

## RETIREMENT AND RELEASE AGREEMENT

Northwest Allen County Schools (the "School") and Dr. Christopher Himself ("Himself") (collectively the "Parties") enter into this Retirement and Release Agreement (the "Agreement"). Throughout this Agreement, Himself and the School are collectively referred to as the "Parties."

- A. The School has employed Himself as its Superintendent since 2010.
- B. Himself has been on a medical leave of absence since December 20, 2021.

C. The School is willing to provide Himself with certain consideration, described below, in exchange for Himself's retirement and agreement to comply with the promises and conditions set forth in this Agreement, including the release of the School from any claims Himself has made or might make arising out of his employment with the School.

In consideration of the mutual promises contained in this Agreement and of each act done pursuant to this Agreement, the Parties agree as follows:

### Complete Release

1. In exchange for the items described in Paragraph 6 of this Agreement, Himself knowingly and voluntarily agrees on behalf of himself and his heirs, executors, administrators and assigns to forever release the School, including any affiliated entity or related entity, and their employees, administrators, School Board members, agents, attorneys, insurers, and employee benefit plans and their fiduciaries and each of their successors, predecessors and assigns (all of these parties are known as the "School Released Parties") from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, expenses and attorneys' fees (collectively "Claims") of any nature, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured which exist, have existed or may arise from any matter whatsoever occurring through the date Himself signs this Agreement, excluding only any vested rights Himself may have under retirement benefit plans or this Agreement.
2. This Agreement includes the release of all Claims against the School Released Parties arising under federal, state, and local laws; federal, state, and local regulations; executive orders; common law; any other source concerning civil rights, employment discrimination, employee benefits, wrongful discharge, breach of express or implied contract; defamation; attorneys' fees, costs, and expenses; and any and all Claims related to Himself's employment with the School and any other aspect of Himself's compensation or benefits. Without limiting the above, this Agreement includes a release of Claims arising under:
  - (a) The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and its regulations;

- (b) Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.*;
- (c) The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*;
- (d) The Older Workers Benefit Protection Act, 29 U.S.C. § 626 *et seq.*;
- (e) The Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*;
- (f) Sections 1981, 1983, 1985, and 1988 of Title 42 of the U.S. Code concerning civil rights;
- (g) The Consolidated Omnibus and Reconciliation Act of 1986, 29 U.S.C. 1161;
- (h) The Indiana Wage Payment and Wage Claim Statutes;
- (i) *Frampton v. Cent. Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973), *McClanahan v. Remington Freight Lines, Inc.*, 517 N.E.2d 390 (Ind. 1988), and/or their progeny;
- (j) The Constitutions of the United States and the State of Indiana;
- (k) The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* and its regulations, 29 C.F.R. § 825.100 *et seq.*; and
- (l) All applicable state or local laws, including, but not limited to, all Indiana statutes prohibiting discrimination and retaliation as well as, all causes of action arising under Indiana contract and common law.

The Parties agree that this Agreement includes the release of all Claims, which the Parties do not know or expect to exist in either Party's favor at the time the Parties sign this Agreement. This Agreement releases all such Claims.

3. Himself represents that he has not filed, nor is there pending, any Claim to which he is a party, charging party, or complainant before any administrative agency or court including, but not limited to, the Department of Labor, the Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, or any local human relations commission.
4. Himself knowingly and voluntarily waives his rights, if any, to recover any damages or other relief for any Claim brought by the Equal Employment Opportunity Commission, Indiana Civil Rights Commission and/or any other state or local agency on Himself's behalf under all federal, state, and local anti-discrimination laws.
5. Notwithstanding the foregoing, no provision of this Agreement shall be interpreted to or is intended to waive, release, or extinguish any rights which—by express and

unequivocal terms of law—may not under any circumstances be waived, released, or extinguished.

#### Consideration

6. The release set forth in this Agreement is given by Himself in exchange for valuable consideration from the School. Specifically, in exchange for the release and Himself's agreement to be bound by all other obligations applicable to him under the terms of this Agreement, the School agrees as follows:
  - a. The School shall allow Himself to remain on medical leave from the present time through June 30, 2022. He shall continue to receive regular pay and benefits during this time by utilizing his existing sick days. Himself shall not be required to submit additional medical documentation to substantiate the need for this leave and the School shall take no additional steps to contest his entitlement to such leave. Notwithstanding, any entitlement to continued pay and benefits shall cease if Himself begins employment with another employer prior to June 30, 2022.
  - b. Given the Superintendent's impending retirement, pursuant to Paragraph 7 below, the School will not make any decision as to whether to extend his contract by an additional year on or before May 1, 2022, nor will it evaluate the Superintendent's job performance for the 2021-2022 school year.
  - c. Himself shall receive health, dental, and vision insurance benefits through September 30, 2022, as such coverage will have been prepaid by June 30, 2022. To the extent there is any conflict between this Agreement and the applicable plan, the plan shall control.
  - d. As of June 30, 2022, Himself shall be paid for any unused sick and personal days in accordance with the School's administrative guidelines.
  - e. As of June 30, 2022, and in accordance with the School's policy and past practice, the School shall pay Himself for any unused vacation days that have accrued as of March 15, 2022. Himself agrees that he will not accrue any additional vacation, sick, or personal days after March 15, 2022.
  - f. The School shall make two payments of Twenty-Six Thousand Seven Hundred Fifty-One and 00/100 Dollars (\$26,751) into Himself's previously existing 401(a) account, so that Himself can use these funds to purchase additional service credit from the Indiana Teachers' Retirement Fund ("TRF"). These payments to Himself's 401(a) account satisfy the requirement in Himself's existing employment contract that the School provide him with between one (1) and six (6) months of TRF credit for each year in which the Board gave him a performance evaluation of effective or highly effective. The parties estimate that these payments, plus a contribution from Himself of Nine

Thousand Nine Hundred Forty-Seven Dollars (\$9,947), will allow Himself to purchase twelve (12) months of TRF credits. The value of the School's contribution to Himself's 401(a) account exceeds the minimum amount, but is less than the discretionary maximum amount, required by his existing employment contract.

- g. The School will continue to indemnify Himself as required by his employment contract and Indiana Code. To the extent Himself is required to assist with the defense of legal actions related to his tenure with the School, he shall be reimbursed for associated expenses, such as mileage, meals, and hotel stays.
- h. Himself's existing employment contract with the School shall fully and finally terminate as of June 30, 2022. However, as of the execution of this Agreement, Himself shall not be entitled to any further pay, benefits, or other consideration except as explicitly described herein.

#### Resignation

- 7. Pursuant to the letter attached to this Agreement as Exhibit A, Himself unequivocally and irrevocably submits his retirement effective June 30, 2022. The School agrees to accept Himself's retirement, thereby irrevocably ending his employment with the School effective June 30, 2022. Himself will not apply for or otherwise seek further employment with the School and the School will be entitled to reject, without cause, any application for employment submitted by or on behalf of Himself. Himself shall have no claim against the School for its failure to employ him.
- 8. Given Himself's irrevocable decision to retire on June 30, 2022, he consents to the School taking all reasonable steps to recruit, hire, and train a replacement so that a new Superintendent can be installed prior to July 1, 2022, if the School wishes. Himself further agrees that there is nothing improper about the School maintaining an interim and/or temporary Superintendent.

#### Public Disclosure

- 9. The School may release a statement confirming that it has approved Himself's continued medical leave and use of accrued sick days through June 30, 2022; Himself announced his retirement as of that date; and the School will immediately begin its search for a new full-time Superintendent.

#### Costs

- 10. Each party shall bear its own costs and attorneys' fees.

#### Entire Agreement, Amendment, and Modifications

11. This Agreement constitutes the entire agreement of the Parties with regard to the disputes between them at this time and there are no other oral or written agreements between the Parties. No waiver, modification, or amendment of any term, condition, or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the Parties.

#### Confidentiality Agreement

12. Himsel also agrees that during the course of Himsel's employment with the School, certain confidential information regarding the School which is not generally available to the public was divulged to or became known by Himsel. This confidential information consists of private student information protected by the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and non-public personnel information regarding School employees, contractors, and volunteers ("Confidential Information"). Himsel expressly agrees that Himsel will not use for Himsel's personal benefit, or directly or indirectly disclose, communicate or divulge, or use for the direct or indirect benefit of any person, school corporation, association or company, any Confidential Information.
13. It is further agreed that if any proceeding is brought against Himsel or Himsel's attorneys to require disclosure of Confidential Information, the person or entity from whom disclosure is sought shall immediately notify the School's attorneys in writing of such proceeding. Such notice shall be sent by certified mail, return receipt requested, to: Jason T. Clagg, Esquire, Barnes & Thornburg LLP, 888 South Harrison Street, Suite 600, Fort Wayne, Indiana 46802. Himsel and Himsel's attorneys further agree to provide the School with the opportunity to intervene and to defend against such proceeding and agree to abide by the confidentiality provisions of this Agreement unless ordered otherwise by a court of competent jurisdiction.
14. Under no circumstances will a breach of the confidentiality provisions contained herein, work to revive or reinstate any claim waived by this Agreement.

#### No Negative Remarks

15. Himsel agrees not to make any negative remarks about the School Released Parties that are or may be harmful or damaging to the School Released Parties. However, this section shall not restrict Himsel's ability to provide information as required by a subpoena or to a government agency, or as otherwise required by law.
16. The School agrees that its School Board and administrators will not make any negative remarks about Himsel that are or may be harmful or damaging to Himsel. However, this section shall not restrict the School's ability to provide information as required by a subpoena, to a government agency, or as otherwise required by law.

### Voluntary Agreement

17. Himsel agrees that he voluntarily signs this Agreement and accepts and understands it. Himsel has been thoroughly advised of his right to discuss all aspects of this Agreement with his private attorney before signing this Agreement, understands the terms of this Agreement (including but not limited to the Claims to be released), has had a reasonable time to consider the Agreement, and that its terms represent consideration in addition to anything of value to which Himsel is already entitled.

### Controlling Law and Forum

18. This Agreement will be interpreted and enforced under the laws of the State of Indiana. The State of Indiana shall not apply its conflict of laws principles, so that the State of Indiana applies the law of another state to interpret or enforce this Agreement.
19. The Parties agree that a case regarding a dispute about this Agreement will be filed in a state or federal court located in Allen County, Indiana.

### Severability of Agreement

20. If a court determines that any part of this Agreement is invalid or unlawful, that determination will not affect any other part of this Agreement that can be enforced by disregarding the invalid or unlawful part. The rest of this Agreement will continue in full force and effect.

### Successorship

21. This Agreement will be binding on the School and its successors and assigns. It also will be binding on Himsel and his heirs, executors, administrators, and assigns.

### No Admission of Wrongdoing

22. Himsel and the School agree that simply because they entered into this Agreement, neither the making of this Agreement nor the terms of this Agreement mean that Himsel or the School did any act that was wrong or unlawful.

### Return of Property

23. Himsel agrees to return to the custody of the School all its property and documents, as well as any copies of the School's property and documents, in his possession, within 48 hours after the Effective Date of this Agreement. This shall include all records, whether electronic or in hard copy.

### No Representations

24. Himsel agrees that no representative of the School promised, said, or did anything to make him sign this Agreement, other than the terms expressly contained in this Agreement.

### Section Headings

25. Section headings are used as a tool to find terms in this Agreement, and they do not affect or change the meaning of any terms.

### Knowledge and Understanding

26. Himsel declares, under penalty of perjury, that:
- (a) Himsel has been and is hereby advised to consult with an attorney prior to executing this Agreement and has had the opportunity to do so;
  - (b) Himsel has been given a period of twenty-one (21) days within which to consider this Agreement;
  - (c) Himsel has had the opportunities Himsel deems necessary to make a voluntary, knowing, and informed decision; and
  - (d) Himsel is fully aware of his rights and has carefully read and fully understands all provisions of this Agreement before signing.

This notice is provided in accordance with the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*, and the Older Workers Benefit Protection Act, 29 U.S.C. § 626 *et seq.*

### Effective Date.

27. If Himsel consents to and signs this Agreement within twenty-one (21) days of receipt, Himsel shall have an additional seven (7) days after signing the Agreement to revoke it. Himsel expressly states that if Himsel executes this Agreement before the expiration of the 21-day period, such execution is knowing, voluntary, and done on the advice of counsel (or with the opportunity to consult with counsel). Any revocation shall be in writing and addressed/delivered to the attention of Jason T. Clagg, Esquire, Barnes & Thornburg LLP, 888 South Harrison Street, Suite 600, Fort Wayne, Indiana 46802. This Agreement shall not become effective, therefore, and none of the benefits set forth in this Agreement shall become effective until the 8<sup>th</sup> day after Himsel executes this Agreement (the "Effective Date").

### Contract Construction.

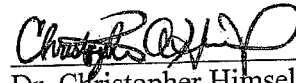
28. Because Himsel and his counsel have reviewed this Agreement, any ambiguity shall not be construed against the drafting party in the interpretation of this Agreement.

Enforcement

29. In the event that a Party institutes an action or proceeding to enforce or seek relief for any breach of this Agreement and it is ultimately determined by a court of competent jurisdiction that the party being sued breached any term, condition or covenant of this Agreement, the breaching party shall be liable for all costs and expenses (including, but not limited to, attorneys' fees) incurred by the non-breaching party related to such action or proceeding.

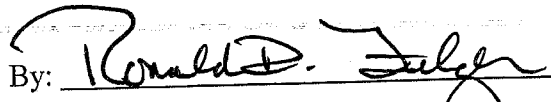
IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates written below:

Dated: March 17, 2022

  
Dr. Christopher Himself

NORTHWEST ALLEN COUNTY SCHOOLS

Dated: March 28 2022

By:   
As its President Board of  
School Trustees



March 17, 2022

Dear Board of School Trustees,

As we recently agreed, I will continue utilizing paid time off days to continue addressing health concerns and retire effective June 30, 2022. Thank you for the opportunity to serve exceptionally talented students alongside an extraordinary team of employees for the past 12 years.

I am proud of the many accomplishments achieved during my service to Northwest Allen County Schools (NACS). Despite the inherent challenges associated with navigating the effects of a debilitating recession and a once-in-a-lifetime pandemic, complying with an ongoing onslaught of state mandates, and accommodating annual enrollment increases which added about 1,700 students to the NACS family, we remained focused on achieving our mission. We created healthy and safe learning environments that engaged, supported, and challenged each learner to achieve more than she or he may have ever thought was possible. As a result, we made a positive difference in the lives of children by developing the talent and nurturing the creativity of each learner.

Nearly 80 percent of our graduates earned college credit or a career credential while in high school. Our state graduation rate remained above 95 percent with each graduating class beginning with the Class of 2011. When applying the current federal graduation rate formula, our federal graduation rate increased from 71 percent in 2010 to 90 percent or more for four of the past five graduating classes (2017, 2018, 2020, and 2021). The percentage of graduates earning an honors diploma increased from 28 percent in 2010 to consistently more than 50 percent for each of the past five graduating classes. Furthermore, the Class of 2022, who were first-graders when I began my service to NACS, is on a trajectory to be among the highest performing graduating classes in the district's history. Many of our students also earned merit-based academic scholarships, state or national art, music, writing, culinary, robotics or FFA awards, academic all-state, all-conference or all-region recognitions, and many other academic awards and recognitions that are too numerous to list.

We also created a culture of service to others. We created Random Acts of Kindness (RAKtivist) clubs. We developed a Champions Together program that models inclusivity while providing a template for other districts to emulate. We created one of the top-performing school-hosted Relay For Life community events in the United States. To honor those fighting chronic illnesses, we demonstrated support through fundraising events like Charging for a Cure, Chargers Fighting Cancer, and Hoops for Hearts as well as participating in activities that supported organizations like Erin's House for Grieving Children, Community Harvest Food Bank, and Riley Hospital for Children. Individually and collectively, many of our students and employees volunteer and support many organizations and individuals throughout our community. These efforts have been noticed by others in our community as evidenced by the many awards and recognitions honoring service to others that have been earned by our students and employees.

We quickly and effectively adapted traditional instructional activities to create remote learning experiences for each of our students at the start of a pandemic. In July 2020, we began safely providing onsite instruction – among the first districts in the country to do so. We applied what we learned in the summer of 2020 and safely provided onsite instruction throughout the 2020-2021 school year – during a time when several other Indiana schools only provided limited on-site opportunities and when nearly all schools in many other states provided zero on-site opportunities. For those needing full-time remote learning opportunities, or temporary remote opportunities during times of illness or quarantine, we effectively provided them. Despite deviations from our normal routines, we navigated the pandemic with relatively small divergence from our previous NWEA achievement results. More importantly, we provided these learning experiences in a manner that resulted in zero students and zero employees passing away or requiring hospitalization because of an exposure to COVID-19 that may likely have occurred during in-school activities.

Collectively, we balanced a general fund budget that, when I began my service to NACS, had a structural deficit that would have grown to more than \$6 million, or at that time about 15% of total general fund expenditures, within two years if no additional actions had been taken. We balanced it in a way that resulted in zero budget-related layoffs during my service to NACS and provided compensation increases to all employees each contract year beginning in 2013. To comply with continual changes in state statutes, we negotiated collective bargaining agreements that

encourage the attainment of professional expertise. The most recent collective bargaining agreement is valid for two years and provides among the largest wage and salary increases in the district's history for all employees.

Our community overwhelmingly supported a building referendum to construct a new elementary school and implement safety upgrades at each of our schools. We completed a site improvement project at Carroll High School that substantially improved parking and traffic flow options, enhanced our ability to host major events like the ISSMA Marching Band Regionals and IHSA Track and Field tournament meets, provided locker room facilities for outdoor activities, upgraded restrooms and concession stands that serve outdoor events, and upgraded our marching band, tennis, track and field, baseball, softball, soccer, and football facilities. We also maintained our school facilities in a way that preserved air quality, drinking water, and school safety standards.

We achieved each of these accomplishments while living within and effectively managing the limited resources we were blessed to receive. We navigated substantial losses to property tax revenues caused by state-mandated property tax caps. Nevertheless, we decreased the overall NACS property tax rate from more than \$1.54 to less than \$1.00. Similarly, we decreased our debt ratio from more than 10 percent of our community's total assessed valuation to less than 4 percent of our community's total assessed valuation, which improves our bond rating. Notwithstanding the results of the recession and pandemic, we restored the Education Fund cash balance from less than 5 percent of expenditures to more than 11 percent of expenditures and maintained more than \$1 million in the district's Rainy Day Fund – this should assist NACS in navigating a future recession.

We achieved these accomplishments, and many others, by not caring about who gets the credit while collectively focusing on meeting the needs of children. None of these accomplishments reflect the work of an individual, instead they exemplify the collaborative work of many.


Moreover, important work remains for the Board to consider and resolve. As a governance board, the following issues will continue demanding much of the Board's future energies:

- planning for future enrollment growth by conducting a demographic study, determining the number of classrooms needed in the future, considering options that ensure adequate classroom space, and developing long-range plans to accommodate future enrollment growth;
- working systematically and proactively with its legal counsel to review and update its policies and bylaws;
- sustaining programs for children and retaining talented employees. This task will require high levels of commitment and vigor in a state where per student funding continues to be roughly a decade behind pre-recession, inflation-adjusted funding levels, and in a district that receives per student funding that is roughly 35 percent less than the national average;
- supporting my replacement and other district leaders in implementing succession plans for other key positions being served by individuals at or nearing retirement eligibility; and
- listening to the consensus of experts, especially the expertise supplied by its administrative team, teachers, and other employees while also fully supporting whatever is adopted by the majority of the Board.

By focusing the Board's energies on these issues, NACS can continue successfully addressing the ongoing onslaught of state mandates, retaining and recruiting talented employees, and fulfilling its legal and moral obligation as a public school corporation – which is predicated on meeting the individual needs of each child regardless of the child's ability, disability or other learning support needs, available socio-economic resources, native language, national origin, race, ethnicity, gender, sexual orientation, or religious beliefs.

I hope Northwest Allen County Schools continues to enjoy success, and I equally hope it continues its commitment to working collaboratively to meet the needs of each child it is blessed to serve.

Respectfully,



Chris Himself