

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**R.H., by and through his parent and
next friend, CHANTELL HOSIER,
Plaintiff,**

Case No. 1:10-CV-640 (LEK/DRH)

v.

**SCHENECTADY CITY SCHOOL
DISTRICT; ERIC ELY, Superintendent;
WILLIAM ROBERTS, Assistant Superin-
tendent; MARK BROOKS, Dean of Oneida
Middle School; KARMEN MCEVOY,
Principal of Oneida Middle School; and LEE
SATTERLEE, Assistant Principal of Oneida
Middle School,
Defendants.**

STIPULATED SETTLEMENT OF CLAIM

Pursuant to Local Rule 17.1 of the Local Rules of Practice of the United States District Court for the Northern District of New York, Plaintiff R.H., by and through his parent and next friend, Chantell Hosier, and Defendants Schenectady City School District, Eric Ely, William Roberts, Mark Brooks, Karmen McEvoy, and Lee Satterlee (hereinafter collectively referred to as "Defendants"), by and through their undersigned counsel, seek authorization of the Court to fully and finally settle all of the claims in the above-referenced matter in accordance with the terms set forth below:

1. Plaintiff commenced this action by a Complaint filed with this Court on June 1, 2010, which Complaint was amended by the filing of an Amended Complaint with the Court on July 13, 2010.

2. In the Complaint and Amended Complaint, Plaintiff alleged, among other things, that Defendants violated Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and that Defendants retaliated against Plaintiff for the exercise of his alleged rights under the First Amendment.

3. On June 22, 2010, Defendants filed an Answer to Plaintiff's Complaint, denying Plaintiff's claims in the Complaint and asserting various affirmative defenses to those claims. On July 27, 2010, and August 2, 2010, Defendants filed an Answer and Amended Answer, respectively, to Plaintiff's Amended Complaint, denying Plaintiff's claims in the Amended Complaint and asserting various affirmative defenses to those claims.

4. In order to avoid the expense and uncertainty of future litigation, the parties now desire to settle all of the claims that have been raised or could be raised in this action upon the following terms:

(a) Defendants or their insurer will pay directly to Plaintiff R.H. the amount of \$2,500.00;

(b) Defendants or their insurer will pay directly to Plaintiff R.H.'s attorney, Raymond Dague, the amount of \$5,107.50 which represents an amount of attorneys' fees which Mr. Dague claims he is entitled to in connection with his representation of Plaintiff in this matter;

(c) Defendants or its insurer will pay directly to Plaintiff R.H.'s attorneys, the American Center for Law & Justice, the amount of \$14,892.50 in attorneys' fees and costs which represents an amount of attorneys' fees and costs which the American Center for Law & Justice claims it is entitled to in connection with its representation of Plaintiff in this matter;

(d) Defendants will expunge from R.H.'s permanent school record at the Schenectady City School District all disciplinary notations, referrals, suspensions, and the like for any

incidents that occurred during the period from May 17, 2010, through October 27, 2010, and Defendants' counsel will notify Plaintiff R.H.'s counsel in writing that the expunging has taken place.

(e) Plaintiff and his parent and next friend, Chantell Hosier, will execute a General Release in the form attached hereto as Exhibit "A" (except that the actual General Release will contain R.H.'s actual name) and deliver the executed General Release to Defendants' counsel, which will be held in escrow by Defendants' counsel until the payments referenced in subparagraphs (a), (b), and (c) above are mailed to Plaintiff and his counsel.

(f) The payments referenced in subparagraphs (a), (b), and (c) above shall be mailed to Plaintiff and his counsel, and Defendant's shall comply with subparagraph (d) above, within thirty (30) days of the later of (i) Defendants' counsel receipt of the executed General Release referenced in subparagraph (e) above, or (ii) the entry of the Court's Order approving this Stipulated Settlement of Claim on the Court's docket.

(g) Within five (5) days of Plaintiff and his counsel's receipt of the payments referenced in subparagraphs (a), (b), and (c) above, Plaintiff's counsel shall cause the Stipulation of Dismissal attached hereto as Exhibit "B" to be filed with the Court.

5. It is expressly understood and agreed that this is a settlement of a disputed claim and that, by agreeing to this stipulation and settlement, Defendants do not in any way admit any liability or fault with respect to any of Plaintiff's claims in this matter.

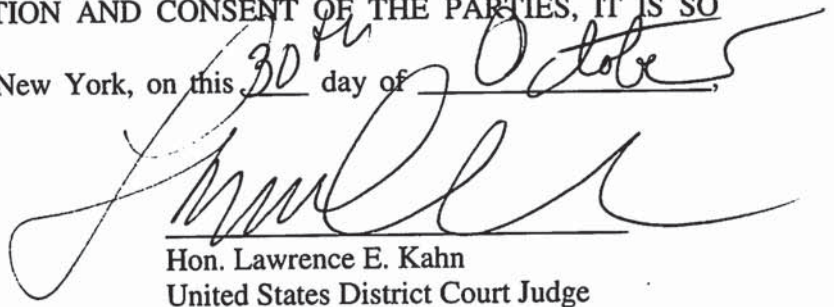
NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

The Court approves this Stipulated Settlement of Claim as set forth in the above paragraphs and Orders the parties to comply with the terms of this Stipulated Settlement of Claim.

This approval of the Stipulated Settlement of Claim shall operate as a final adjudication of Plaintiffs' claims; provided, however, that the Court shall retain jurisdiction over the parties and the subject matter of this action for the purpose of enforcing the Stipulated Settlement of Claim.

This Stipulated Settlement of Claim shall be *res judicata* as to all claims or causes of action that were or could have been alleged and raised by Plaintiff R.H. in this action, but shall have no preclusive effect with respect to any claims or causes of action arising as a result of any acts occurring after October 27, 2010.

BASED ON THE STIPULATION AND CONSENT OF THE PARTIES, IT IS SO ORDERED in chambers in Albany, New York, on this 30th day of October, 2010.



Hon. Lawrence E. Kahn
United States District Court Judge

Approved for entry by counsel for the parties on October 27, 2010:

/s/ Patrick J. Fitzgerald
Patrick J. Fitzgerald
N.D. N.Y. Bar Roll No. 511103
Attorney for Defendants
Girvin & Ferlazzo, P.C.
20 Corporation Woods Boulevard
Albany, New York 12211
Tel. 518-462-0300; Fax. 518-462-5037

/s/ Raymond J. Dague
Raymond J. Dague
N.D. N.Y. Bar Roll No. 505622
Local Counsel for Plaintiff
Raymond J. Dague, PLLC
472 South Salina Street
Syracuse, New York 13202
Tel. 315-422-2052; Fax. 315-474-4334

/s/ Edward L. White III
Edward L. White III (adm. phv)
N.D. N.Y. Bar Roll No. 106754
Attorney for Plaintiff
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
Tel. 734-662-2984; Fax. 734-302-1758

/s/ Geoffrey R. Surtees
Geoffrey R. Surtees (adm. phv)
N.D. N.Y. Bar Roll No. 106756
Attorney for Plaintiff
American Center for Law & Justice
6375 New Hope Road
New Hope, Kentucky 40052
Tel. 502-549-7020; Fax. 502-549-5252