

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
COUNTY OF DUPAGE, STATE OF ILLINOIS

DIANNE BARRETT,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: 2010 CH 3983
)	
DR. NICHOLAS WAHL,)	
Superintendent, Hinsdale Township)	
High School District #86,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

NOW COMES, Plaintiff Dianne Barrett (“Plaintiff”) and Dr. Nicholas Wahl (“Defendant”), in his official capacity as Superintendent of Hinsdale Township High School District #86 (“District #86”), by and through their respective counsel [Scariano and Krislov] and hereby submit this, their Settlement Agreement (hereinafter “Agreement”) for review and acceptance by the Court, to resolve all disputes presented by the pleadings herein.

Subject to approval and entry by the court, the parties stipulate and agree as follows:

1. Dennis Brennan, who no longer serves District #86 in any capacity, is dismissed as a party Defendant with prejudice, and the caption of the matter is amended as above. It is stipulated by the parties that Dennis Brennan has, individually, incurred no costs or expenses herein, and has no claim against any other party herein.

2. Defendant Nicholas Wahl, individually, has incurred no costs or expenses herein and has no claim against any other party. It is further stipulated and agreed that the Defendant is sued solely in a representative capacity as Superintendent of Schools, and that this Agreement represents the agreement of District #86 as a legal entity, subject to the statutory duty under the Illinois *School Code* (105 ILCS 5/10-20.20) to indemnify and protect school districts, members of school boards, and employees against damage claims and suits and empowered to resolve litigation involving its board members and employees, and that the Agreement has been lawfully approved by the Board of Education of District #86.

3. Jurisdiction and venue for this cause are properly before this Court, and the Court shall hereinafter retain jurisdiction of this cause for the purpose of interpreting, enforcing and administering this Agreement.

4. The Board agrees that District #86 Board Members have and retain the right to listen to closed session tapes (maintained pursuant to the Illinois *Open Meetings Act*) whether or not they actually attended that closed session. Any Member exercising rights under this paragraph shall be entitled to review tape contents outside the presence of District #86 staff, but must do so on District #86 premises. Any request for review of a tape made pursuant to this paragraph shall be granted within five business days, unless the tape is certified by the District to no longer exist.

5. Agreement in lieu of Plaintiff's prayer to review specific documents:

i. A Board Member (who shall be identified later by agreement of the parties, in the company of legal counsel of his or her choice) shall listen to the tape of the Executive Session of August 11, 2009, and he or she shall then report to Plaintiff whether or not (in his or her opinion) (a) the Executive Session appears to have been held in compliance with the Illinois *Open Meetings Act*, and (b) any potentially defamatory statements involving Plaintiff were made during the course of the session;

ii. Any and all Special Education Settlement Agreements from July 1, 2007, through August 30, 2009, shall be reviewed by a Board Member (who shall be identified later by agreement of the parties, in the company of legal counsel of his or her choice) who shall then report to the Board (in open or closed session as appropriate) whether or not those agreements appear to be reasonable and appropriate (including whether or not the agreements evidence a lack of good faith performance of legal obligations by the District);

iii. The Board of Education undertakes to adopt a Policy requiring the express approval by the Board of any Settlement Agreement, negotiated after the date of this Agreement, by its attorney(s) in the context of a Special Education dispute (whether or not such agreement is executed in the context of formal litigation).

Plaintiff otherwise agrees to forego her request for any and all District records.

6. Board Policy. The Board Policy currently numbered 2:225 is stricken and will not be readopted by District #86, either as currently written or in any form substantially equivalent to the present policy. In its place, the following terms shall govern the matter of District #86 Board Members' right to access internal District #86 information (and the Board may adopt a policy which references this Consent Decree for informational purposes).

All District #86 Board Members are, by their offices, entitled to:

a. Unlimited access to documents necessary and relevant to a Board Member's exercise of official duties that are maintained by, or in the possession of, District #86, including personnel and student records, with no requirement that any reason for the request be stated. The Board specifically finds that the office of Board Member entails responsibility for student well-being and education so as to justify said access to student records whenever a Member has a legitimate educational interest in a student, either individually or being representative of the student population. At the time of the request, the Member shall execute a written form of agreement (the terms of which shall be reasonable and drafted in easily-understood language), acknowledging his or her responsibility to maintain the confidential nature (if any) of requested documents, and shall not re-disclose any confidential information contained therein. The written form of agreement shall provide an express acknowledgement that the Member understands the consequences of re-disclosure, both in terms of any applicable statutory penalties under Federal, State or local law, and for contempt of court sanctions in connection with the Consent Decree to be entered herein.

b. Unlimited access to District #86 properties, subject to the following:

i. Access may be limited to school hours, and to other times at which the buildings are normally open to staff or members of the public; and,

ii. No access shall be requested for purposes violative of any Collective Bargaining Agreement ("CBA") then in effect. This limitation shall also apply in any case in which a CBA has expired, and a new agreement is being actively negotiated; and,

iii. The Member shall be responsible for observing all applicable Federal, State and Local laws while on school property – this Agreement does not supersede any such provision; and,

iv. The member is entitled to enter and move about the property without being accompanied by District #86 staff.

7. All document requests will be honored within a reasonable time, in no case to exceed five business days unless a longer time is agreed. Pendency of a Board meeting is a circumstance that shall be considered in determining whether a shorter time period is appropriate; however, it is also incumbent upon the requesting Board Member (and is a circumstance which may also be taken into consideration) to make requests for meeting-related documents in a timely manner. The District's causing the responsive material to be posted to the Members-Only section of its official website shall be deemed responsive. Further, it shall also be deemed responsive if the district cites the Member to an existing on-line posting of the requested material.

8. Abuse. No Member may abuse the rights granted herein. Abuse is defined as either (i) using District information or access for advancement of purely personal purposes and not for the exercise of official duties (particularly but without

limitation thereto, inappropriately to infringe upon the rights of other individuals – including, but not limited to, the right to be free from harassment – for purposes unrelated to the Member’s office), or (ii) unduly burdening the resources of District #86 with voluminous, or otherwise unreasonable requests. Requests for existing documents (unless highly voluminous) shall ordinarily not be deemed abusive; however, substantial requests by individual Members for collating information and creating original documents may be more highly suspect of abuse.

In any case where a request is deemed abusive, the request shall be referred, with notice to the requesting Member, to the President of the Board of Education, and by him or her placed upon the next scheduled meeting’s agenda (if referral comes within the 48 hours prior to a scheduled meeting, the President shall raise the referral during his report to the Board, or as New Business). The Board shall consider the referral at its first opportunity, and this Consent decree entered herein shall constitute due notice, for purposes of the Illinois *Open Meetings Act*, that action on such a referral may be taken at any regularly scheduled Board meeting.

The Member’s request shall be allowed forthwith unless, by a 2/3 vote, the Board finds the request is abusive, as defined herein. In the event of any such finding, the District will, within five business days, submit the Member’s request to this Court for resolution pursuant to retention of jurisdiction provided for in paragraph 3, *supra*. The Court should make every effort to resolve the matter expeditiously, and may do so in a one-session hearing, or upon written submission of the parties.

Burden of Proof. The Board shall bear the burden of showing the request to be abusive, as defined herein.

If the requesting Member certifies that the requested material is necessary to the consideration of a pending item of Board business, the Board shall defer action on that item until the Member’s request is resolved (and the information produced if the Member’s request is allowed); provided, however, that if a 2/3 majority of the Board in turn certifies that the business item is urgent, the matter may be considered by the Board as scheduled.

The procedure for submitting Member requests to the Court shall be informal. A Member whose request is resolved in his or her favor by this Court shall be entitled to recovery of reasonable attorney’s fees, in an amount not to exceed \$5,000.00, unless unusual circumstances are shown justifying a higher amount.

9. This Agreement shall be submitted to the Court for approval. If approved, the Court will enter it as a Consent Decree forthwith, incorporating the terms herein, and making findings pursuant to Illinois Supreme Court Rule 304(a) that, notwithstanding the Court’s retention of jurisdiction, there is no just reason to delay enforcement of, or appeal from, said Decree.

10. Entry of a Consent Decree pursuant to the terms herein shall have no effect on the rights of any member of the public, except Board Members.

11. Plaintiff and Defendant waive any and all rights not set forth in this Agreement. Plaintiff's counsel may petition the court for an award of attorneys' fees and costs, which Defendant may oppose, in an amount determined by the court to be appropriate.

Counsel for Plaintiff

Counsel for Defendant

Date: _____

Date: _____