

**SUBJECT TO TRS REVIEW AND  
APPROVAL BY THE BOARD OF EDUCATION**

**SEPARATION AGREEMENT AND GENERAL RELEASE**

This **SEPARATION AGREEMENT** (the “Agreement”) made and entered into this 9th day of May, 2017, between Dr. Michael E. Robey (the “Superintendent”) and the Board of Education of Lombard Elementary School District No. 44, DuPage County, Illinois, (the “Board” or the “District”).

**W I T N E S S E T H:**

**WHEREAS**, the Superintendent, on the date of execution of this Agreement, is employed by the Board as Superintendent;

**WHEREAS**, the Parties have mutually determined to end their contractual relationship effective June 30, 2017; and

**WHEREAS**, the Superintendent and the Board are mutually agreeable to entering into this Agreement which confirms the terms and conditions of the mutual separation and releases and waives any charges, grievances, lawsuits, claims, or other potential litigation between the parties.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements of the parties, it is hereby agreed by the Board and the Superintendent as follows:

**SECTION 1. MUTUAL SEPARATION**

The Parties agree to mutually separate effective June 30, 2017 and release and waive any and all contractual rights extending from July 1, 2017 through June 30, 2019 under the Superintendent’s current employment contract.

**SECTION 2. COMPENSATION**

The Superintendent’s final day of employment with the District shall be June 30, 2017. In complete and final settlement of any and all claims, actions, causes of action and demands that the Board may now have or that may inure to the Board arising out of or in any way connected with, directly or indirectly, the employment of the Superintendent, the Superintendent hereby agrees to continue to work as assigned by the Board, in consultation with the Superintendent, or Interim Superintendent in a professional manner through June 30, 2017 as directed by the Board

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of Education.

The Superintendent will receive his regular compensation through his final date of employment in accordance with the regular pay periods of the District. On June 15, 2017, the Board shall issue the Superintendent his final paycheck in the amount of Ten Thousand Five Dollars and Seventy-Four Cents (\$10,005.74), less applicable withholdings for state and federal taxes, contributions to the Teachers' Retirement System ("TRS") and any other deductions required by law or authorized by the Superintendent. This paycheck shall represent the Superintendent's final paycheck for regular earnings.

**SECTION 3. VACATION**

In accordance with the Illinois Wage Payment and Collection Act, the Board shall provide payment for ten (10) unused vacation days for the 2016-2017 contract year at a per diem rate of Eight Hundred Forty-One Dollars and Sixty-Two Cents (\$841.62). Payment shall be made in the amount of Eight Thousand Four Hundred Sixteen Dollars and Twenty Cents (\$8,416.20), less applicable withholdings for state and federal taxes and any other deductions required by law or authorized by the Superintendent. Such payment will not be paid until ten (10) business days after the Superintendent's last day of work or ten (10) business days after the receipt of his final paycheck for regular earnings, whichever date is later. The Superintendent acknowledges that, upon his receipt of such payment, he shall have received pay for all wages, unused vacation and any and all other compensation earned by him through his final day of employment with the Board.

**SECTION 4. SEVERANCE PAYMENTS**

In consideration of the Superintendent's separation and the General Release of Claims set forth in Section 7 of this Agreement, the Board shall provide the Superintendent with severance payments in the gross amount of Ten Thousand One Hundred Eighty-Eight Dollars and Twenty-Four Cents (\$10,188.24) ("semi-monthly total compensation"), less applicable withholdings for state and federal taxes and any other deductions required by law or authorized by the Superintendent. Subject to the terms set forth in this Paragraph below, the severance payments shall be paid in twenty-four (24) equal payments on or before the fifteenth (15th) and last day of

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each month, with the first payment to be made on or before July 15, 2017, and the last payment to be made on or before June 30, 2018. Beginning on the effective date of this Agreement, the Superintendent shall actively seek employment with another employer. If the Superintendent accepts such employment with another employer, he shall notify the Board President as soon as possible and provide a copy of his new employment contract, or the equivalent. If the Superintendent obtains employment at an annual compensation equal to or greater than Two Hundred Forty-Four Thousand Five Hundred Seventeen Dollars and Sixty-Four Cents (\$244,517.64), (the Superintendent's "current annual total compensation," which includes \$4,379.88, the additional cost for portable life insurance continuation through June 30, 2018), the Board's obligation to make any remaining payments to the Superintendent under this Section shall cease upon the Superintendent's first day of employment with the new employer. If the Superintendent obtains employment from another employer at an annual compensation that is less than the Superintendent's current annual total compensation, the Board shall pay the Superintendent the difference, taking into account any severance payments the Superintendent has already received and the first date of new employment, pro-rating as necessary to ensure only that, from the period of July 1, 2017 through June 30, 2018, the Superintendent receives at least his "current annual compensation." Any such payment shall be made in a lump sum within fourteen (14) business days of the Superintendent's first day of employment with the new employer. Should the Board obtain information that the Superintendent has become employed by another employer, but has failed to provide the required notice, the Board shall have the right to terminate any future payments. However, it is agreed between the Board and the Superintendent that the Superintendent may serve in the occasional role of a paid consultant, or may teach college courses, for example, and the Board shall not consider the first Ten thousand Dollars (\$10,000.00) of income (in the aggregate) when calculating any difference in the Superintendent's new annual compensation.

**SECTION 5. INSURANCE BENEFITS**

After June 30, 2017, provided the Superintendent elects to continue his health and dental insurance coverage in the District's health plan or successor plans in accordance with his rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA), in

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consideration of the General Release of Claims set forth in Section 7 of this Agreement, the Board shall pay the Superintendent's COBRA health and dental insurance premiums beginning July 1, 2017, through June 30, 2018, at the same level of coverage as was in effect on June 30, 2017, as long as the Superintendent is continuing to receive the severance payments set forth in Section 4. The premium cost for such insurance coverage shall be deducted from the semi-monthly total compensation set forth in Section 4. The Board shall make the payment required in this paragraph directly to the health and dental insurance plan and the Superintendent shall have no option of receiving any portion of the payment set forth in this paragraph in cash in lieu of the Board paying for insurance continuation premiums. After his severance payments end, the Superintendent may continue with health and dental insurance at his sole cost and expense for the remainder of the COBRA period if he so elects and for as long as he remains eligible.

**SECTION 6. SICK DAYS**

On behalf of the Superintendent, the District shall report fifty-eight (58) accumulated and unused sick leave days to the Teachers' Retirement System for creditable service. Said submission shall occur upon the District's annual report to TRS.

**SECTION 7. GENERAL RELEASE AND WAIVER OF CLAIMS**

In consideration of the payments and benefits set forth in Section 4 above, the Superintendent, for himself and his agents, representatives, attorneys, assigns, heirs, executors, and administrators, and the Board, its members, employees, agents, officials, officers, insurers and/or attorneys fully and mutually release each other from any and all liability, claims, demands, actions, causes of action, suits, grievances, debts, sums of money, agreements, promises, damages, costs, expenses, attorneys' fees, and remedies of any type, whether concealed or not concealed, known or unknown, regarding any act or failure to act that occurred as related to the employment of the Superintendent, including but not limited to all claims, actions or liability under (1) *The School Code* (including, but not limited to, Section 10-22.4 and Sections 24-11 and 24-12 thereof); (2) Title VII of the *Civil Rights Act of 1964*, the *Civil Rights Act of 1991*, the *Civil Rights Act of 1866* (42 U.S.C. § 1981), the *Equal Pay Act*, the *Americans with Disabilities Act*, the *Age Discrimination in Employment Act*, the *Family and Medical Leave*

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*Act*, and the *Illinois Human Rights Act*; (3) any other federal, state, or local statute, ordinance, or regulation regarding employment, compensation, employee benefits, tenure, termination of employment, or discrimination in employment; and (4) the common law of any state relating to employment contracts, tenure, wrongful discharge, and/or intentional infliction of emotional distress.

This General Release and Waiver of Claims does not apply to any action to enforce this Agreement, or if applicable, to any criminal or fraudulent wrongdoing.

**SECTION 8. RELEASE FROM AGE DISCRIMINATION CLAIM**

The Board hereby advises the Superintendent to consult with an attorney prior to executing this Agreement. The Superintendent acknowledges that he has consulted with such counsel prior to executing this Agreement and does hereby relinquish and waive all legal and equitable remedies provided under the *Age Discrimination in Employment Act*, as amended 29 U.S.C. §621 et seq. Further, the Superintendent acknowledges that he has been informed of and understands all rights and claims pursuant to the *Older Worker's Benefit Protection Act of 1990*, P.L. 101-433, including, without limitation the following:

- A. That, by virtue of entering into this Agreement, the Superintendent does not waive any rights or claims that may arise after the date of execution of this Agreement, or to the enforcement of this Agreement;
- B. That the Superintendent waives his rights and claims only in exchange for consideration in addition to anything in value to which he already is entitled to arising out of his employment relationship with the District;
- C. That the Superintendent has twenty-one (21) days within which to consider this Agreement; and
- D. That for a period of seven (7) days following the execution of this Agreement, the Superintendent may revoke this Agreement by delivering, in person, a written revocation to Therese Piper, Executive Secretary to the Superintendent and Board of Education, 150 W. Madison Street, Lombard, Illinois 60148, and the Agreement shall not become effective or enforceable until the revocation period

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has expired.

If a court of competent jurisdiction were to determine that the aforementioned age discrimination waiver was invalid, unenforceable, or ineffective, the age discrimination waiver shall be deemed severable, and all other provisions, terms and clauses of this Agreement shall remain valid and binding upon all the parties hereto.

On date of execution of this Agreement, at its Board meeting, the Board agrees to announce the separation of employment by reading the joint press statement. The Parties acknowledge that this Agreement is a public document and will be released by the Board if requested to do so under the Illinois Freedom of Information Act.

**SECTION 9. EFFECTIVE DATE**

The Superintendent acknowledges that he has been offered twenty-one (21) days to consider this Agreement and understands that he may, for a period of seven (7) days from the date of her signature of this Agreement, revoke such Agreement and that this Agreement shall not become effective until eight (8) days have passed from the date the Superintendent signs this Agreement, or upon the date of the Board's signature on this Agreement, whichever is later.

**SECTION 10. PROSPECTIVE EMPLOYERS**

The Board agrees that, any inquiries received from a prospective employer by the District's Human Resource's office or by any individual who is a member of the Board as of the effective date of this Agreement, shall be directed to Ms. Courtney Simek, who shall respond on the District's behalf. The Superintendent agrees to provide Ms. Simek's name as the point of contact for the District. This Section shall remain in effect until June 30, 2019, or until Ms. Simek's term ends, whichever occurs first.

**SECTION 11. NO FAULT**

This Agreement is not to be construed or used as an admission of any wrongdoing and/or liability whatsoever by or on behalf of the Superintendent and/or Board, as each of the

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undersigned expressly deny any and all liability or wrongdoing in connection with the Superintendent's employment and/or this separation agreement.

**SECTION 12. INDEMNIFICATION.**

The Board agrees that it shall indemnify and protect the Superintendent against any and all demands, claims, suits, actions, and legal proceedings as required by Section 10-20.20 of the *School Code* (105 ILCS 5/10-20.20). Notwithstanding the foregoing, it is expressly understood that in no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings. If the Superintendent is required to return to the District in regard to any and all demands, claims, suits, actions and legal proceedings brought by any individual or entity other than the Superintendent for which the Board has an indemnification obligation by law, the District shall pay for the related business expenses, including but not limited to travel and legal representation expenses. The Board shall have no obligation to pay expenses under this Section if the Superintendent is receiving semi-monthly total compensation under Section 4 of this Agreement. The Superintendent agrees to fully cooperate with the District and its attorneys, in the defense of any litigation against the District and/or its employees or Board Members, that is currently pending or may be filed in the future.

**SECTION 13. VOLUNTARY NATURE OF AGREEMENT**

The Superintendent and Board agree that they are freely, knowingly, voluntarily, and without duress, coercion, or undue influence signing this Agreement. The Superintendent and Board agree that they intend to be legally bound by the terms of this Agreement.

**SECTION 14. COMPLETE UNDERSTANDING**

This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties related to the subject matter hereof, and there are no promises, agreements, or undertakings, either oral or written, expressed or implied, between them other than as herein

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set forth.

**SECTION 154. EFFECT OF AGREEMENT**

This Agreement shall inure to the benefit of the Board and the Superintendent and shall bind the Board and the Superintendent, their agents, representatives, assignees, and successors. The Parties shall accept facsimile copies of this Agreement as if original copies.

**SECTION 16. ADVICE OF COUNSEL**

The Parties have consulted legal counsel regarding the terms of this Agreement and the legal liabilities of the parties.

**SECTION 17. SEVERABILITY**

If any of the provisions, terms and clauses of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum with competent jurisdiction to do so, those provisions, terms and clauses shall be deemed severable, and all other provisions, terms and clauses of this Agreement shall remain valid and binding upon all the parties hereto so long as the Parties' intent in entering into this Agreement can still be satisfied.

**SECTION 18. AMENDMENT OF AGREEMENT**

Except as otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and duly authorized and signed by each of them.

**SECTION 19. CHOICE OF LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of Illinois to the extent applicable. In the event of the institution of any legal proceedings, the parties hereto agree that jurisdiction and venue shall be vested in any federal or state court located in the State of Illinois and that venue, for all purposes, shall be in DuPage County, Illinois.



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**SECTION 20. SIGNATURE IN COUNTERPARTS**

This Agreement may be executed in counterparts each of which shall be considered an original, and all of which together shall be considered one and the same instrument.

**SECTION 21. TEACHERS RETIREMENT SYSTEM**

The Superintendent acknowledges that the Board makes no representations as to the eligibility for TRS credit of any compensation or service that is a subject of this Agreement. It is understood that only TRS has the capacity to determine the creditable status of such compensation and service and that nothing in this Agreement is contingent upon Robey's receipt of any TRS credit or benefit.

**SECTION 22. NO ADDITIONAL BENEFITS**

No promise has been made by the Parties to pay the other any other or future consideration except as set forth in this Agreement. The Superintendent shall not be entitled to any additional benefits from the Board other than those specifically set forth in his employment contract or this Agreement.

**SECTION 23. BENEFITS EXCEED ANY OTHER BENEFIT TO WHICH ENTITLED.**

The Superintendent acknowledges and agrees that the promises indicated in this Agreement exceed any payment, benefit, or other thing of value which he already is entitled to receive from the Board.

**SECTION 24. ADDITIONAL DOCUMENTS TO EFFECTUATE AGREEMENT.**

The Parties shall execute any and all additional documents necessary to effectuate the intent and purposes of this Agreement.

**SIGNATURE PAGE FOLLOWS**

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement on this 9th day of May 2017.

**SUPERINTENDENT**

**BOARD OF EDUCATION OF  
LOMBARD ELEMENTARY SCHOOL  
DISTRICT NO. 44  
DUPAGE COUNTY, ILLINOIS**

\_\_\_\_\_  
**Dr. Michael E. Robey**

By: \_\_\_\_\_  
**President**

\_\_\_\_\_  
**Secretary**