

SETTLEMENT AGREEMENT

NOW COME Lola Duffort ("Plaintiff"), the Vermont Agency of Education and State Board of Education ("Defendants"), (collectively, the Parties), and enter into this Settlement Agreement ("Agreement") as set forth below:

I. WHEREAS, the parties to this agreement are parties to a lawsuit captioned *Duffort v. Agency of Education*, No. 380-7-16 Rdcv (the "Lawsuit") and desire to settle and resolve all issues arising out of or relating to the Lawsuit; and

II. WHEREAS, the Defendants acknowledge that they are subject to the Vermont Public Records Act, which as of the date of this Agreement, provides as follows:

In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

1 V.S.A. § 318(d); and

Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

1 V.S.A. § 316(c); and

If the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. A record shall be produced for inspection or a certification shall be made that a record is exempt within three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination.

1 V.S.A. § 318(a)(2); and

III. WHEREAS, the Agency of Education acknowledges the reporting requirements of 16 V.S.A. § 164(17), which, as of the date of this Agreement provides that the Board shall:

(17) Report annually on the condition of education statewide and on a school-by-school basis. The report shall include information on attainment of standards for student performance adopted under subdivision (9) of this section, number and types of complaints of harassment, hazing, or bullying made pursuant to chapter 9, subchapter 5 of this title and responses to the complaints, financial resources and expenditures, and community social indicators. The report shall be organized and presented in a way that is easily understandable by the general public and that enables each school to determine its strengths and weaknesses. The Secretary shall use the information in the report to determine whether students in each school are provided educational opportunities substantially equal to those provided in other schools pursuant to subsection 165(b) of this title.

16 V.S.A. § 164(17); and

IV. WHEREAS, Lola Duffort's counsel seeks to recover attorney fees and costs pursuant to 1 V.S.A. § 319; and

V. WHEREAS, Lola Duffort has asked the Defendants to provide her with a school by school report for the 2012–13, 2013–14, 2014–15, and 2015–16 school years analogous to the school by school report for those years previously produced to Ms. Duffort by Defendants, but with zero value cells identified on the incident report and on the totals column for the actions report; and

VI. WHEREAS, Lola Duffort has asked the Defendants to provide her with a school by school report, but aggregated over the period beginning with the 2012–13 school year and ending with the 2015–16 school year, with zero values as indicated in the preceding paragraph; and

VII. WHEREAS, all reports and public records produced by Defendants shall be subject to redaction or suppression pursuant to the Family Educational Rights and Privacy Act and other applicable exemptions under the Public Records Act; and

VIII. WHEREAS, Lola Duffort has asked, and the Defendants have agreed, to post additional information on the Public Records Act's requirements on the Agency's "Public Information" webpage.

NOW, THEREFORE: the parties agree as follows:

1. Payment. The Defendants agree to pay the ACLU Foundation of Vermont \$30,500 to resolve Ms. Duffort's motion to reimburse her attorneys' fees and costs on or before August 1, 2018, and to file a joint stipulated motion with the Plaintiff, attached hereto, on or

before the filing date of a stipulated motion for dismissal, seeking a court order for such payment.

2. Production. The Defendants shall produce to Ms. Duffort on or before March 1, 2018:

- a. a school by school report for the 2012–13, 2013–14, 2014–15, and 2015–16 school years as previously produced to Ms. Duffort by Defendants, but with zero value cells identified on the incident report and on the totals column for the actions report, and;
- b. a school by school report, as previously produced to Ms. Duffort by Defendants, but with aggregated cell values over the period beginning with the 2012–13 school year and ending with the 2015–16 school year, with zero values as indicated in the preceding paragraph.

3. The Agency of Education agrees to post the provisions of the Public Records Act quoted above on its “Public Information” webpage on or before June 1, 2018.

4. The Agency of Education will fulfill the requirement in 16 V.S.A. § 164(17) and annually produce a statewide report and a school-by-school report on Hazing, Harassment, and Bullying, as long as that requirement remains in Vermont statute.

3. Dismissal of Lawsuit. The Parties shall dismiss the Lawsuit with prejudice. Except as indicated in paragraph 1, each side shall bear its own costs and attorney’s fees.

4. Miscellaneous. This Agreement represents a compromise to avoid litigation. By making this Agreement, no party makes any admission concerning liability and/or the strength or weakness of any claim or defense. This Agreement is a comprehensive agreement to resolve any and all claims that were or could have been raised by Plaintiff; all prior understandings and discussions are merged into this Agreement. This Agreement may only be amended by a written agreement signed by all parties. This Agreement shall be interpreted under the laws of the State of Vermont. All Parties are represented by counsel and have reviewed this Agreement with counsel. No presumption against the drafter shall apply to any party in connection with this Agreement.

**FOR THE PLAINTIFF,
LOLA DUFFORT**

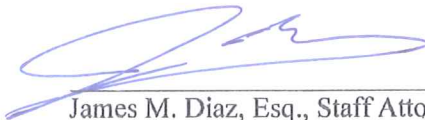
**FOR THE AGENCY OF EDUCATION
& THE STATE BOARD OF EDUCATION**

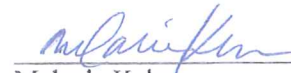
Lola Duffort
Plaintiff

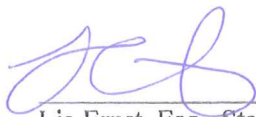
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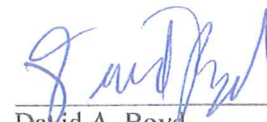

Heather Bouchey, Ph.D. Date
Deputy Secretary, Agency of Education

Approved as to form:

 2/6/18
James M. Diaz, Esq., Staff Attorney Date
American Civil Liberties Union of Vermont

 2/6/18
Melanie Kehne Date
Assistant Attorney General

 2/6/18
Lia Ernst, Esq., Staff Attorney Date
American Civil Liberties Union of Vermont

 2/6/18
David A. Boyd Date
Assistant Attorney General