

The following copy of the Press Release and Settlement Agreement and Release was provided to AccountabilityInTheMedia.com by the Mount Vernon City School District.

Mount Vernon City School District Board of Education
Press Release

August 27, 2009

Being in the business of educating children, the Board recognizes the need to remain focused on what is best for the students of this District. For the past year and few months, a federal lawsuit has been pending against the Board, Superintendent, Middle School Principal, and Middle School Teacher by the Doe family. Pending approval by the Knox County Probate Court, the Board's insurance carrier has resolved the lawsuit on behalf of the Board, Superintendent, and Middle School Principal with the Doe family. There have been no admissions of liability by the Board, Superintendent, and Middle School Principal. The resolution of the lawsuit against the Board, Superintendent, and Middle School Principal has no impact or bearing on the pending administrative hearing with respect to the Middle School Teacher's employment. Due to pending litigation, the Board will not be commenting further.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is voluntarily executed on this 26th day of August, 2009, by [REDACTED] ("Plaintiffs") and the Mount Vernon City School District Board of Education ("Board"), Stephen Short ("Short") and William White ("White") (collectively "Defendants"), and The Netherlands Insurance Company ("Insurer"). In consideration for the mutual promises contained herein, the Parties agree as follows.

WHEREAS, Plaintiffs filed a lawsuit in the United States District Court for the Southern District of Ohio, being Case No. 2:08 CV 575, styled *John Doe, et al. v. Mount Vernon City School District Board of Education, et al.* ("Lawsuit"), asserting various civil rights and other claims against the Board, Short, White, and John Freshwater. Plaintiffs sought various relief, including damages, attorneys fees and costs; and

WHEREAS, this Agreement only concerns Plaintiffs' claims against the Board, Short, and White and does not concern or involve any of the claims made by the Plaintiffs against John Freshwater nor the counterclaim John Freshwater raised against Plaintiffs;

WHEREAS, rather than incurring further time and expense in pursuing/defending the claims asserted in the Lawsuit and to avoid the uncertainty of the outcome of a court trial, Plaintiffs, the Board, Short, and White wish to compromise, resolve, and settle their claims and differences pursuant to and in consideration of the mutual promises and covenants contained herein and the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs, the Board, Short, and White agree as follows:

1. **Release of Claims.**

(A) In consideration for the economic and non-economic consideration received pursuant to this Agreement, Plaintiffs, together with their heirs, legal representatives, agents and assigns, past, present, and future, knowingly and voluntarily, irrevocably and unconditionally release, acquit and fully and forever discharge, subject to paragraph 1(B) below, the Board, Short and White, together with their respective elected members, officers, employees, agents, directors, legal representatives, heirs, agents, and assigns (except, as to each such related person, John Freshwater)(the "Released Parties"), both past and present and in their individual and official capacities, from any and all claims, demands, obligations, judgments, actions, or causes of action, suits, liabilities, debts, contentions, damages, benefits, levies and executions of any kind, whether in law or in equity, from the beginning of the world to the date of the execution of this Agreement, including all claims in any way relating to or connected with [REDACTED] enrollment, attendance, and participation as a student attending the Mount Vernon City School District, whether known or unknown, arising in tort, contract, or under the U.S. Constitution, Ohio Constitution, 42 U.S.C. § 1983, or pursuant to any federal, state or local laws, regulations, executive orders or other requirements that were raised or could have been raised in the Lawsuit.

(B) Defendants and the Insurer acknowledge the Insurer is providing a defense for defendant John Freshwater in the Lawsuit. Through the foregoing release, Plaintiffs are specifically not releasing defendant John Freshwater from any claims. The Insurer acknowledges Plaintiffs are not hereby giving up in any way any rights to seek attorneys fees, damages, costs, or other such amounts for claims against, or defense of claims by, defendant John Freshwater. Plaintiffs acknowledge they are not entitled to a double recovery of the same attorneys fees. Accordingly, to the extent Plaintiffs try to recover from John Freshwater attorneys fees already paid by the

Insurer hereunder, the Insurer will be entitled to offset such amount from any attorneys fees they pay to Plaintiffs on behalf of John Freshwater.

(C) In consideration of the mutual promises and consideration contained herein, Defendants, together with their heirs, legal representatives, agents and assigns, past, present, and future, knowingly and voluntarily, irrevocably and unconditionally release, acquit and fully and forever discharge Plaintiffs, together with their heirs, legal representatives, agents and assigns, past, present, and future, from any and all claims, demands, obligations, judgments, actions, or causes of action, suits, liabilities, debts, contentions, damages, benefits, levies and executions of any kind whether in law or in equity, from the beginning of the world to the date of the execution of this Agreement.

(D) Plaintiffs and Defendants acknowledge they have each reviewed these Releases with an attorney of their choosing and have been fully advised concerning the contents of the Releases.

2. **Consideration.** The economic and non-economic consideration set forth in this Agreement is full and complete satisfaction of any and all claims Plaintiffs brought or could have asserted against the Board, Short, and White in the Lawsuit.

(A) In consideration of the releases set forth above, the Insurer, on behalf of the Defendants, agrees to pay as follows:

(i) The sum of Five Thousand Five Hundred Dollars (\$5,500.00) to be paid to [REDACTED]. This sum compensates [REDACTED] for the claims asserted against the Board, Short, and White.

(ii) The sum of One Hundred and Fifteen Thousand and Five Hundred Dollars (\$115,500.00) to be paid to counsel for Plaintiffs (the "Legal Fee Payment"), as set forth in Section 2(B) of this Agreement.

(iii) The sum of One Dollar (\$1.00) to [REDACTED]

(iv) The sum of One Dollar (\$1.00) to [REDACTED]

The foregoing payments, with the exception set forth below, shall be due after the Board's

adoption of a resolution accepting this Settlement Agreement and within twenty (20) days after the approval of this Agreement by the Probate Court of Knox County, Ohio pursuant to R.C. § 2111.18. Should the Board not adopt a resolution within fifteen (15) days after execution of this Agreement, this Agreement shall become null and void. Plaintiffs shall be responsible for submitting the settlement to the Probate Court of Knox County, Ohio for approval.

(B) In regard to the payments under Section 2(A)(ii):

(i) Sixty-One Thousand and Five Hundred Dollars (\$61,500.00) of the Legal Fee Payment shall be paid directly to Isaac, Brant, Ledman & Teetor, LLP ("Isaac Brant"). This payment shall be made within ten (10) days after approval of this Agreement by the Probate Court of Knox County, Ohio.

(ii) Three Thousand and Fourteen Dollars (\$3,014.00) of the Legal Fee Payment shall be paid directly to Crabbe, Brown & James, LLP.

(iii) The remainder of the Legal Fee Payment, or Fifty Thousand and Nine-Hundred and Eighty-Six Dollars (\$50,986.00), shall be paid directly to Jones Day.

(C) In consideration of the releases set forth above, the Board agrees as follows:

(i) At the first Superintendent staff meeting at the Middle School and High School for the 2009-2010 school year and for each successive year while legal action is pending in regard to John Freshwater and for any years thereafter while any of Plaintiffs' children attend school at Mount Vernon, the Superintendent will notify the staff they are prohibited while acting within the course and scope of their employment during the school day and at school activities from discussing the John Freshwater case with or in the presence of students.

The parties recognize testimony by Board employees at deposition, trial, or other legal proceeding in the presence of students is not prohibited by this provision.

(ii) While [REDACTED] attend school at the District, each shall be allowed to directly contact the Superintendent should any staff member discuss with either, or in their presence talk about, the John Freshwater case or the proceedings related to the John Freshwater case.

(iii) The Board shall provide training to Board members, administrators, and staff as follows:

a. At the beginning of the 2009-2010 school year, the Board shall have its legal counsel provide training to Board members and administrators on the topics

contained in section (C)(iii)(d). Plaintiffs acknowledge the Board provided this training on August 18, 2009 in anticipation of this Agreement.

- b. At the beginning of the 2009-2010 school year, the Board shall have its legal counsel provide training to teaching staff, with input from the Union, on the topics contained in section (C)(iii)(d). Plaintiffs acknowledge the Board provided this training on August 18, 2009 in anticipation of this Agreement.
- c. During the time period from the spring of the 2009-2010 school year to September 2010, the Board shall have Melissa Rogers from the Wake Forest School of Divinity Center for Religion and Public Affairs make a presentation to administration and staff on the topic of the 1st Amendment, Religion, and Public Education. In the event Ms. Rogers is not available to make the presentation, the Board shall secure a nationally recognized speaker on the topic, with similar credentials as Ms. Rogers.
- d. Religious Liberty in America
Prayer in School
Religion in the Curriculum
Evolution vs. Creationism
Teaching about Religious Holidays
Religious Displays on School Property
Student Religious Clubs
Distribution of Religious Materials
Teacher Religious Expression

- (iv) The Board shall make a public statement either (a) when the Board makes its decision in regard to the recommendation forthcoming from R. Lee Shepherd in the John Freshwater administrative hearing, or, (b) if no recommendation is made due to the hearing ending prior to Referee Shepherd's decision, at the time the hearing ends. The public statement shall be as follows:

Throughout this process, the Mount Vernon City School District Board of Education has been concerned about elements in this community who decided to attack the student and family who reported concerns about John Freshwater. It is critical for our students to be able to come forward with concerns or issues so they can be addressed. The Board applauds [REDACTED] for the courage he had in coming forward.

- 3. **Taxation.** No party to this Agreement warrants nor represents to any other party the tax implications/deductibility/taxability of payments provided for hereinabove. Plaintiffs expressly acknowledge and agree to indemnify and hold the Board, Short, White, Britton, Smith, Peters & Kalail Co., L.P.A., and the Insurer harmless from any taxes, penalties, or interest levied by any

governmental authority against the Board, Short, White, Britton, Smith, Peters & Kalail Co., L.P.A., or the Insurer because of Plaintiffs' failure to pay applicable taxes with respect to the amounts paid pursuant to this Agreement for which the Plaintiffs have a tax liability. The payments made pursuant to this Agreement shall be reported to the IRS as separate payments to each of the entities as set forth above. W-9 forms shall be completed by the Plaintiffs and Jones Day and Plaintiffs shall endeavor to have such forms or Tax Identification Numbers from the remaining entities sent to the Insurer.

4. **Dismissal of Lawsuit.** In consideration of the payments described in Paragraph 2 and upon approval of this Agreement by the Probate Court of Knox County, Ohio, Plaintiffs and Defendants will file a stipulation of dismissal with prejudice of Plaintiffs' claims against the Board, Short, and White in the litigation pending in the United States District Court for the Southern District of Ohio being Case No. 2:08 CV 575, styled *John Doe, et al. v. Mount Vernon City School District Board of Education, et al.* To minimize expense, the parties agree to stay discovery in the Lawsuit as to one another while steps are taken to fully effectuate this Agreement. Should the Court require Plaintiffs to file an Amended Complaint to effectuate their dismissal of claims with prejudice, they agree to do so promptly upon notice from the Court. The parties shall be responsible for their own court costs.

5. **Other Proceedings.** Plaintiffs represent and confirm none has filed or otherwise initiated any other lawsuit, complaint, charge, or other proceeding against the Board, Short, or White in any court or government agency based on events occurring on or prior to the date of signing this Agreement. With the exception of their claims against defendant John Freshwater and any right to recovery arising thereunder, Plaintiffs expressly waive any right to damage or other legal or equitable relief awarded by any court or government agency relating to any lawsuit, complaint,

charge, or other proceeding against the Released Parties (regardless by whom filed), currently pending or that is filed in the future based on events occurring on or prior to the date of signing this Agreement.

6. **No Admission of Liability or Wrongdoing.** This Agreement does not constitute nor shall it be construed as an admission of liability or wrongdoing by Short, White, or the Board, its members, officers, superintendent, administrators, agents, employees or successors, with respect to any claims asserted against the Board, Short, and White, who each deny doing anything wrong or unlawful.

7. **Indemnification and Hold Harmless.** Subject to the provisions set forth in Section 1(B) above, Plaintiffs expressly acknowledge and agree to indemnify and hold the Board, Short, White, the Insurer, and Britton, Smith, Peters & Kalail Co., L.P.A., harmless for attorneys fees Plaintiffs incurred in connection with the Lawsuit as may be asserted against the Board, Short, White, the Insurer and/or Britton, Smith, Peters & Kalail Co., L.P.A. by Isaac Brandt; Jones Day; or Crabbe, Brown & James, LLP. This indemnification shall not be construed as a release of the Insurer's obligations related to defendant John Freshwater.

8. **Governing Law.** This Agreement shall be governed by the laws of the state of Ohio.

9. **Waiver of Interest.** Plaintiffs specifically waive any right to interest on the amount of settlement for any delay in payment from the date of settlement, until the date of payment, provided the payment is mailed (regular U.S. mail, postage pre-paid) to Plaintiffs' legal counsel within twenty (20) days (except as set forth above) after the Probate Court for Knox County, Ohio approves the settlement embodied in this Agreement as it relates to minor [REDACTED]. Said waiver applies to any claim or demand for interest on the settlement amount to which

Plaintiffs may or may not otherwise be entitled in accordance with *Hartmann v. Duffey*, 95 Ohio St.3d 456 (2002).

10. **Entire Agreement.** Plaintiffs, the Board, Short, and White affirm the only consideration for signing this Agreement is included herein; no other promises or agreements of any kind have been made to cause execution of this Agreement; each fully understands the meaning and intent of this Agreement, including, but not limited to, its final and binding effect; and each has executed the same freely and voluntarily, after the opportunity for explanation, review and approval by their attorney.

11. **Construction.** Any rule of construction to the effect that ambiguities are resolved against the drafting party shall not apply to the interpretation and construction of this Agreement.

IN WITNESS WHEREOF, [REDACTED]

the Board,

Short, White and the Insurer executed this Agreement in the County of Knox, State of Ohio.

[REDACTED]

SWORN TO BEFORE ME, and subscribed in my presence this 26th day of AUGUST, 2009.

Anita Earlywine
NOTARY PUBLIC

ANITA EARLYWINE, Notary Public
In and for the State of Ohio
My Commission Expires Feb. 19, 2012

[REDACTED]

SWORN TO BEFORE ME, and subscribed in my presence this 26th day of AUGUST, 2009.

Anita Earlywine
NOTARY PUBLIC

ANITA EARLYWINE, Notary Public
In and for the State of Ohio
My Commission Expires Feb. 19, 2012

[REDACTED] and [REDACTED] the
natural parents of [REDACTED]

SWORN TO BEFORE ME, and subscribed in my presence this 24th day of AUGUST,
2009.

Anita Earlywine
NOTARY PUBLIC
ANITA EARLYWINE, Notary Public
In and for the State of Ohio
My Commission Expires Feb. 19, 2012

Mount Vernon City School District
Board of Education

The Netherlands Insurance Company

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

STEPHEN SHORT

WILLIAM WHITE