

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF SUFFOLK

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In the Matter of LATINOJUSTICE PRLDEF,

Petitioner,

-against-

SOUTH COUNTRY CENTRAL SCHOOL DISTRICT,
and the SOUTH COUNTRY CENTRAL BOARD OF
EDUCATION

Respondents.

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**STIPULATION OF
SETTLEMENT**

Index No.: 001204/2018
03292/2018

Hon. Sanford N. Berland

WHEREAS, the following contains the entire stipulation of settlement between Petitioner LATINOJUSTICE PRLDEF (hereinafter, "Petitioner") and the South Country Central School District and South Country Central Board of Education (collectively, "Respondents");

WHEREAS, on or about August 1, 2017, Petitioner submitted a request for records pursuant to the Freedom of Information Law ("FOIL Request");

WHEREAS, Respondent provided a response to the FOIL Request;

WHEREAS, on or about March 6, 2018, Petitioner filed an appeal pursuant to CPLR Article 78 against the South Country Central School District under Index Number 001204/2018 challenging the adequacy of the Respondent South Country Central School District's response to the FOIL Request;

WHEREAS, on June 18, 2018, Petitioner filed an appeal pursuant to CPLR Article 78 against the Respondents under Index Number 03292/2018 further challenging the adequacy of Respondents' subsequent response to the FOIL Request; and

WHEREAS, the Respondents do not admit to any wrongdoing whatsoever in these matters;

WHEREAS, the parties wish to resolve the dispute without the need for further costly litigation.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties mutually agree as follows:

I. Definitions:

"Code of Conduct" shall mean the South Country Central School District's Code of Conduct.

“Disclosure” as defined by 20 U.S.C. 1232g; 34 C.F.R. § 99.3.

“District” shall mean the South Country Central School District, Suffolk County, New York.

“District Function” means a “School Function” as defined in the Code of Conduct, i.e. any school-sponsored extra-curricular event or activity regardless of where such event or activity takes place, including those events or activities that take place in another state.

“District Policies” shall include the South Country Central School District Policy Manual; and the Progressive Discipline, Standards of Intervention & Code of Conduct Summary.

“District Property” means “School Property” as defined in the Code of Conduct, i.e. in or within any school building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of the District’s public elementary or secondary schools, or in or on a school bus, as defined in the Vehicle and Traffic Law.

“Education Records” as defined by 20 U.S.C. 1232g; 34 C.F.R. § 99.3.

“FERPA” shall mean the Family Educational Rights and Privacy Act 20 U.S.C. § 1232g; 34 CFR Part 99.

“FOIL” shall mean the New York Public Officer’s Law §§ 84-90 also known as the Freedom of Information Law.

“FOIL Request” shall mean the Petitioner’s August 1, 2017 written request for Records to the Respondents.

“Matters” shall mean index numbers 001204/2018 and 03292/2018 before the New York State County of Suffolk Supreme Court.

“Records” are as defined pursuant to the New York Public Officer’s Law § 86.

“SROs” shall mean School Resource Officers or law enforcement officers as defined in New York Education Law §2801-a. Notwithstanding the aforementioned, for the purposes of this Agreement, the category of “law enforcement or public or private security personnel” shall not include District “Responders” serving in the Suffolk County Civil Service title of “Guard.”

II. Record Identification and Production

1. Respondents’ designee shall meet with Petitioner’s designee to: a) review the District’s subject-matter list of Records maintained by the District; b) identify records sought in the FOIL Request; and, c) identify the manners in which records are filed, retrieved or generated including, but not limited to, those identified throughout the proceedings of the Matter.

2. Respondents' designee shall meet with Petitioner's designee to assist in the creation of a list of search terms and phrases that the District will use to conduct a search within the electronic storage locations identified through the process set forth in paragraph II(1) herein. of Records pursuant to FOIL. The District shall not be required to create records not otherwise required pursuant to FOIL; and shall not be required to produce records to Petitioner unless required pursuant to FOIL.

- a. Respondents shall conduct a search pursuant to the process generated from clause II(1) above, and Records shall be produced and released to Petitioner in a reasonably prompt manner, of no later than 7 school days following the creation of the aforementioned list of search terms and phrases.
- b. Petitioner shall not have to initiate a new FOIL request process that would be subject to a new administrative appeals process.
- c. Respondents' failure to release the records responsive to the search executed pursuant to clause II(2)(a) to Petitioner may be deemed a breach of contract if such records are accessible pursuant to FOIL.
- d. Petitioner may not obligate Respondents to create, produce, or release records that are not required to be made available pursuant to New York Public Officer's Law 87(g).

3. Within 60 days of the execution of this agreement, the Respondents shall immediately publish their current subject matter list on the District's website as required pursuant to N.Y. Comp. Codes R. & Regs. tit. 21, § 1401.6.

III. Record Maintenance

4. The District shall document and maintain records of any and all interviews of and/or meetings with students that occur on District Property or at a District Function by law enforcement or public or private security personnel, including SROs. Information to be recorded must indicate the known or perceived race and/or ethnicity, gender and age or grade level of the student.

5. The District shall maintain Records of any and all requests by District personnel for the involvement of law enforcement or public or private security personnel, including SROs, in connection with any student matter.

6. District Policy shall be amended within ninety (90) days to reflect the requirements of Paragraphs 4 and 5 herein. Notwithstanding anything to the contrary herein, this requirement shall remain in effect through and including June 30, 2024.

IV. Staff Training

7. In the 2020-2021, 2021-2022, and 2022-2023 school years, the District will conduct one (1) training session in each year addressing the requirements of the Family Educational Rights and Privacy Act; FOIL; and the District's records retention policy for its administrators, the records access officer, the records management officer, and clerical staff assigned to building administrators and central administrators. Such training shall include, but is

not limited to, training with regard to response to requests for records, search methodology, document retention and maintenance, and procedures for compliance with FOIL.

8. In the 2020-2021, 2021-2022, and 2022-2023 school years, the District will conduct one (1) training session in each school year for administrators addressing various topics including, but not limited to, when District personnel should contact law enforcement about student behavior or action, and the potential consequences of labeling or identifying a student as Gang-Related.

9. In the 2020-2021, 2021-2022, and 2022-2023 school years, the District shall provide its teachers with an electronic or hard copy of District Policy 7240, Student Records: Access and Challenge; and the associated administrative regulations.

10. Respondents shall complete compliance with clauses 7-8 above for the 2020-2021 school year within 90 days of the execution of this Agreement or as agreed to by the parties in writing, and provide Petitioner with written notice of full compliance within 14 days thereafter.

V. Practices Regarding SRO, Law Enforcement & Security Officers

11. The District warrants and represents that it does not employ, contract with, or otherwise retain law enforcement or public or private security personnel, including SROs as of the execution date of this Agreement; and that an SRO does not maintain an office within any District building.

12. Notwithstanding anything to the contrary herein, the Parties agree that if the District employs, contracts with, or otherwise retains law enforcement or public or private security personnel, including but not limited to an SRO on or before June 30, 2024, Respondents will adhere to the practices enumerated below:

a) The District shall require any law enforcement, and public or private security personnel, including SROs to participate in trainings about:

- i) Race, National Origin, Ethnic and Gender Bias against students with a component that provides historical context;
- ii) Trauma management in youth;
- iii) De-escalation tactics for working with youth
- iv) Students with mental health issues and special needs

b) The District shall provide any law enforcement, and public or private security personnel, including SROs with a copy of District Policy 7240, Student Records: Access and Challenge; and the associated administrative regulations.

c) The District shall publish on the District's website all District employees who will be authorized to evaluate requests for Disclosure of Student Information within a student's records from any law enforcement officer or entity to determine whether release of the student information complies with FERPA and District policy. Incorporation of such information into District policy shall satisfy this requirement.

d) The District shall prohibit District employees from releasing personally identifiable information to law enforcement or public or private security personnel, including an SRO unless said communication is permissible pursuant to FERPA or applicable law.

e) The District shall publish in its materials that it is solely responsible for enforcing the Code of Conduct and District policies. When a District policy or provision of the Code of Conduct references law enforcement or public or private security personnel, including SROs, it does not affect the District's responsibility for enforcing that provision or any other provision within the Code of Conduct or District policies.

13. Notwithstanding anything to the contrary herein, the Parties agree that if the District employs, contracts with, or otherwise retains law enforcement or public or private security personnel, including but not limited to an SRO on or before June 30, 2024, the District shall provide Petitioner with written notice within 30 days after such action. Respondents will be expected to implement the practices written in Paragraph V(12) within 60 days. This requirement shall not be triggered if: (1) the District requests or receives training services for District employees from law enforcement or public or private security personnel, including a school resource officer; and/or (2) the District contacts law enforcement in the event of an emergency.

VI. Settlement Amount

14. Respondents will pay to Petitioner the total settlement amount of one hundred thousand dollars (\$100,000.00) in full resolution of this matter, by check to be mailed via FedEx or other trackable mailing service to LatinoJustice PRLDEF, Attention: Finance, 475 Riverside Drive, Suite 1901, New York, New York 10115. Respondents will notify Petitioner the mode and date the check is mailed. Respondents will provide tracking information of said mailing to Petitioner. Such payment shall be mailed to Petitioner within sixty (60) days of the full execution of this agreement.

VII. Compliance and Dismissal

15. Upon execution of this Stipulation of Settlement, the appeals filed by Petitioner against Respondent(s) pursuant to CPLR Article 78 under index numbers 001204/2018 and 03292/2018 ("Matters") shall be deemed discontinued with prejudice, without any costs to either party as against the other. Counsel for the parties shall execute a stipulation of discontinuance confirming the discontinuance upon tendering payment of the settlement amount set forth in Paragraph 14 herein. The Stipulation of Discontinuance is annexed hereto as Exhibit "A" and is incorporated by reference and made a part of this Agreement.

VIII. Notice, Breach and Miscellaneous Provisions

16. All notices among the Parties may be conveyed via e-mail communication to the counsels of record.

17. In the event Petitioner believes Respondent(s) have breached the contract, they shall notify Respondents in writing of the alleged breach including, but not limited to, the known details of the alleged breach; the applicable contract clause; and the manner in which the alleged breach occurred.

18. Respondent shall have forty five (45) days to cure any alleged breach, from the date the aforementioned notice of breach is received by the District.

19. If the alleged breach is not cured within forty five (45) days of the alleged breach, then Petitioner may avail itself of available remedies.

20. Unless otherwise specified herein, the requirements of this Agreement shall sunset and shall be deemed void on or after June 30, 2023.

21. This Agreement contains the sole and entire agreement between the Parties and completely and fully supersedes and replaces any and all prior contracts, agreements, discussions, representations, negotiations, understandings and any other communications between the parties pertaining to the subject matter hereof. No other promises or agreements shall be binding unless in writing, signed by the parties thereto, and expressly stated to represent an amendment to this Agreement.

22. This Agreement shall not be construed as an admission by any Party hereto, of wrongdoing or liability of whatever nature. The Parties are entering into this Agreement solely because they desire to settle all outstanding claims and thereby avoid further expense and inconvenience, and desire to put to rest the controversies between them.

23. This Agreement represents the complete understanding of the Parties regarding the subject matter contained herein. The Parties further agree that:

- a. This Agreement may not be changed or modified orally;
- b. This Agreement shall be construed and enforced in accordance with the laws of the State of New York;
- c. This Agreement shall be enforceable in the Supreme Court of the State of New York, County of Suffolk.
- d. If, at any time after the date of execution of this Agreement, any provision of this Agreement shall be held to be illegal, void, or unenforceable by a court of competent jurisdiction, such provision shall be of no force and effect. However, the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement;
- e. This Agreement is binding upon, and shall inure to the benefit of the Parties, and their respective heirs, assigns, and distributees; and
- f. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

- g. The Parties agree that this Agreement has been jointly drafted and negotiated with the assistance of counsel for each Party and that any ambiguity shall not be construed against any Party as the drafter of the Agreement.
- h. By executing this Agreement, the Parties acknowledge the terms and conditions contained within this Agreement and acknowledge that they have read and fully understand such terms and conditions, and accept same knowingly and voluntarily.
- i. The Parties, individually and collectively, expressly represent and warrant that there has been no assignment or other transfer of any interest in any claims or interests being settled hereunder.

24. Except as otherwise set forth herein, the Parties shall at any and all times, upon reasonable request to the other, or to their legal representatives, promptly make, execute and deliver any and all other and further instruments, writings or documents as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement without charge.

25. The Parties acknowledge they have been satisfactorily represented by counsel at all stages of this proceeding.

26. The Parties acknowledge that this Agreement is the entire agreement among the Parties concerning its subject matter, supersedes all prior agreements and understandings, whether or not written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

27. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties, and facsimile or electronic signatures shall have the same force and effect as an original.

28. This Agreement may be delivered by facsimile or electronic transmission. The facsimile or electronic transmission of any signed original document or any retransmission of any signed facsimile or electronic transmission will be deemed the same as delivery of an original.

29. Each of the individuals signing this Agreement on behalf of any of the Parties represent that he/she has authority to sign on behalf of the entity for which they have acted as signatory.

WHEREFORE, the Parties hereto have caused this Agreement to be signed on the dates indicated below and the Stipulation becoming effective upon signature by all Parties.

[THE NEXT PAGES ARE SIGNATURE PAGES]