

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHN DOE, a minor, by his parents
and next friends, SUSAN AND JACK
DOE,

Plaintiff,

Case No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**PARTIES' JOINT NOTICE OF SETTLEMENT & MOTION FOR THE
COURT TO APPROVE SETTLEMENT AND RETAIN JURISDICTION**

The parties, by and through their undersigned counsel, hereby jointly give notice to the Court that they have entered into a settlement agreement, and respectfully move the Court to both approve the settlement, as John Doe is a minor, and retain jurisdiction to enforce the terms of the settlement agreement. In support of this joint motion, the parties state the following grounds:

1. The parties have entered into a settlement agreement, a redacted copy of which is attached hereto as Exhibit 1. The portions of the settlement agreement redacted are only the names of the John Doe, a minor, and his parents Susan and Jack Doe, in order to protect the identity of John Doe.

2. Because this case involves a minor, John Doe, court approval of the settlement as to John Doe is necessary. Fla. Stat. § 744.387(3)(a); *see also Wilson v. Griffiths*, 811 So. 2d 709, 712 (Fla. 5th DCA 2002).

3. This settlement is in the best interest of the minor John Doe, as is evident by the terms of the settlement agreement, a copy of which is attached hereto.

4. The release in the settlement agreement is not a broad general release, but instead only waives claims the parties could have asserted in this Action.

5. Susan and Jack Doe are the parents and legal guardians of John Doe.

6. The parties request that the Court retain jurisdiction over the parties and their settlement agreement to enforce its terms. *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272 (11th Cir. 2012); *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

WHEREFORE, the parties respectfully move this Court for an Order approving the settlement agreement and retaining jurisdiction over the parties and their settlement agreement to enforce its terms.

Dated: August 31, 2018

Respectfully submitted,

/s/ Thomas M. Gonzalez

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Attorneys for Plaintiff

Exhibit 1

REDACTED COPY OF SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT AND RELEASE

This Release and Settlement Agreement (the "Agreement") is entered into as of the date of the last signature hereto (the "Effective Date") by and between Plaintiff [REDACTED] ("Student"), a minor, by and through his parents and legal guardians [REDACTED] ("Guardians") (collectively Student and Guardians are referred to as "Plaintiff") and Defendant Volusia County School Board ("Defendant") (collectively Plaintiff and Defendant are referred to as "Parties") in order to compromise, resolve, and settle the below-identified pending legal dispute.

RECITALS

WHEREAS, Student, by and through Guardians, brought an action against the Volusia County School Board (hereinafter "Defendant" or "School Board") in the United States District Court, Middle District of Florida, Orlando Division, Case 6:18-cv-102-RBD-GJK (the "Action") on January 19, 2018, alleging claims of discrimination on the basis of sex by the School Board under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688. Plaintiff brought and prosecuted the Action as "John Doe" so that Student's identity and personal life would be protected against public and media scrutiny. The Parties seek to continue to maintain the confidentiality of Student's identity throughout the settlement process and thereafter;

WHEREAS, Student has obtained and provided Defendant with a birth certificate that reflects his sex as male;

WHEREAS, Defendant, based on the student's birth certificate, will treat Student as male for all purposes including the use of communal boy's restrooms and locker rooms;

WHEREAS, the Plaintiff and Defendant have conferred in good faith and through voluntary arms-length settlement discussions have negotiated the terms of this Agreement to fully and finally settle all claims raised by Plaintiff in the Action; and

NOW, THEREFORE, in consideration of the mutual agreements herein made and described below, the Parties agree as follows:

TERMS

1. **RECITALS:** The Recitals are true and accurate and incorporated into this Agreement.

2. **COURT APPROVAL OF SETTLEMENT BECAUSE STUDENT IS A MINOR AND DISMISSAL OF ACTION:** Within 14 days of the full execution of this Agreement by the Parties, Plaintiff shall file a motion requesting the trial court in the Action issue an order approving this Agreement, as required by Fla. Stat. § 744.387(3)(a). Attorneys designated by Plaintiff shall handle obtaining court approval of the Agreement, and Defendant

shall not be responsible for Plaintiff's counsel's fees or costs. Should Defendants' cooperation be required in order to obtain court approval, Defendants shall provide reasonable cooperation, including, but not limited to, permitting Plaintiff to file "joint" motions to file confidential documents under seal. The Parties expressly agree that this Agreement is contingent upon receiving court approval. The effective date of this Agreement shall be the date the court issues an order approving the Agreement ("Effective Date").

3. **DISMISSAL OF ACTION:** Within 5 days of obtaining court approval of this Agreement, the Parties shall jointly file a Stipulation of Dismissal to dismiss with prejudice all claims asserted in the Action in accordance with Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. The Stipulation of Dismissal is attached to the Agreement as Exhibit A.

4. **CONSIDERATION TO STUDENT:** In exchange for the compromise of all claims asserted against Defendant in The Action and the promises in this Agreement, Defendant (including all officers, members, agents, representatives, and employees of the School Board and/or the Volusia County School District) shall treat Student according to the sex reflected on his birth certificate for all purposes including restrooms, locker rooms and all other sex-separated facilities and activities, at or in all facilities, activities, and/or programs within Defendant's jurisdiction and control, including but not limited to all facilities, activities, and/or programs of the Volusia County School District and any activities and/or programs sponsored by or affiliated with Defendant or the Volusia County School District, regardless of whether the activity and/or program occurs in a facility owned or operated by Defendant or the Volusia County School District. Furthermore, the promises contained in Sections 4.a and 4.b will continue to remain in effect into perpetuity, including, but not limited to, the remainder of Student's education in the Volusia County School District and any visits to facilities within the Defendant's jurisdiction and control after Student's graduation.

5. **MUTUAL RELEASE AND DISCHARGE:** In consideration of the promises herein, each Party hereby releases the other Party, including all of their officers, members, employees, agents, legal representatives, and other representatives in both their individual and official capacities, from the beginning of time through the Effective Date, from any and all claims, demands, actions, causes of actions, or suits at law or equity or whatever kind of nature, whether now known or unknown and from continuing effects therefrom, that were or could have been asserted in the Action, including Plaintiff's claim for compensatory damages and recovery of reasonable attorneys' fees and costs.

6. **NO PRESUMPTIONS REGARDING AUTHORSHIP:** The Parties acknowledge that this Agreement and the consideration for it involves the resolution of disputed claims and no presumption or construction shall be made in favor of or against any Party based on the authorship of this document.

7. **NO ADMISSION OF WRONGDOING:** Plaintiff acknowledges that this Agreement involves the resolution of disputed claims and that Defendant is not admitting wrongdoing through execution of this Agreement. Nothing within this Agreement shall be construed as establishing or reflecting any official policy or practice for Defendant.

8. **CONFIDENTIALITY:** The Parties agree to treat as confidential and protected by the Federal Education Rights Privacy Act (FERPA) the identity of Student, including, but not limited to, his name and those of his parents (Guardians), his contact information, and his school of attendance. Defendant further agrees to take reasonable measures to safeguard the privacy of Student's identity, and that of his parents, including but not limited to referring to Student as John Doe in both public and private meetings of the School Board, and redacting Student's name, the names of Student's parents, and the family's address and contact information when disclosing this Agreement, or any documents associated with this case, to any person or entity pursuant to public records request under Florida law, the Florida Sunshine Law (Fla. Stat. ch. 286, *et seq.*), or any other federal or state law(s), regulation(s) or local ordinance. Notwithstanding the foregoing, the Parties are not precluded from filing the unredacted agreement under seal in court for purposes of obtaining approval or enforcing the terms of the Agreement.

9. **PARTIES' ATTORNEYS' FEES AND COSTS:** The Parties agree that each shall bear their own attorney's fees and costs incurred in relation to the Action.

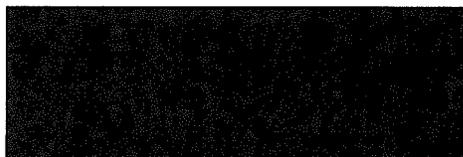
10. **COMPLETE AGREEMENT:** This Agreement contains the Parties' entire agreement with respect to its subject matter, and no other promises or agreements of any kind have been made to cause the Parties to execute this Agreement. The provisions of this Agreement may be amended, modified, supplemented, or waived only by an instrument in writing duly executed by Plaintiff and Defendant. Plaintiff fully understands the meaning and intent of this Agreement, including, but not limited to, its final and binding effect, and Plaintiff executed this Agreement freely and voluntarily, after the opportunity for explanation, review, and approval by legal counsel.

11. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the state of Florida applicable to contracts made and to be performed in that state.

12. **JURISDICTION:** The Parties agree that any suit arising as a result of this Settlement Agreement and Release shall be filed in the United States District Court for the Middle District of Florida. If the Court does not accept jurisdiction of the action, suit may be brought in a court of competent jurisdiction in the State of Florida.

13. **NOTICE:** All notices or communications regarding this Agreement shall be directed to each of the Parties and to the Parties' attorneys via both email and overnight mail, as follows:

For Plaintiff:



with copies to:

Lauren Valiente, Esq.
Foley & Lardner LLP
100 N. Tampa Street, Suite 2700
Tampa, FL 33602
E-mail: lvaliente@foley.com

and

Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
E-mail: aorr@nclr.org

For Defendant:

Michael G. Dyer, Esq.
General Counsel
School Board of Volusia County
200 North Clara Avenue
DeLand, FL 32720

with copies to:

Thomas Gonzalez, Esq.
Thompson, Sizemore, Gonzalez &
Hearing P.A.
201 N. Franklin Street, Suite 1600
Tampa, FL 33602
E-mail: tgonzalez@tsghlaw.com

or such other persons or addresses as either Party may direct in writing.

14. **SEVERABILITY:** The provisions of this Agreement shall be severable. If any provision of this Agreement is deemed invalid or unenforceable, such provision shall be of no force or effect and the remainder of this Agreement shall not be affected by such invalidity or unenforceability and shall otherwise continue in full force and effect.

15. **ATTORNEYS' FEES AND COSTS FOR ENFORCEMENT OF AGREEMENT:** The Parties agree that any party shall be entitled to recover reasonable attorney's fees and expenses to the extent permitted by law arising from or relating to enforcement of any provision of this agreement in which that party prevails on any or all issues presented, including attorneys' fees and costs incident to appeal.

16. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one Agreement. True and correct copies, including facsimile, electronic, or PDF

copies of signed counterparts, may be used in place of originals for any purpose and shall have the same force and effect as an original.

This Agreement has been entered into following opportunity for and/or full discussion, disclosure, and consultation with legal counsel. As a result of a full understanding of the contents of this Agreement, the Parties voluntarily and without duress enter this Agreement, including the provisions pursuant to which Plaintiff releases his claims.

FOR PLAINTIFF:

_____ Date

_____ Date

FOR DEFENDANT:



Michael G. Dyer, General Counsel

BOARD APPROVED 8/4/18

8/13/18
_____ Date

copies of signed counterparts, may be used in place of originals for any purpose and shall have the same force and effect as an original.

This Agreement has been entered into following opportunity for and/or full discussion, disclosure, and consultation with legal counsel. As a result of a full understanding of the contents of this Agreement, the Parties voluntarily and without duress enter this Agreement, including the provisions pursuant to which Plaintiff releases his claims.

FOR PLAINTIFF:

[Redacted signature]

8-17-18
Date

[Redacted signature]

8/17/18
Date

FOR DEFENDANT:


Michael G. Dyer, General Counsel

8/15/18
Date

BOARD APPROVED 8/14/18