

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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BYSHOP ELLIOTT,	:
	:
Plaintiff,	:
	:
v.	:
	:
BUFFALO CITY SCHOOL DISTRICT; and	:
CRYSTAL BOLING-BARTON, McKinley High	:
School Principal, in her official and individual	:
capacities,	:
	:
Defendants.	:
-----X	

CASE NO. 17-CV-397-WKS

SETTLEMENT AGREEMENT AND PROPOSED ORDER OF DISMISSAL

WHEREAS, the Plaintiff Byshop Elliott has instituted the above-captioned action against the Buffalo City School District (the "District") and McKinley High School Principal Crystal Boling-Barton asserting violations of the Equal Access Act, 20 U.S.C. § 1071, and the First Amendment to the United States Constitution; and

WHEREAS, the District disclaims any liability to the Plaintiff and denies engaging in any wrongful, tortious, or unlawful activity; and

WHEREAS, the Plaintiff and the Defendant District¹ have come to a full and complete settlement (the "Agreement") resolving all claims raised by the Plaintiff against the District; and

WHEREAS, no party hereto is an infant or incompetent;

IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

¹ This Agreement represents the settlement reached between Plaintiff Byshop Elliott and Defendant Buffalo City School District. The settlement of the Plaintiff's claims against Defendant Crystal Boling-Barton is not encompassed in this Agreement.

1. Agreement To Implement Measures To Ensure The Protection Of The Rights Of LGBTQ Students At McKinley High School: The Parties enter into this Agreement out of a mutual desire to protect the constitutional and statutory rights of all students in the McKinley High School community, to ensure the safety and well-being of LGBTQ students, and to increase awareness of the District's existing anti-discrimination and anti-harassment policies, all in a cost-effective, timely, and collaborative manner.

A. McKinley High School Gay-Straight Alliance ("GSA")

The District has confirmed that, subsequent to the filing of the Plaintiff's lawsuit challenging the denial of his requests to form a GSA at McKinley High School, the school and the District approved the creation of a GSA at McKinley and permitted the group to begin meeting in the spring of 2017. The District agrees that it will take no action to disband or prohibit the McKinley High School GSA—under its current name or under any future name, so long as the group's purpose remains substantially the same—from continuing to exist in the future. The District agrees that the GSA will continue to enjoy the same resources and benefits, and be subject to the same rules, as other student clubs at McKinley, and that the GSA will be approved to continue meeting for as long as students remain interested in doing so.

B. Trainings

The District agrees to schedule at least two mandatory trainings for all McKinley High School staff—including all administrators, faculty, and all other school staff who interact with McKinley High School students—that will focus on preventing and avoiding anti-LGBTQ discrimination, increasing cultural competency regarding LGBTQ issues, and creating an affirming environment for LGBTQ students at McKinley. Each training will

last at least two hours, and the District may, in consultation with the training providers and in furtherance of the goals of the training, break up the McKinley staff into smaller groups and administer multiple versions of the training to these groups in order to ensure that all staff can attend a training session and no training session is overcrowded. All staff will attend at least one training during the 2017-2018 school year, and all staff will attend at least one more follow-up training during the fall semester of the 2018-2019 school year.

C. Assemblies

The District agrees to provide at least one two-hour assembly for McKinley High School students during the fall semester of the 2017-2018 school year that will focus on understanding how the District's anti-discrimination policy protects the rights of LGBTQ students, preventing and avoiding anti-LGBTQ harassment and discrimination, and increasing awareness of how to report incidents of discrimination or harassment. In order to ensure that the entire student body has the opportunity to attend, the presentation may be offered multiple times to smaller groups of students broken up by grade level or class schedule. While students may choose to opt out of attending, the District agrees to schedule the assembly in a manner designed to ensure that all students are encouraged to attend and that students are not forced to choose between attending class or other required curricular activities and participating in the assembly.

D. Trainers

The Parties agree to confer regarding potential providers of the trainings described above. Counsel for the Plaintiff has provided the District with information regarding local organizations that currently offer trainings similar to the ones described above, and the

District has agreed to consider those organizations along with others that might be able to offer similar services. The District agrees to inform counsel for the Plaintiff of its intent to engage a specific training provider and to confer regarding the qualifications of that provider in advance of finalizing any training. The District agrees to make a good-faith effort to address any concerns raised by the Plaintiff's counsel regarding the qualifications of a proposed training provider.

E. Nondiscrimination Policy

The District has a nondiscrimination policy that prohibits “intimidation, harassment, or discrimination based on actual or perceived . . . gender identity [and] sexual orientation,”² as mandated by the New York State Dignity for All Students Act, N.Y. Educ. Law §§ 10-18. In order to ensure that all students and staff at McKinley High School are fully aware of these protections, the District agrees to create a poster that highlights them and includes clear instructions on how to file a complaint to report an incident of prohibited harassment, intimidation, or discrimination. The poster will clearly state that, in addition to filing a complaint with a designated individual or individuals at McKinley High School, an individual may also file a complaint directly with the District. The District agrees to display this poster in prominent locations around McKinley High School through at least the conclusion of the 2018-2019 school year.

F. Dignity Act Reporting

As required by the Dignity for All Students Act, the District will collect and/or maintain records regarding all complaints of discrimination or harassment at McKinley High

² Buffalo Public Schools, *Code of Conduct* (2016-2017) at 25, available at <http://www.buffaloschools.org/files/57596/bps%20code%20of%20conduct%20%202016-2017-r.pdf>.

School. At the end of each semester of the 2017-2018 and 2018-2019 school years, the District will provide to Plaintiff's counsel a summary report that includes:

- i. The number of incidents reported that semester involving anti-LGBTQ bias, including complaints involving any reference to sexual orientation, gender identity, or gender expression; and
- ii. The number of those reported incidents found to be material pursuant to the Dignity Act (and therefore required to be reported to the New York State Education Department); and
- iii. A description of any complaint that would indicate that the terms of this Agreement have been violated, including but not limited to any complaint regarding the rights and resources afforded the McKinley High School GSA.

2. Release of the Buffalo City School District: In exchange for the consideration provided for in this Agreement, the Plaintiff and his heirs and assigns irrevocably and unconditionally release the Defendant Buffalo City School District of and from all claims, demands, actions, causes of action, rights of action, contracts, controversies, covenants, obligations, agreements, damages, penalties, interest, fees, expenses, costs, remedies, reckonings, extents, responsibilities, liabilities, suits, and proceedings of whatsoever kind, nature, or description, direct or indirect, vested or contingent, known or unknown, suspected or unsuspected, in contract, tort, law, equity, or otherwise, under the laws of any jurisdiction, which arise from the Plaintiff's allegations and claims as set forth in this lawsuit. Notwithstanding the foregoing, this release does not include the Plaintiff's right to enforce the terms of this Agreement.

3. Release of Plaintiff by the Buffalo City School District: In exchange for the consideration provided for in this Agreement, the District and its predecessors, parents,

subsidiaries, affiliates, and past, present and future officers, directors, members, agents, consultants, employees, representatives and insurers, irrevocably and unconditionally release the Plaintiff, his successors and assigns, of and from all claims, demands, actions, causes of action, rights of action, contracts, controversies, covenants, obligations, agreements, damages, penalties, interest, fees, expenses, costs, remedies, reckonings, extents, responsibilities, liabilities, suits, and proceedings of whatsoever kind, nature, or description, direct or indirect, vested or contingent, known or unknown, suspected or unsuspected, in contract, tort, law, equity, or otherwise, under the laws of any jurisdiction, that the Defendant District ever had, now has, or hereafter can, shall, or may have, against the Plaintiff, which arise from the Plaintiff's allegations and claims as set forth in this lawsuit. Notwithstanding the foregoing, this release does not include the right to enforce the terms of this Agreement.

4. Interpretation: The Parties acknowledge and agree that they have each had the opportunity to have this Agreement reviewed by counsel of their choosing. Therefore, the normal rule that ambiguities are construed against the drafter shall not apply in connection with interpretation and construction of this Agreement.

5. Authority to Execute Agreement: Each party acknowledges and represents that the person executing this Agreement on its behalf has the requisite authority to execute and enter into the Agreement for that party and thereby bind that party. Each individual executing this Agreement on behalf of any party acknowledges and represents that he or she has the requisite authority to execute and enter into the Agreement and thereby bind the party on whose behalf he or she executes the Agreement.

6. Counterpart Signatures: The Parties to this Agreement may execute the Agreement in counterparts each of which may be considered an original when executed. Signatures by facsimile, e-mail, or email pdf shall be considered as originals.

7. Dismissal And Retention Of Jurisdiction: The Parties agree that this action shall be dismissed as to the Defendant Buffalo City School District, with prejudice, pursuant to the terms of this Settlement Agreement. This Court shall retain jurisdiction over the Settlement Agreement for enforcement purposes, and the Parties agree that the Settlement Agreement shall not be effective if this provision retaining jurisdiction for settlement purposes is not present in the final order of dismissal.

8. Enforcement Actions: The Parties commit to work in good faith to avoid enforcement actions. If Plaintiff's counsel believes the Defendant District is not in compliance with a provision of this Agreement, Plaintiff's counsel shall, before seeking judicial action, give written notice of the failure to counsel for the District. Within 15 days of receipt of such notice, the District shall respond in writing setting forth its position on whether it is in compliance with the relevant provisions of the Agreement and what actions, if any, it proposes to take to address the alleged lack of compliance. If the District disputes the allegation of noncompliance, the Parties shall meet and confer within 21 days of the notice. After the meet and confer, if the Parties remain unable to resolve the dispute, Plaintiff's counsel may seek relief from the Court.

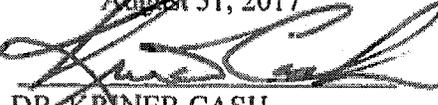
The prevailing party in any proceeding brought to enforce the terms of this Agreement shall be entitled to recover the fees, costs, and expenses incurred in commencing or defending the action, including an award for attorneys' fees.

Dated: New York, New York
August 31, 2017



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Dated: Buffalo, New York
August 31, 2017



DR. KRINER CASH
Superintendent
Buffalo City School District
712 City Hall
Buffalo, New York 14202

SO ORDERED:

U.S. District Judge