

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

COLLEEN PIZZO  
1201 Central Avenue  
Lindenwold, NJ 08021

Plaintiff,

v.

LINDENWOLD BOARD OF EDUCATION  
801 Egg Harbor Road  
Lindenwold, NJ 08021

Defendant.

CIVIL ACTION NO:

COMPLAINT WITH JURY DEMAND

**CIVIL ACTION COMPLAINT**

Plaintiff Colleen Pizzo (hereinafter "Plaintiff"), by and through undersigned counsel, hereby complains as follows against Defendant Lindenwold Board of Education (hereinafter "Defendant").

**INTRODUCTION**

1. Plaintiff has initiated this action to redress violations by Defendant of the Family and Medical Leave Act ("FMLA") and the New Jersey Law Against Discrimination ("NJLAD"). In essence, Plaintiff was terminated from her employment for taking protected absences and due to her disability and/or perceived disability, in violation of the FMLA and NJLAD. As a result of Defendant's actions, Plaintiff suffered damages as set forth herein.

**JURISDICTION AND VENUE**

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, specifically the FMLA. This Court has jurisdiction over Plaintiff's state law claims because they are supplemental to Plaintiff's underlying federal claims and arise out of the same transaction or

occurrences, having the same common nucleus of operative facts pursuant to 28 U.S.C. § 1367(a).

3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice.

4. Pursuant to 28 U.S.C. §§ 1397(b)(1) and (b)(2), venue is properly laid in this judicial district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

### **PARTIES**

5. The foregoing paragraphs are incorporated herein as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant is an entity that operates the public school system in Lindenwold, New Jersey at the address set forth in the caption.

8. At all times relevant herein, Defendant acted through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment/engagement with Defendant.

### **FACTUAL BACKGROUND**

9. The foregoing paragraphs are incorporated herein as if set forth in full.

10. On or about September 4, 2001, Defendant hired Plaintiff as a custodian.

11. Plaintiff suffers from clinical depression (hereinafter referred to as "Medical Condition").

12. On or about March 9, 2013, Plaintiff sought medical treatment for her Medical Condition.

13. Plaintiff's physician ordered Plaintiff to take a medical leave of absence for the workweek beginning on March 11, 2013.

14. Plaintiff's physician then ordered two additional days of leave on March 18 and March 19, 2013.

*Dubie* 15. On or about March 20, 2013, Plaintiff attempted to return to work but was unable to perform her duties due to her Medical Condition.

16. At that time, Plaintiff's physician ordered Plaintiff to take a further medical leave of absence.

17. Plaintiff planned to return to work from the additional medical leave on April 2, 2013.

18. Plaintiff's medical leave qualified as FMLA leave.

19. Defendant designated her absences as FMLA qualifying.

20. Nonetheless, Defendant fired Plaintiff because of her medical leave.

21. Moreover, Defendant did not provide Plaintiff with individualized notice of her rights and responsibilities under the FMLA for this medical leave.

22. Defendant miscalculated the amount of medical leave to which Plaintiff was entitled in 2013, and mistakenly determined that Plaintiff had exhausted her FMLA leave entitlement.

23. On March 28, 2013, Defendant informed Plaintiff that she was fired because she had exhausted her FMLA leave entitlement.

24. Accordingly, Defendant fired Plaintiff because of her FMLA-protected absences, because of her Medical Condition, and because she needed to take further medical leave due to her Medical Condition.

**COUNT I**  
**Violations of the Family and Medical Leave Act**  
**(Interference)**

25. The foregoing paragraphs are incorporated herein as if set forth in full.

26. Plaintiff was an eligible employee under the definitional terms of the Family and Medical Leave Act.

27. As of March 2013, Plaintiff was employed with Defendant for at least twelve (12) months.

28. Furthermore, Plaintiff had at least 1,250 hours of service with Defendant during the twelve (12) months prior to the commencement of her medical leaves of absence.

29. Defendant is engaged in an industry affecting commerce and employed fifty (50) or more employees for twenty (20) or more calendar workweeks in 2012.

30. Plaintiff required time off from work due to her Medical Condition; this leave was FMLA-qualifying.

31. Defendant was not permitted to interfere with Plaintiff's rights under the FMLA.

32. Defendant was not permitted to retaliate against Plaintiff for exercising her rights under the FMLA.

33. Defendant interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with individualized written notice of her FMLA rights in March 2013.

34. Defendant interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with an FMLA mandated eligibility notice in March 2013.

35. Defendant interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with an FMLA mandated rights and responsibilities notice in March 2013.

36. Defendant interfered with Plaintiff's FMLA rights by firing her in retaliation for having taken leave that Defendant should have designated and treated as FMLA protected leave.

37. Defendant interfered with Plaintiff's FMLA rights by firing her to prevent her from taking further FMLA leave.

38. As a result of Defendant's unlawful actions, Plaintiff has suffered damages.

**COUNT II**  
**Violations of the Family and Medical Leave Act**  
**(Retaliation)**

39. The foregoing paragraphs are incorporated herein as if set forth in full.

40. Defendant retaliated against Plaintiff by firing her for having taken leave that Defendant should have designated and treated as FMLA protected leave.

41. As a result of Defendant's unlawful actions, Plaintiff has suffered damages.

**COUNT III**  
**Violations of the New Jersey Law Against Discrimination (NJLAD)**  
**(Disability/Perceived Discrimination)**

42. The foregoing paragraphs are incorporated herein as if set forth in full.

43. At all times relevant herein, Plaintiff's Medical Condition rendered her an individual with a disability under the NJLAD.

44. At all times relevant herein, Plaintiff was perceived by Defendant to be suffering from a disability.

45. Plaintiff was terminated because she suffered from a Medical Condition and/or because Defendant perceived her as being disabled.

46. Defendant's actions as aforesaid constitute violations of the NJLAD.

47. As a result of Defendant's unlawful actions, Plaintiff has suffered damages.

**COUNT IV**  
**Violations of the New Jersey Law Against Discrimination (NJLAD)**  
**(Failure to Accommodate)**

48. The foregoing paragraphs are incorporated herein as if set forth in full.

49. Plaintiff's requests for additional medical leave constituted a request for a reasonable accommodation under the NJLAD.

50. Defendant denied Plaintiff's requests without ever engaging in the required interactive process with Plaintiff.

51. Defendant could have accommodated Plaintiff without undue hardship but refused to do so.

52. Defendant's actions as aforesaid constitute violations of the NJLAD.

53. As a result of Defendant's unlawful actions, Plaintiff has suffered damages

**COUNT V**  
**Violations of the New Jersey Law Against Discrimination (NJLAD)**  
**(Retaliation)**

54. The foregoing paragraphs are incorporated herein as if set forth in full.

55. Plaintiff requested a period of time off from work due to a disability.

56. Requesting an accommodation for a disability and accepting the accommodation are clearly protected activities under the NJLAD.

57. Defendant terminated Plaintiff because she requested the aforementioned accommodation.

58. Defendant's aforementioned conduct constitutes retaliation pursuant to the NJLAD.

59. As a result of Defendant's unlawful actions, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating against employees or prospective employees based on their need to take FMLA qualifying leaves and/or their health conditions;

B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to past lost and future lost earnings;

C. Plaintiff is to be awarded liquidated damages and/or punitive damages in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious, and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future (liquidated damages are sought under the FMLA);

D. Plaintiff is to be awarded damages for emotional distress and/or pain and suffering (as permitted by applicable law) and is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal law.

Respectfully submitted,

**SWARTZ SWIDLER, LLC**

/s/ Richard S. Swartz

Richard S. Swartz, Esq.

Justin L. Swidler, Esq.

Matthew D. Miller, Esq.

1878 Marlton Pike East, Suite 10

Cherry Hill, NJ 08003

(856) 685-7420

(856) 685-7417 Fax

Dated: June 11, 2013

**DEMAND TO PRESERVE EVIDENCE**

Defendant is hereby directed to preserve all physical and electronic information pertaining in any way to Plaintiff's employment, to Plaintiff's cause of action and/or prayers for relief, and to any defenses to same, including, but not limited to, electronic data storage, closed

circuit TV footage, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages, any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.



## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is made and entered into as of this 8<sup>th</sup> day of October, 2015, between COLLEEN PIZZO (referred to herein as "PIZZO"), plaintiff in that certain civil action (the "Civil Action") pending in the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, and styled COLLEEN PIZZO v. LINDENWOLD BOARD OF EDUCATION, et als, Case No: 1:13-cv-3633, on the one hand, and the LINDENWOLD BOARD OF EDUCATION and the LINDENWOLD SCHOOL DISTRICT (referred to herein as the "School District Defendants") on the other hand.

By means of this Agreement, PIZZO intends to fully and unconditionally release any and all claims he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against the SCHOOL DISTRICT DEFENDANTS, and each of the SCHOOL DISTRICT DEFENDANTS' affiliates, predecessors, successors, parents, subsidiaries, divisions, assigns, officers, directors, shareholders, representatives, employees, former employees, insurers, attorneys, consultants and agents, (collectively referred to as "Releasees"), the remaining terms of which Agreement are now fully set forth in Paragraphs I through XVI below.

### **I. Consideration**

In consideration of the payment of Forty Thousand Dollars (\$40,000.00) to PIZZO, PIZZO gives the releases, covenants, representations, and warranties stated herein. The check should be made payable as follows:

- \$40,000.00 to Swartz Swidler LLC

Payment shall be made within twenty-one (21) days of the complete execution of this Agreement and the approval and ratification of same by the LINDENWOLD BOARD OF EDUCATION.

### **II. Covenant to Not Pursue Further Legal Action**

PIZZO hereby covenants and agrees that the Civil Action shall be dismissed with prejudice and without costs as to all parties. PIZZO shall take no further action against any individual or entity based upon the matters set forth within PIZZO'S pleadings and/or based upon any other cause of action that PIZZO may have stemming or originating from PIZZO'S employment with the SCHOOL DISTRICT DEFENDANTS.

### **III. General Release**

Whereas PIZZO brought the Civil Action alleging damages for claims as set forth in his pleadings in the Civil Action, including, but not limited to, claims for pain and suffering, embarrassment and humiliation, as well as

emotional distress, and in consideration for the terms and conditions set forth herein, PIZZO, and his heirs, successors and assigns, hereby voluntarily waives, generally releases and discharges Releasees from any and all rights or claims that PIZZO may have against Releasees, for any and all reasons, including, but not limited to, claims of employment discrimination or harassment with regards to any alleged protected category, status or class, including but not limited to political affiliation, political activity, age, sex, religion, race, disability, familial status or national origin, breach of contract, wrongful resignation, retaliation, hostile work environment, wrongful discharge, intentional and/or negligent infliction of emotional distress, defamation, libel, slander, personal injury, lost wages, and any other economic and/or non-economic damages whatsoever for anything that has happened from the beginning of time to the date that this document is executed. PIZZO specifically waives any claims which were or could have been set forth in the Civil Action, as well as any rights that PIZZO may have under:

- Title VII of the Civil Rights Act of 1964, as amended;
- The Civil Rights Act of 1991;
- Sections 1981-1988 of Title 42 of the United States Code, as amended;
- The Employment Retirement Income Security Act of 1974, as amended;
- The Immigration Reform and Control Act, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967, as amended;
- The Workers' Adjustment and Retraining Notification Act, as amended;
- The Occupational Safety and Health Act, as amended;
- The Older Workers Benefits Protection Act;
- The Equal Pay Act;
- The Family Medical Leave Act
- The Fair Labor Standards Act;
- The New Jersey Law Against Discrimination;
- The New Jersey Family Leave Act;
- The New Jersey State Wage and Hour Law;
- The New Jersey and Federal Conscientious Employee Protection Acts;
- The New Jersey Equal Pay Law;
- Individuals with Disabilities Education Act;
- Any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance;
- Any public policy, contract, tort or common law; or
- Any allegation for costs, fees or other expenses including attorney's fees incurred in the lawsuit or in any of these matters,

that he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against Releasees for compensatory or

punitive damages or other legal or equitable relief of any type or description. These claims shall be referred to as the "Released Claims".

#### **IV. Release Includes Unknown Claims**

A. PIZZO understands and agrees that the Released Claims are intended to and do include any and all claims of every nature and kind whatsoever (whether known, unknown, suspected, or unsuspected and whether pursuant to any law or cause of action presently in effect or which may be enacted or created in the future) which he has or may have against the Releasees, individually or collectively.

B. PIZZO further acknowledges that he may hereafter discover facts different from or in addition to those which he now knows or believes to be true with respect to the Released Claims and agrees that, in such event, this Agreement shall nevertheless be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

C. PIZZO represents and acknowledges (i) that she and her attorneys have conducted whatever investigation was deemed necessary by his and his attorneys to ascertain all facts and matters related to this Agreement; (ii) that she has consulted with and received advice from legal counsel concerning this Agreement; and (iii) that she is not relying in any way on any statement or representation by the SCHOOL DISTRICT DEFENDANTS or its attorneys, except as expressly stated herein, in reaching his decision to enter into this Agreement.

#### **V. No Future Employment**

As additional consideration for the execution of this Agreement by PIZZO and in furtherance of the resolution of this matter, PIZZO agrees to refrain from applying for any position with the SCHOOL DISTRICT DEFENDANTS.

SCHOOL DISTRICT DEFENDANTS agree that, upon any inquiry from any prospective employer of PIZZO and/or any other third party entity, they shall provide only PIZZO's dates of employment, last position and most recent salary in the form of a neutral employment reference.

#### **VI. No Assignment or Transfer of Released Claims**

PIZZO represents and warrants that as of the Effective Date, PIZZO has not assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, to any person, firm, corporation, association, or entity whatsoever any of the Released Claims. PIZZO hereby agrees to indemnify and hold harmless Releasees against, without limitation, any and all rights, claims warranties, demands, debts, obligations, liabilities, costs, expenses (including attorneys' fees), causes of action, and judgments based on, arising out of, or

connected with any such transfer, assignment, or hypothecation, or purported transfer, assignment, or hypothecation.

**VII. No Admission of Liability**

PIZZO understands and agrees that this Agreement is a release of disputed claims and does not constitute an admission of liability on the part of the SCHOOL DISTRICT DEFENDANTS as to any matters whatsoever and that the SCHOOL DISTRICT DEFENDANTS merely intend by this Agreement to avoid further litigation and buy its peace.

**VIII. Allocation**

The parties acknowledge that the Civil Action included claims for personal injuries alleged to be sustained by PIZZO, including but not limited to, allegations that PIZZO sustained physical manifestations of emotional distress. Notwithstanding the foregoing, all Parties acknowledge that this settlement is not conditioned or contingent upon the tax consequences, or lack thereof, associated with PIZZO'S receipt of the settlement proceeds discussed above. Further, PIZZO understands and agrees that the SCHOOL DISTRICT DEFENDANTS have not withheld any amount from the agreed upon payment made pursuant hereto for federal, state, or local taxes or other withholdings, and that payment by the insurer for the SCHOOL DISTRICT DEFENDANTS shall be memorialized utilizing Box 3 on Internal Revenue Service Form 1099. PIZZO agrees that he shall be liable for any damage, loss, liability, or expense, including penalties, interests, and attorneys' fees, arising out of any actions, suits, proceedings, demands, judgments, or other loss resulting from any action, of any nature whatsoever, to require any party to pay any such taxes or other withholdings which arise from the payment made hereunder.

**IX. Modification**

No provision of this Agreement may be changed, altered, modified or waived except in writing signed by PIZZO and a duly authorized representative of the SCHOOL DISTRICT DEFENDANTS, which writing shall specifically reference this Agreement and the provision which the parties intend to waive or modify.

**X. Dismissal**

Contemporaneously with the execution of this Agreement, PIZZO and the SCHOOL DISTRICT DEFENDANTS, through their respective counsel, shall execute the Stipulation of Dismissal, a copy of which is appended hereto as Exhibit A, which shall be filed promptly in the Court in which the Civil Action is pending.

**XI. Severability**

In the event any provision of this Agreement should be held to be unenforceable, each and all of the other provisions of this Agreement shall remain in full force and effect.

**XII. Attorneys' Fees, Costs and Expenses**

PIZZO understands and agrees that the aforesaid payments to her include and encompass therein any and all claims with respect to attorneys' fees, costs, and expenses for or by any and all attorneys who have represented his or with whom she has consulted or who have done anything in connection with the Civil Action and/or the Released Claims.

**XIII. Entire Agreement**

The parties hereto acknowledge that this Agreement constitutes a full, final, and complete settlement of their differences and supersedes and replaces any and all other written or oral exchanges, agreements, understandings, arrangements, or negotiations between or among them relating to the subject matter hereof, and affirmatively state that there are no other prior or contemporaneous agreements, exchanges, representations, arrangements, or understandings, written or oral, between or among them relating to the subject matter hereof other than that as set forth herein, and that this Agreement contains the sole and entire Agreement between them with respect to the subject matter hereof. The parties hereto further acknowledge and agree that language proposed for, deleted from, or otherwise changed in the various drafts of this Agreement but not included herein shall not be considered in any way in the interpretation and application of this Agreement and shall not in any way affect the rights and obligations of the parties hereto.

**XIV. Understanding**

PIZZO acknowledges and represents that she has read this Agreement in full and, with advice of counsel, understands and voluntarily consents and agrees to each and every provision contained herein.

**XV. Applicable Law and Mutual Submission to Jurisdiction**

This Agreement shall be construed and enforced according to the laws of the State of New Jersey. PIZZO agrees to submit any and all disputes arising out of or based on this Agreement to the jurisdiction of the Courts of the State of New Jersey.

**XVI. Counterparts Acceptable**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date shown below.

**COLLEEN PIZZO**

Colleen Pizzo

Date: 10-13-2015

Sworn to and subscribed to before me on this 13 day of October, 2015.

Jennifer L. Bitting  
NOTARY PUBLIC

JENNIFER L BITTING  
Notary Public  
State of New Jersey  
My Commission Expires Jul 3, 2019