



# KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street  
Soldotna, Alaska 99669  
Phone (907) 714-8888 Fax (907) 262-9645

Matthew Fischer  
37736 Stone Hollow Drive  
Soldotna, AK 99669

December 13, 2022

## **NOTIFICATION OF DISMISSAL**

Dear Mr. Fischer,

This letter serves as formal notification of your dismissal from employment with the Kenai Peninsula Borough School District, effective immediately. Pursuant to notice given to you on October 31, 2022, a pretermination hearing was held on November 3, 2022, before Human Resource Director Nate Crabtree. Based on the information provided at the termination hearing, including statements made by you, it has been determined that dismissal is warranted for the causes identified below. This letter, including the following Statement of Cause and Bill of Particulars, are provided to you pursuant to Alaska Statute 14.20.180.

## **STATEMENT OF CAUSE**

You are dismissed pursuant to AS 14.20.170(a)(2) and (3) for the following causes asserted against you jointly and severally:

1. Immorality, which is defined as the commission of an act that, under the laws of the state, constitutes a crime involving moral turpitude; and,
2. Substantial noncompliance with the schools laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

## **BILL OF PARTICULARS**

The causes for your dismissal are specifically supported by the following bill of particulars.

1. You are employed by the District as a certificated teacher and are required to abide by the laws and regulations of the State of Alaska and Board policies

established by the District, and to fulfill the duties and responsibilities set forth in your contract of employment.

2. On November 3, 2015, you were injured in an automobile accident.
3. You are, and were at the time of injury, enrolled in the Kenai Peninsula Borough School District's Medical Plan ("Medical Plan" or "Plan"), a self-funded health plan established for the benefit of District employees. Your coverage under the Medical Plan is and was controlled by the Kenai Peninsula Borough School District Health Care Plan ("Health Care Plan").
4. The Health Care Plan has a Right of Recovery clause, which states that when a plan participant ("Covered Person") is injured and incurs medical expenses as a result of an act or omission of "Another Party" (referred herein as a third-party) who is or may be legally responsible for causing the injuries, "the [Medical] Plan will be secondary, not primary. Participants who have received payment, referred to as a "Recovery," from a responsible third party are not entitled to payment of expenses from the District's medical plan. The Plan specifically provides, that it *will not* cover any expenses for which compensation was provided through a previous Recovery.
5. You received a payment of \$302,000 from the responsible party's insurance provider, USAA, on January 16, 2016. Receipt of this payment rendered you ineligible for payment of expenses from the District's Plan, up to the amount of the Recovery. Nonetheless, you did not notify the District's Plan Administrator and instead contacted a third-party administrator, Rehn, to secure payment of your medical expenses from the District Plan. In furtherance of your effort to have your medical expenses (for which you had already been compensated by USAA) paid from the District Plan, you executed a Right of Recovery form on March 23, 2016, under which you promised to reimburse the District from any payments received from a third party. Thereafter, you received a second settlement payment of \$200,000 from your own insurance provider, in October, 2016. Not knowing that you had already received \$300,000 in compensation from USAA, and an additional \$200,000 from State Farm, the District paid over \$164,000 in medical expenses claimed by you.
6. The Right of Recovery form you executed on March 23, 2016 provided that you, "understand and agree" that any amounts paid by the District Plan toward your medical expenses incurred from the accident are subject to the "Reimbursement of Benefits" provision contained in the Health Care Plan. The Right of Recovery form further stated,

If and when a recovery is made and in consideration of payments made toward such expenses I hereby agree to reimburse the Health Care Plan any and all monies which may be due in accordance with the "Reimbursement of Benefits" plan provision.

7. Pursuant to the terms of the Health Care Plan's reimbursement provision, you were obligated to: (1) immediately reimburse 100 percent of the amount paid by the District out of any Recovery from a third-party; (2) notify the District in writing of any proposed settlement and obtain the Plan's written consent before signing any release or agreeing to any settlement; and (3) cooperate fully with the Plan in its exercise of its rights under this provision, and do nothing that would interfere with or diminish those rights and furnish any information required by the Plan. It further requires,

A Covered Person who receives any Recovery (whether by judgment, settlement, compromise, or otherwise) has an absolute obligation to immediately tender the Recovery to the Plan under the terms of this provision. *A Covered Person who receives any such Recovery and does not immediately tender the Recovery to the Plan will be deemed to hold the Recovery in constructive trust for the Plan, because the Covered Person is not the rightful owner of the Recovery and should not be in possession of the Recovery.*

8. Despite written demand, you failed and refused to reimburse the medical expenses paid by the District, and actively spent the settlement funds in breach of your fiduciary duties to hold the money in a constructive trust for the benefit of the District.
9. Per Judge Wells February 17, 2022 Order Regarding Plaintiff's June 3, 2020 Motion:

When Mr. Fischer signed the Right of Recovery Agreement, he agreed to immediately reimburse the [District's medical] plan upon receipt of settlement money paid by liable third-parties. He explicitly agreed he had an "absolute obligation to immediately tender the Recovery to the Plan under the terms" of the [Plan]. *See* p. 5.

... [T]he terms of the contract explicitly stated that Mr. Fischer had a duty to immediately reimburse the plan, and that if he failed to do so, the funds would be considered to be held constructively in trust because "he is not the rightful owner of the Recovery and should not be in possession of the Recovery...." *Id.*

... [I]t is clear that The District suffered damages when Mr. Fischer failed to reimburse the plan as required by the contract. *Id.* at p. 6.

10. As noted above, the Court determined that you are bound by the terms and conditions of the Third Party Recovery, Subrogation, and Reimbursement section of the Health Care Plan Summary Plan Description. That section also includes the following:

It is the responsibility of the Covered Person to inform the Plan Administrator when expenses are related to an Illness or Injury for which a Recovery has been made. *Acceptance of benefits under this Plan for which the Covered Person has received a Recovery will be considered fraud ....*

11. On September 12, 2022, Judge Wells issued an order granting the District's motion for summary judgement on damages in the amount of \$164,111.28. She subsequently issued an order of Final Judgment on October 20, 2022 in the amount of \$187,228.49 (an amount including interest). This final judgment affirms that you withheld a significant amount of money in violation of law and the contract, as described herein.
12. You are employed by the Kenai Peninsula Borough School District as a teacher at the District's Skyview Middle School. As a certified employee you are required to abide by the Board Policies as established by the District. As a professional educator, you are statutorily and contractually bound to abide by the laws and regulations of the State of Alaska. These include the Professional Teaching Standards and Code of Ethics adopted by the Professional Teaching Practices Commission. The Code of Ethics is incorporated into KPBSD Board Policy by BP 4119.21.
13. Pursuant to your employment contract, you agreed to abide by and be bound by the laws of the State of Alaska and *the policies, rules and regulations* of the Department of Education, *and the District*, as well as the Professional Teaching Standards and Code of Ethics adopted by the Professional Teaching Practices Commission.
14. KPBSD Board Policy 4119.21 requires that employees maintain the highest ethical standards, follow district policies and regulations, and abide by state and national laws.
15. Your failure to inform the Plan Administrator of your USAA and State Farm settlements, obtaining payment of medical expenses for which you had already been compensated by promising to reimburse the District from settlements received, knowing and willful breach of the Right of Recovery agreement, and wrongful withholding and spending of District funds to which you were not entitled and not the rightful owner, amounts to theft of District resources, violates BP 4119.21, and constitutes a breach of your professional employment contract.
16. Your conduct also violates the Professional Teaching Standards and Code of Ethics adopted by the Professional Teaching Practices Commission, specifically: 20 AAC 10.020(c)(8), which states that a professional educator may not use or allow the use of District resources for private purposes not related to the District programs and operation; and 20 AAC 10.020(d)(15), which states

that a professional educator may not unlawfully breach a professional employment contract.

17. “Theft” is defined as a crime involving moral turpitude justifying termination on the grounds of immorality, and includes Theft by Failure to Make Required Disposition of Funds Received or Held. AS 14.20.030; 20 AAC 10.030; AS 11.46.100; AS 11.46.210. As a professional educator in Alaska, you are prohibited from engaging in acts of moral turpitude, defined as conduct that “is wrong in itself even if no statute were to prohibit the conduct.” 20 AAC 10.035(1). You obtained payment of medical expenses in excess of \$164,000 from the District plan to which you were not entitled, promising to reimburse the District from settlements of your third-party insurance claim(s) in order to induce payment of those expenses.
18. You had an affirmative obligation to hold \$164,111.28 of the settlement funds you received in constructive trust for the District. Instead, you withheld and misappropriated the District’s trust funds for your own use, spending them with impunity on luxury vehicles, multiple vacations to Hawaii, Arizona, Missouri and elsewhere, as well as home improvement projects. Your conduct is particularly troubling because, as the District is a self-insured entity, your withholding of the funds was not just theft from the District, but from your fellow co-workers also enrolled in the hearth insurance program. Your conduct fits within the PTPC’s definition of moral turpitude.
19. You were given the opportunity to respond to the Bill of Particulars at your pretermination hearing on November 3, 2022. Your statements are addressed in the following paragraphs.
20. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you did not deny: (a) that you received a settlement payment of \$302,000 in January 2016 from USAA as a result of the injuries you suffered in the 11/3/15 accident; (b) you did not provide insurance claim documentation or written notice of your settlement to the Plan Administrator before settling the claim; (c) you accepted Plan benefits despite having already recovered past and future medical expenses in your USAA settlement; (d) you did not notify the Plan Administrator in writing of the proposed settlement with State Farm or obtain written consent before agreeing to accept the settlement; (e) on March 23, 2016, you signed the Right of Recovery agreement promising to immediately reimburse the District from any Recovery you received or to hold the amount owed to the District in a constructive trust for the benefit of the District because the funds do not belong to you; (e) you did not immediately reimburse or tender 100 percent of the amount paid by the District out of any Recovery you were in possession of or received; (f) you failed to hold the Recovery owed to the District in a constructive trust for the benefit of the District; (g) you failed to cooperate fully with the Plan in its exercise of its rights to Reimbursement; (h) you interfered with the District’s rights of Reimbursement; and (i) you were found by a court

of law to have breached the Right of Recovery agreement by failing to immediately reimburse the District or hold the funds in a constructive trust.

21. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you stated that your diagnosis of PTSD has impacted your decision-making ability throughout this process. You also indicated you felt your decisions were made under duress. However, despite legal consultation prior to the lawsuit informing you that you were required to reimburse the District, and you were represented by counsel during the proceeding, you did not allege lack of capacity, incompetence, duress, fraud, or any other impairment that would render your reimbursement agreement unenforceable. You also demonstrated clear understanding of the Plan's right to reimbursement on multiple occasions, including in emails to the District requesting it reduce and waive reimbursement, verified discovery responses, and you testified under oath at the evidentiary hearing and at your deposition.
22. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you maintained that only the first femur surgery was related to the accident and the second and third surgeries were corrective and therefore un-related. You provided medical records and documentation. You made this same assertion before the trial court, who found your argument unsupported and speculative and awarded full damages to the District for which judgment has issued. More compelling, however, is the uncontroverted evidence that you were compensated for the second and third surgeries as part of your UM/UIM settlement. As a UM/UIM claim, your policy required that the injuries and medical expenses *must be related to the underlying accident* in order for the policy to pay on a claim. As part of your UM/UIM claim, you sent an email to State Farm confirming the second and third surgeries were accident related, and submitted the surgical records and treatment records to support your claim for UM/UIM damages. State Farm reviewed your medical records and determined your second and third surgeries were related to the accident of 11/3/15 and included the costs of the surgeries and treatment in its offer of \$200,000, which you accepted. As it was already determined the two surgeries and treatment were related and included in your UM/UIM settlement, your statement that they are unrelated is false and misleading.
23. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you stated that you have always had the money to pay the District despite its claims that you had spent it all. Your statement conflicts with numerous declarations you have made regarding your finances. You represented to the District on at least three separate occasions that you would have to file for bankruptcy if the District pursued reimbursement against you. You informed the District in July 2018 that you had spent nearly everything from the settlements, requesting the District waive its right to reimbursement. But, at your deposition you conceded that your bank records accurately showed that you had approximately \$190,000 in savings at that time. You also testified under oath that you had spent approximately \$460,000 of the \$500,000, with

only \$40,000 left from the settlements. You testified that your mortgage balance on your home was approximately \$450,000 and \$270,000 was owed on the duplex you owned. You testified that you would lose your house if you were required to reimburse the District. The Plan states its right of first Reimbursement will not be reduced for any reason. It was incumbent upon you to immediately reimburse the District *or hold those funds* in a constructive trust for the benefit of the District, even if you objected and challenged your obligation through the court system. Failure to do so is a basis for dismissal. You have demonstrated a lack of candor and credibility and these lack of accurate statements exhibit and demonstrate an additional basis for dismissal.

24. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you stated that the District should have waived recovery for you. You are incorrect because you contractually agreed to reimburse the District. On March 23, 2016, you signed the Right of Recovery agreement, contractually obligating you to reimburse the District for pre-paid medical expenses if/when you received a Recovery. You were also ineligible to receive Plan benefits. At the time you signed the Right of Recovery, you had already settled the USAA claim for \$302,000 (January 21, 2016). The Plan excludes coverage for any expenses for which compensation was provided through a previous Recovery. Because your USAA settlement included payment for past and future medical expenses, and the amount you recovered far exceeded your medical bills, you were never eligible for Plan coverage.
25. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you stated your belief that Joann Riener and Sean Dusek had knowledge of your settlement, submitting an email sent to you on 11/9/15 by Ms. Riener, your email to Ms. Riener and Superintendent Dusek on 12/15/15, and Ms. Riener's email to you on 12/21/15 in support of your position. You contend that the District knew of your settlement and failed to advise you on what to do. The District finds your statement disingenuous. The emails you rely upon were all sent before your claims were settled (USAA - January 2016 and State Farm October 2016). It is also belied by the fact that you were not eligible to accept benefits due to your USAA settlement. You were on notice that acceptance of benefits under the Plan after receiving a Recovery is not permitted. The District does not find your statement that it had advance notice of your settlements credible, or material as you were at all times obligated to comply with the Plan's requirements and your own promise to reimburse the District. Whether the District was on notice of your settlements does not excuse your performance obligation under the Right of Recovery agreement. You also admitted under oath at your deposition that you did not notify the Plan Administrator or any District employee of your State Farm settlement.
26. At your pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you objected to the District's statement that you spent the settlement funds "with impunity" and alleging that two trips you took with your wife used \$100 companion fares. However, you testified under oath

that you took your family on numerous vacations, including multiple trips to Arizona, two trips to Hawaii, a trip to Illinois, Tampa, FL, Georgia, St. Louis, MO, to Alyeska Resort for skiing approximately 10 times per year, that you purchased two new vehicles, and you used settlement money for home improvements. When asked at your deposition if you were responsible with your spending, you said no. These were District funds used for personal use unrelated to your medical care or treatment.

27. In sum, at the pretermination hearing with Director of Human Resources Nate Crabtree on November 3, 2022, you reiterated the same arguments that were defeated in the litigation finding you in breach of the Right of Recovery agreement. Despite these arguments, the basis for termination is simple: you accepted Plan benefits despite being ineligible, you breached the Right of Recovery agreement by failing to immediately reimburse the District or hold the settlement funds in a constructive trust while objecting to repayment, and you withheld and misappropriated the District's trust funds for personal use. Your conduct constitutes immorality and substantial noncompliance with the policies of the District, as defined by AS 14.20.170. It is just cause for your dismissal under AS 14.20.170(a)(2) and (3) and the terms of your professional employment contract.

### **YOUR RIGHTS PURSUANT TO AS 14.20.180**

Within fifteen (15) days of the receipt of this dismissal, you may notify me, in writing, that you request a hearing on your termination before the Kenai Peninsula Borough School District Board pursuant to AS 14.20.180(d), or you may invoke the statutory arbitration procedures set forth at AS 14.20.180(e).

#### **Hearing Procedures**

##### **AS 14.20.180(d)**

Should you elect to have a hearing before the School Board, you will have the right to select either a public or private hearing. Counsel may represent you. You may request witnesses to testify under oath or affirmation, cross-examine witnesses, and subpoena persons who have made statements upon which the District is relying in terminating your employment.

After the hearing, a copy of the School Board's decision will be issued to you within ten (10) days. Should the Board find adequate grounds for your termination, you may appeal this decision to the Superior Court.

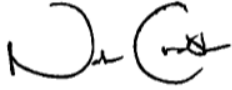
#### **Arbitration Procedures**

##### **AS 14.20.180(e)**

Should you elect to invoke the arbitration procedures, the Board will notify you of an informal hearing date to review your notice of dismissal and bill of particulars. No additional evidence will be presented at this hearing. You may choose to hold this hearing

in public or private. At the conclusion of this hearing, the Board will vote whether to sustain your termination. Should they vote to do so, within fifteen (15) days of the decision, you may submit the matter to arbitration under the rules of the American Arbitration Association. The arbitrator's decision will be final and binding on all parties. Should you wish, you may request that the Board waive the informal hearing and allow the matter to proceed directly to arbitration.

Sincerely,

A handwritten signature in black ink, appearing to read "Nate Crabtree". The signature is written in a cursive style with a large initial "N" and a distinct "C" at the end.

Nate Crabtree  
Director of Human Resources  
Kenai Peninsula Borough School District