

AGREEMENT

This agreement (the "Agreement") is entered into this 2 day of June, 2017, by and among James E. Penk, Jr. ("Mr. Penk" or "Employee") and the Board of Education of the Austintown Local School District (the "Board" or "District"), by and through its duly-authorized Superintendent, Vincent Colaluca and Board President, Alex Benyo (collectively the "Parties").

WHEREAS, Mr. Penk is an administrative employee serving as a principal for the District and is subject to the terms and conditions of employment as set forth in his administrative employment agreement with the Board and Section 3319.02 of the Ohio Revised Code;

WHEREAS, under his employment agreement, Mr. Penk agreed and promised to "perform the duties of that position as prescribed by the laws of the State of Ohio and by the rules, regulations and position description adopted by the Board of Education, and in accordance with the terms and conditions of this agreement";

WHEREAS, Mr. Penk also agreed and promised in his employment agreement to "devote time, skill, labor and attention to performance of the duties of the position during the term of this contract";

WHEREAS, Board Policy GBCB ("Staff Conduct") provides, in relevant part, "All staff members have a responsibility to make themselves familiar with, and to abide by, the laws of the state of Ohio and the negotiated agreement, the policies of the Board and the administrative regulations designed to implement them";

WHEREAS, Board Policy GBCB ("Staff Conduct") further provides, in relevant part, "The Board expects staff members to conduct themselves in a manner which not only reflects credit to the District, but also presents a model worthy of emulation by students";

WHEREAS, Board Policy GBCB ("Staff Conduct") goes on to state, in relevant part, "All staff members are expected to carry out their assigned responsibilities";

WHEREAS, Board Policy GBCB ("Staff Conduct") continues, in relevant part, "Essential to the success of ongoing operations and the instructional program are the following specific responsibilities which are required of all personnel: 2. support and enforcement of policies of the Board and regulations of the administration; . . . 4. care and protection of District property; and 5. concern and attention toward their own and the District's legal responsibility for the safety and welfare of students";

WHEREAS, Board Policy JFCJ ("Weapons in the Schools") defines "knife" as a "cutting instrument having a sharp blade" and it plainly provides, "The Board is committed to providing the students of the District with an educational environment which is free of the dangers of firearms, knives and other weapons";

WHEREAS, Board Policy KGB (“Public Conduct on District Property”) provides that “All persons on District grounds are expected to abide by all applicable laws, local ordinances, Board policies, and District and building regulations”;

WHEREAS, Ohio Revised Code § 4117.01 provides in relevant part that: “‘Management level employee’ means an individual who . . . responsibly directs the implementation of policy Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees”;

WHEREAS, a fundamental duty of District principals is to enforce student discipline policies;

WHEREAS, Mr. Penk’s alleged workplace violations involved him storing a large knife in his office and on multiple occasions pulling it out or displaying it during professional meetings and/or interactions with subordinate and other employees, having a large knife in his office that could be accessed by employees or students in the office, failing to properly address or report employee behavior that would violate Board policy and/or Ohio law regarding use of sick leave, and failing to properly address or report an employee complaint involving harassment or discrimination;

WHEREAS, the Board believes Mr. Penk recently engaged in unprofessional conduct amounting to serious and willful violations of Board work rules and policies, including but not limited to GBCB (“Staff Conduct”) and KGB (“Public Conduct on District Property”);

WHEREAS, the Board has agreed to continue to employ Mr. Penk contingent upon his recognition that he engaged in serious misconduct and his representations that similar misconduct will not occur in the future; and

WHEREAS, in furtherance of that recognition and commitment, Mr. Penk agrees to strictly comply with the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties have agreed to the following:

1. Based on the Board’s conclusion that Mr. Penk engaged in professional misconduct of a serious nature, the Board shall issue Mr. Penk an unpaid suspension for ten (10) work days in lieu of proceeding to terminate his employment. It is agreed and understood by the Parties that Mr. Penk has already served the time of ten (10) days while being off on paid leave, and therefore, the Board will deduct from Mr. Penk’s pay an amount equivalent to ten (10) work days.
2. Mr. Penk agrees to a demotion to Assistant Principal for the remainder of his employment contract, which expires July 31, 2019, and his current employment contract may be amended to reflect the new salary, as stated in the Administrative Salary Schedule at High School Assistant Principal level, and the title of Assistant Principal. Mr. Penk expressly recognizes and agrees that there is a salary reduction involved with

this demotion. Mr. Penk expressly waives any contrary rights he has under the Ohio Revised Code or his existing contract with respect to reassignment and salary rights.

3. Mr. Penk agrees to apologize to any employee who was subjected to him pulling a knife out or him displaying it during professional meetings and/or interactions. Mr. Penk will make each of these apologies no later than the beginning of the 2017-18 school year.
4. Mr. Penk agrees to attend management training that may include topics on professionalism and discrimination/harassment in the workplace. The Superintendent shall approve the training and the Board shall pay the cost(s) of the training. Said training will commence prior to the beginning of the 2017-18 school year.
5. Beginning on the effective date of this Agreement and continuing in full effect, without interruption, for the length of Mr. Penk's tenure with the District, Mr. Penk agrees that should he engage in misconduct of any kind similar to the concerns set forth below, including but not limited to pulling out a knife or other weapon during professional meetings or interactions, storing a knife or other weapon in his office, or failing to report or address employee misconduct or complaints involving harassment or discrimination, Mr. Penk shall be subject to immediate discharge at the Board's sole discretion. The concerning conduct warranting immediate termination includes:
 - a. Storing a knife or other weapon in his office without the knowledge and approval of the Superintendent;
 - b. Pulling out or displaying a knife or other weapon during professional meetings and/or interactions with other employees or while students are working in or around his office;
 - c. Keeping a knife or other weapon in his office that could be accessed by employees or students (subject to subparagraph "a" above);
 - d. Failing to properly address or report employee behavior that would constitute misuse or abuse of District leave under Board policies, applicable collective bargaining agreements or Ohio law; or
 - e. Failing to properly address or report an employee complaint involving harassment or discrimination.
6. To the fullest extent permitted by law, Mr. Penk agrees he shall not challenge or take any other recourse, including but not limited to instituting any lawsuit, to oppose any discipline, the related forfeiture of compensation, or other conditions of employment for any reason as agreed upon in this proceeding involving Mr. Penk and the Board, nor shall he challenge any discipline if he fails to abide by the conditions in paragraphs 1 through 5 above or is discharged under the terms of this Agreement, specifically as described in paragraph 5 above.
7. Mr. Penk acknowledges that the Board will report his conduct to the Ohio Department of Education's Office of Professional Conduct to determine whether Mr. Penk has

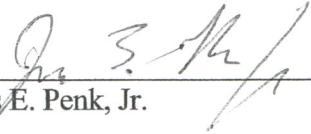
committed any violation(s) of the Licensure Code of Professional Conduct for Ohio Educators. The Parties further recognize that any formal action taken by the Ohio Department of Education that impacts Mr. Penk's licensure status, such as a suspension or revocation, may also require the Board to act upon his employment status in a commensurate fashion at a subsequent date.

8. Mr. Penk agrees that this Agreement follows the conclusion of a District investigation, during which Mr. Penk was given due process, including but not limited to the opportunity to respond to the allegations of misconduct. Mr. Penk has had an opportunity to review this Agreement with his own legal counsel and enters this Agreement voluntarily recognizing it as a mutually-agreeable and fair resolution between the Parties to end any further dispute and in lieu of the Board instituting any more severe discipline.
9. The Parties also agree that should the Board fail to exercise its rights under this Agreement to discharge Mr. Penk in the future, such forbearance shall not waive the Board's right to discharge Mr. Penk thereafter for any other or additional violation of any nature of any rule or policy in the Board's sole discretion.
10. The Parties agree that this Agreement shall not constitute or be used as a precedent and shall not be cited to in any fashion whatsoever in any other dispute that is not between the Board and Mr. Penk.
11. The Parties further agree that the terms of this Agreement shall prevail over any contrary terms in the current or any future employment agreement between the Board and Mr. Penk.
12. The Parties further acknowledge and agree: (a) each has had full and complete opportunity to review and examine the terms of this Agreement and to consult with persons of their choice, including legal counsel, prior to execution of this Agreement; (b) each has voluntarily executed this Agreement and fully understands the rights, duties and responsibilities imposed by the Agreement; and (c) there are no other terms, conditions or agreements relating to the subject matters herein set forth aside from the provisions contained in this Agreement.

In witness whereof, the following individuals have affixed their signatures hereto:

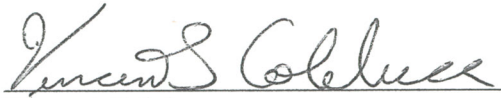
FOR EMPLOYEE:

Date: 6/2/17


James E. Penk, Jr.

FOR THE BOARD:

Date: 6/2/17


Vincent Colaluca
Superintendent
Austintown Local School District

Date: 6-3-17


Alex Benyo
Board President
Austintown Local School District