledges that he is not entitled to any payments, benefits, or compensation, including anything set forth in his Employment Agreement, which the parties mutually agree to terminate effective the Resignation Date, from the Board beyond those set forth in this Agreement. However, this Agreement does not impact any vested rights to any retirement or pension plans available to Clark through the Board nor the payment of his accrued and unused vacation pursuant to Board policy.

(b) Clark acknowledges that he would not be entitled to all of the payments or benefits in this Agreement if he did not enter into this Agreement.

4. **Release.** (a) In exchange for the promises and covenants made by the Board, Clark knowingly and voluntarily releases and forever discharges the Board, all of the Board's past, present and future elected and appointed officials, members, officers, agents, attorneys, insurers, representatives, employees, individually and in their official

capacity, and any person acting on behalf of or in concert with any of them (collectively, the "RELEASEES"), from any and all claims, demands, obligations, liabilities, causes of action, known or unknown, asserted or unasserted, and any claim for costs, attorneys' fees, expenses or any form of damages which Clark has or may have against RELEASEES arising out of or in any way connected with his employment or separation from employment, including, but not limited to Title VII of the Civil Rights Act of 1964, 42 U.S.C §§ 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §§ 46a-51 et seq., Conn. Gen. Stat. § 31-290a, any other federal, state or local law, any obligation arising under any public policy, any obligation arising under contract (express or implied, written or oral), employment policies or practices, employee handbooks and/or any statement by any employee or agent of the Board whether oral or written, any obligation arising under tort, or common law or other legal principle, including but not limited to wrongful discharge, defamation, intentional and/or negligent infliction of emotional distress, misrepresentation and/or breach of the duty of good faith and fair dealing. Clark understands that THIS IS A WAIVER AND RELEASE OF ALL CLAIMS by him resulting from or arising out of or in any way connected with his employment or separation from employment. Clark affirms that he has no pending claim under the Workers' Compensation Act, Conn. Gen. Stat. §§ 31-275 et seq., and that he has no present intention of filing any such claim.

Clark acknowledges that he was never denied a family or medical leave of absence or military leave of absence, and was never discouraged from seeking such a leave. Clark acknowledges that he has been paid or will be paid for all hours worked, has not filed a claim with any federal or state Department of Labor concerning his wages and that he knows of no basis for a wage and hour claim.

(b) This Agreement does not prevent Clark from filing a charge with the Equal Employment Opportunity Commission ("EEOC") or the Connecticut Commission on Human Rights and Opportunities ("CHRO") concerning claims of discrimination, or participating in an EEOC or CHRO investigation, hearing or proceeding, although Clark specifically waives the right to recover any damages or other relief in any such claim or suit, except where prohibited by law.

5. **Confidentiality.** (a) This Agreement, its terms and the negotiations leading up to the Agreement's execution are confidential and Clark agrees not to disclose any such information to any third party except his accountant, attorney, spouse, or significant other, or as required by law.

(b) Nothing in this Agreement is intended to affect Clark's ability to respond to an inquiry by a governmental or self-regulatory body, to respond to a valid and binding subpoena, or to enforce this Agreement.

(c) This Agreement does not prohibit or restrict Clark from (i) making any disclosure of information required by law; or (ii) providing information to, or testifying or otherwise assisting in, any investigation or proceeding brought by any federal or state regulatory or law enforcement agency or legislative body, any self-regulatory organization or the Board's legal or compliance departments.

6. **No Disparagement.** (a) Clark acknowledges that he shall not make any disparaging or defamatory statements about the Board, its members, including Frank Redente, Mayor Toni N. Harp, Makayla Dawkins, Dr. Edward Joyner, Darnell Goldson, Edgar Rivera, Jamell Cotto, Dr. Tamiko Jackson-McArthur, Joseph Rodriguez or its business, the Superintendent, Dr. Carol Birks, or RELEASEES at any time, oral or written (including in any electronic form), to any other person or entity. The Board will instruct Frank Redente, Mayor Toni N. Harp, Makayla Dawkins, Dr. Edward Joyner, Darnell Goldson, Edgar Rivera, Jamell Cotto, Dr. Tamiko Jackson-McArthur, Joseph Rodriguez, Dr. Carol Birks and Clark's Successor not to make any disparaging or defamatory statements relating to the circumstances of Clark's employment or his separation from employment with the Board at any time, oral or written, to any other person or entity.

(b) Both parties acknowledge the Board's obligations to disclose certain information pursuant to the Freedom of Information Act, and both parties agree that any such disclosure shall not violate this Paragraph 6(a) or the Agreement.

7. **No Admission.** Clark and the Board acknowledge that this Agreement does not constitute any admission by the Board that: the Board is in any way liable to Clark; that the Board harmed or damaged Clark; that the Board violated any rights Clark may have; or, that the Board in any respect treated Clark unfairly or unlawfully.

8. **Waiver.** Clark acknowledges that he shall not make any claim or demand and Clark hereby waives any rights he may now have or may hereafter have or claim to have, based upon any alleged oral alteration, amendment, modification or any other alleged change in this Agreement.

9. **Return of Property.** Clark represents that, on or before the Resignation Date, he shall deliver to the Board any and all property of the Board which is in his possession or under his control, including but not limited to, all information, files (hard and soft copies of all documents), records, data compilations, research, books, computers, handheld electronic devices, cellular telephones, corporate credit cards, security access cards, keys, computer disks, computer software, computer hardware, thumb drives, computer passwords and other computer access information. This provision includes any information, files, records, or other property of the Board that Clark has forwarded to any private e-mail account or transferred to any personal storage device (thumb drive, hard drive, etc.). If Clark later discovers in his possession, custody

or control any additional property belonging to the Board, he shall return such property to the Board within three (3) business days of its discovery.

10. **Cooperation.** (a) Clark shall be available to the Board as a consultant, as reasonably needed, at mutually convenient times, to assist the Board with any transition to a new COO or otherwise to assist the Board with matters not concluded prior to the Resignation Date through March 15, 2019. Except as needed, Clark will not be expected to come into the office. Clark agrees that the payments in Paragraph 2 above are intended to fully compensate Clark for any services he performs for the Board under this Paragraph. Clark further agrees that in order to receive the benefits in Paragraph 2 above he must make himself available as reasonably needed under this Paragraph.

(b) Clark agrees that he shall cooperate with the Board and its legal counsel in connection with any current or future investigation, litigation, arbitration or other legal proceeding relating to any matter with which he was involved or of which he has knowledge or which occurred during his employment at the Board. Such assistance will include, but not be limited to, being reasonably available for depositions and testimony and will continue until such matters are resolved. The Board shall provide Clark reasonable notice whenever possible of the need for his cooperation. Clark agrees that the payments in Paragraph 2 above are intended to fully compensate Clark for any services he performs for the Board under this Paragraph, except the Board agrees to reimburse Clark for any reasonable travel costs incurred related to his services under this Paragraph upon presentation of a receipt for such costs by Clark.

11. **Severability.** The parties intend as follows:

(a) that if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;

(b) that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of this Agreement will remain in effect as written, except as provided in (c) below;

(c) to the extent allowed by applicable law, The Board is entitled to cease severance payments and recover its prior payment of the same if a court or arbitrator determine that any portion of the release in Paragraph 4 above is unenforceable.

12. **Remedies.** In the event of a breach or threatened breach by Clark of any of the provisions of this Agreement, Clark agrees and consents that the Board shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any

court of competent jurisdiction, without the necessity of showing actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.

13. **Counterparts; PDF/Facsimile/Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall be deemed one and the same instrument. In the execution of this Agreement and delivery of signatures, PDF/facsimile/electronic signatures will be treated in all respects as having the same effect as original signatures.

14. **Governing Law.** This Agreement is entered into in the State of Connecticut, and the laws of the State of Connecticut will apply to any dispute concerning it, excluding the conflict-of-law principles thereof. Furthermore, any action regarding this Agreement or its enforcement shall be subject to the exclusive jurisdiction of the state courts of Connecticut. Finally, to the extent permissible under applicable law, Clark hereby agrees to waive his right to a jury trial in connection with any claim he may have against the Board.

15. **Modifications.** No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by duly authorized representatives of the parties.


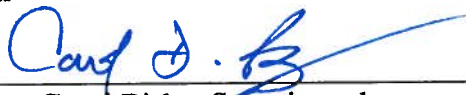
16. **Employee Acknowledgment.** Clark acknowledges that:

- (a) Clark has had a sufficient opportunity to consider this Agreement;
- (b) Clark has read this entire Agreement including the full release of claims including claims under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. and fully understands its terms;
- (c) Clark was advised to consult with an attorney prior to signing this Agreement and has had an opportunity to review this Agreement with an attorney;
- (d) Clark is voluntarily entering into this Agreement knowingly of his own free will and without undue influence or stress;
- (e) Clark has been given a period of twenty one (21) days to consider this Agreement. If Clark signs this Agreement prior to the expiration of the twenty one (21) days, he agrees that he is doing so voluntarily and of his own free will. The twenty one (21) day period runs from the date of the Board's final offer. Clark and the Board agree that any changes to the Agreement, whether material or immaterial, do not restart the running of the twenty one (21) day period.

17. **Revocation Period.** This Agreement shall become effective on the eighth (8th) day following execution by Clark. Prior to becoming effective, Clark may revoke assent to this Agreement within seven (7) days following execution (the "Revocation Period"). Any revocation within this Revocation Period must be submitted, in writing, to the Board and must state "I hereby revoke my acceptance of my Separation Agreement and Release." The revocation must be personally delivered or mailed to the Board at the Board's Central Office, Attention: Dr. Carol Birks and received by the Board prior to the expiration of the Revocation Period. If the last day of the Revocation Period is a Saturday, Sunday or legal holiday in Connecticut, then the Revocation Period shall not expire until the next following day which is not a Saturday, Sunday or legal holiday. This Agreement will not become effective or enforceable, and the consideration described above will not be payable, until the Revocation Period has expired without such revocation having been given.

18. **Scope of Agreement; Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and fully supersedes any and all prior agreements, including Clark's Employment Agreement dated July 1, 2017, representations or understandings, written or oral between the parties.

IN WITNESS WHEREOF, the aforementioned parties, intending to be legally bound hereby, have executed this Agreement.

	Board of Education of the City of New Haven
By:  William F. Clark	By:  Dr. Carol Birks, Superintendent
Date: <u>12-30-18</u>	Date: <u>1/4/19</u>

To accept this Agreement and receive the payments and benefits provided herein, you must sign and return this Agreement to Dr. Carol Birks or her designee, no sooner than the Resignation Date and no later than the end of the 21st day following your Resignation Date, or you will irrevocably lose the opportunity to receive the consideration detailed herein.