

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Michelle Smith,

Appellant,

v.

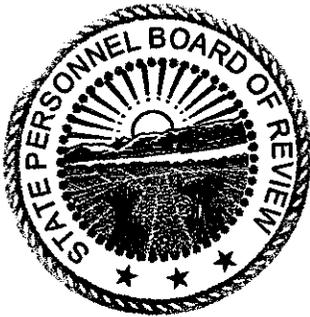
Case No. 2014-REM-10-0269

Department of Education,

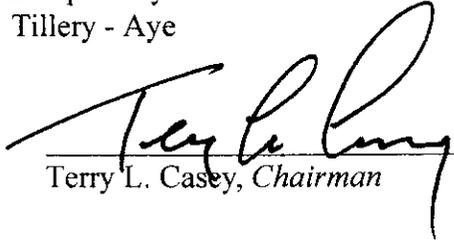
Appellee,

ORDER

This matter came on for consideration on the motion of both parties that the Settlement Agreement attached hereto and incorporated herein by reference, be adopted. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement is **ADOPTED** and the instant appeal is **DISMISSED**.



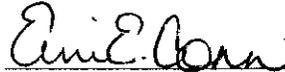
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, March 25, 2015.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

MICHELLE SMITH, :
Appellant, : CASE NO. 2014-REM-10-0269
v. : JAMES R. SPRAGUE
DEPARTMENT OF EDUCATION, : Administrative Law Judge
Appellee. :

2015 MAR -9 PM 2: 53

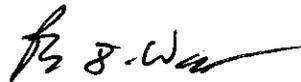
STATE PERSONNEL BOARD OF REVIEW

NOTICE OF SETTLEMENT AND JOINT MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT BY BOARD ORDER

Now come the Appellant, Michelle Smith, and Appellee Ohio Department of Education by and through counsel, and hereby give notice that the above-captioned appeal has been resolved by settlement between the parties. The parties request that the Board adopt the attached Settlement Agreement and Release of Claims by order pursuant to Ohio Administrative Code Section 124-11-20(B).

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General



GARY A REEVE (0064872)
Law Offices of Gary A. Reeve, LLC
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Columbus, Ohio 43207
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*Counsel for Appellant,
Michelle Smith*

RYAN D. WALTERS (0076724)
ABIGAIL J. LEDMAN (0092679)
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(614) 752-4677 - Facsimile

*Counsel for Appellee,
Ohio Department of Education*

ENTER
3-9-15

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via regular mail upon Gary A. Reeve, Attorney at Law, P.O. Box 7866, Columbus, Ohio 43207, and via electronic mail at greeve@reevelaw.net, this 9th day of March, 2015.



RYAN D. WALTERS (0076724)
Assistant Attorney General

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is made and entered into by and between Michelle Smith ("Smith") and the Ohio Department of Education ("ODE") (each, a "Party," and, collectively, the "Parties").

WHEREAS, Smith filed Case No. 14-REM-10-0269 before the State Personnel Board of Review; and

WHEREAS, the Parties desire to resolve any and all disputes relating to Smith's claims against ODE including, but not limited to, those claims embodied in the above-mentioned case filed with the State Personnel Board of Review relating to Smith's October 10, 2014 removal from her employment at ODE.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

I. Actions to be Performed by ODE:

- A. Placement of Smith as Fiscal Specialist 2, Office of Fiscal Services.** ODE will rehire Smith in the position of Fiscal Specialist 2 in the Office of Fiscal Services, effective March 23, 2015.
- B. Discipline Record.** After one (1) year from Smith's effective date of rehire, ODE agrees to not use for purposes of any future discipline Smith's October 10, 2014 removal.

II. Actions to be Performed by Smith:

- A. Release of All Claims.** Smith, on behalf of herself and her immediate family, heirs, assigns, personal representative, executors, agents and administrators, both past and present, does hereby fully, finally and forever release, hold harmless from and against, waive and forever discharge the State of Ohio, ODE, its current, former and future officers, directors, employees, agents, and agencies, personally and in any other capacity, of or from any and all claims, actions and causes of action, suits, debts, liability, costs, expenses, demands whatsoever, in law or in equity, and any and all other damages which Smith ever had, may now have, or may hereafter have, whether known or unknown, against the State of Ohio or ODE or its officers, directors, employees, agents, and agencies, on account of or in any way arising out of or by reason of any act, claim, matter or cause arising prior to the execution of this Agreement by her, whether known or unknown to her, including but not limited to any claims for attorney fees or costs, past employment, back pay, front pay, longevity pay, overtime, compensatory time, holiday pay, vacation leave, personal or sick leave, any other form of leave earned as a result of her employment with ODE, insurance or retirement contributions, workers compensation, or any other benefit, insurance, or other payment, including any payment of interest, which may have accrued to her as an employee of ODE.
- B. Complete Dismissal and Waiver.** Within 10 business days after execution of this Agreement, Smith agrees to jointly file with ODE an agreed dismissal with prejudice of Case No. 14-REM-10-0269 before the State Personnel Board of Review. Entry of such

EXHIBIT

an agreed dismissal is an express condition of this Agreement going into effect. Smith also shall immediately dismiss any other action(s) which have been filed, are now pending, or which could have been filed against ODE relating to any acts or omissions which have transpired at any time up to and including the date of execution of this Agreement in regard to Smith's service with ODE. Smith further agrees to never file or re-file any action, claim or other lawsuit against ODE, its officers, directors, agents or any other agency of the State of Ohio, relating to any acts or omissions which have transpired at any time up to and including the date of the execution of this Agreement and acknowledges that this Agreement would bar any such action or proceeding.

III. Non-Admission. The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by ODE. Neither the terms nor the Agreement shall be deemed or construed as an admission by ODE of any wrongful acts whatsoever by or against Smith or any other person, nor does any arrangement(s) made with Smith constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by ODE.

IV. General Terms. The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or perquisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Smith a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise. Each Party fully understands the meaning and intent of this Agreement, including but not limited to its final and binding effect. Each Party further acknowledges that before executing this Agreement that they have had the opportunity to consult counsel and that each Party has carefully read and fully understands all of the provisions of the Agreement, and that the execution of the Agreement is a knowing and voluntary act.

V. Construction and Severability. This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives. This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement.

MICHELLE SMITH PLEASE READ CAREFULLY BEFORE SIGNING:

PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO

EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY ME WITHIN THE TIME SET FORTH ABOVE, THIS AGREEMENT SHALL BE VOID AND ODE SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and date indicated below their respective signatures.

Michelle Smith
MICHELLE SMITH

Richard A. Ross / JR
RICHARD A. ROSS
Superintendent of Public Instruction
Ohio Department of Education

3-6-15
DATE

2/26/15
DATE