

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

CAMIKA SHELBY, as heir of Nigel Shelby
and personal representative of the ESTATE
OF NIGEL SHELBY,

and

PATRICK CRUZ, as heir of Nigel Shelby,

Plaintiffs,

v.

Civil Action No. 5:21-cv-520-CLS

HUNTSVILLE CITY BOARD OF
EDUCATION

and

JO STAFFORD,
in her individual capacity,

Defendants.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

WHEREAS, Plaintiffs Camika Shelby, as heir of Nigel Shelby and personal representative of the Estate of Nigel Shelby, and Patrick Cruz, as heir of Nigel Shelby (collectively, "Plaintiffs") filed the above-captioned lawsuit (the "Action") against the Huntsville City Board of Education (the "Board") and Jo Stafford ("Stafford"), in her individual capacity (collectively, "Defendants"), and other parties, on April 13, 2021; and

WHEREAS, Plaintiffs filed an Amended Complaint against Defendants on July 23, 2021, alleging claims against the Board under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and claims against both Defendants under 42 U.S.C. § 1983, seeking compensatory damages against both Defendants,

punitive damages against Stafford; pre- and post-judgment interest, as appropriate, on any damages awarded to any plaintiff; attorneys' fees, expenses, and costs, pursuant to 42 U.S.C. § 1988; and such other and further relief deemed just and proper by the Court; and

WHEREAS, Plaintiffs and Defendants (collectively, the "Parties") wish to amicably settle the disputes between them to avoid further litigation and the further expense, delays, risks, and uncertainties associated with further litigation; and

WHEREAS, the Parties intend for this Settlement Agreement and Mutual Release (the "Agreement") to wholly resolve this Action,

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, agreements, and other consideration stated below, the Parties hereby stipulate and agree as follows:

1. Definitions.

For purposes of this Agreement:

- a. "**Action**" refers to *Shelby et al. v. Huntsville City Board of Education et al.*, Civ. No. 5:21-cv-520-CLS (N.D. Ala.).
- b. "**Agreement**" refers to this Settlement Agreement and Mutual Release.
- c. "**Approval Date**" refers to the date this Agreement is approved by the Board.
- d. "**Effective Date**" refers to the last date on which this Agreement is executed by the Parties.
- e. "**Plaintiffs**" refers to Camika Shelby, as heir of Nigel Shelby and personal representative of the Estate of Nigel Shelby, and Patrick Cruz, as heir of Nigel Shelby, who are Plaintiffs in the Action.
- f. The "**Board**" refers to the Huntsville City Board of Education.

g. “**Defendants**” refers to the Huntsville City Board of Education and Jo Stafford, in her individual capacity, who are the Defendants in the Action.

h. “**District**” refers to the Huntsville City Schools.

i. “**Operative Complaint**” refers to the First Amended Complaint filed in this Action.

j. “**Previous Defendants**” refers to all other individuals named as defendants in the original Complaint in the Action but not named as Defendants in the Amended Complaint.

k. The “**Parties**” refers to the Plaintiffs and the Defendants.

2. **Mutual Release.** In exchange for the Parties’ performance and satisfaction of the mutual promises, covenants, representations, agreements, and other consideration in this Agreement, the Parties, on behalf of themselves, their affiliates, predecessors, successors, officers, employees, attorneys, beneficiaries, assigns, and agents, hereby and forever release each of the other Parties, and each of the Parties’ affiliates, predecessors, successors, officers, employees, attorneys, beneficiaries, assigns, and agents, from any and all claims, obligations, duties, damages or expenses of any kind whatsoever, including claims for attorneys’ fees and costs (collectively called “a claim” or “claims”) arising from any act or failure to act occurring on or before the effective date of this Agreement and existing on or before the Effective Date of this Agreement (whether in law or equity, or based on state or federal law) that any of the Parties has against any of the other Parties, whether or not raised in the Action, whether known or unknown to any Party at the present time. This mutual release includes any claim or counterclaim which any of the Parties made or could have made in this Action. The Parties agree that this mutual release applies to any claims made by or against any of the Parties and Camika Shelby individually and/or Patrick Cruz

individually. The Parties also agree that this mutual release applies with equal force to claims that could have been made against or by the Previous Defendants in this Action.

3. Covenant Not to Sue. This Agreement shall also be deemed a covenant by the Plaintiffs not to sue any Defendant or Previous Defendant for any of the matters released or discharged by this Agreement.

4. Consideration. In consideration for these acts and covenants of Plaintiffs, the Board will take the actions specified in §§ 5 and 6 below. The Parties and their respective attorneys acknowledge that this consideration is adequate for the Parties' respective obligations under this Agreement, including the mutual release of all claims in § 2 above.

5. Payments.

a. The Board, and other entities on behalf of the Defendants, will make a total payment of \$840,000.00 (the "Payment") to Plaintiffs' counsel of record at Wardenski P.C. through either (1) a wire transfer to the Wardenski P.C. Client Funds Trust Account within 21 days of the Approval Date, or (2) by certified or cashier's check issued to "Wardenski P.C. Client Funds Trust Account" and delivered to Joseph J. Wardenski of Wardenski P.C. by FedEx overnight delivery to be received by Wardenski P.C. no later than the 21st day after the Approval Date, at the following address:

Joseph J. Wardenski
Wardenski P.C.
195 Plymouth Street, Suite 519
Brooklyn, NY 11201

b. The Board also agrees to pay the cost of the mediator retained by the Parties to mediate this dispute, the Honorable Robert S. Vance, Jr.

These payments shall be in full and final satisfaction of all of Plaintiffs' claims and requests for relief in the Action against all Defendants, including but not limited to the claims for attorneys' fees and costs for all attorneys representing Plaintiffs in this matter.

6. Nonmonetary Terms.

a. Policy and Procedure Changes.

i. Within 60 days of the Effective Date, the Board will amend its Title IX policy, Board Policy 4.7B, to clarify that sex-based discrimination, including harassment, includes conduct based on a person's sexual orientation and nonconformity to gender stereotypes, by making the following revisions to Policy 4.7B.4(F) (additions in red and deletions in strikeout):

(F) Sex-Based Discrimination - Any conduct based on a person's sex, pregnancy, gender identity, sexual orientation, ~~or~~ gender expression, or nonconformity to gender stereotypes that adversely affects a term or condition of that person's employment, education, or participation in an educational program/activity.

**Note that sex-based discrimination includes harassment based on a student or employee's sex, gender, sexual orientation, gender identity, gender expression, or ~~failure to~~ nonconformity to gender stereotypes.*

ii. Consistent with Board Policy 4.7B, as revised pursuant to § 6.a.i. above, the Board, through its Title IX Coordinator, will ensure that all school administrators and other personnel involved in handling or investigating bullying and harassment complaints understand that all complaints or known incidents of bullying, harassment, and other unwelcome conduct based on a student's sex, gender, sexual orientation, gender identity, or nonconformity to gender stereotypes will be treated as complaints of sex-based discrimination. This will be done through

a training prior to the start of 2023-24 school year and as an annual refresher training prior to, at minimum, the 2024-24 and 2025-26 school years.

b. *Information for Students and Parents.*

i. Within 60 days of the Effective Date, the Board will ensure that the Huntsville City Schools website and each individual school webpage contain the following information in a prominent location labeled “Bullying and Harassment Information”:

- (a) A statement that bullying, harassment, and other unwelcome verbal or physical conduct directed to a person or group of persons based on sex, including gender, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes, are prohibited by Board policy and may be reported to school administrators;
- (b) A description of the process for filing complaints of bullying and harassment, including a link to online complaint forms; and
- (c) The name, position, and contact information for the Board’s District-wide Title IX coordinator and, on the individual school webpages, the name(s), position(s), and contact information for the administrators or other personnel responsible for receiving and investigating bullying and harassment complaints.

ii. No later than the beginning of the 2023-24 school year, the Board will:

- (a) amend the Student-Parent Information Guide as follows:

- (i) The paragraph entitled “Student Support – Bullying” in the “Student Privacy and Support” section will be amended to (1) indicate that bullying based on sex, gender, sexual orientation, gender identity, gender expression, or nonconformity to gender stereotypes may also constitute sex-based discrimination or harassment in violation of Board policy; and (2) provide instructions or a link to information on the Board’s website on how to report bullying and harassment.
 - (ii) The “School Environment and Safety” section will specify that, in addition to sexual harassment, harassment and harassing conduct based on sex (including sex, gender, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes) and other protected classifications are prohibited by Board policy, and clarifying that the complaint, reporting, and investigation procedures contained in the “Student Sexual Harassment” subsection are also applicable to other forms of discriminatory harassment.
- (b) amend any handbooks or other materials directed to faculty, staff, parents, or students that reference the Board’s bullying and harassment policies to conform to the changes to the Student-Parent Information Guide specified in § 6.b.ii.(a). above.

c. *External Consultants.*

i. Within 60 days of the Effective Date, the Board will, upon mutual agreement of the Parties, retain one or more external consultant(s) or professional development provider(s) with expertise in schools' prevention and response to bias-motivated bullying and harassment, including the bullying and harassment of LGBTQ students, students who do not conform to sex stereotypes, and students of color, to, no later than December 31, 2023:

- (a) conduct a comprehensive review of District-wide and school-level policies, practices, procedures, and trainings provided to personnel and middle school and high school students regarding:
 - (i) bullying and harassment based on sex, including gender, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes;
 - (ii) interventions for students experiencing harassment and related physical and mental health harms; and
 - (iii) suicide prevention and intervention programs and practices, including student-facing suicide prevention programs for middle school and high school students.
- (b) conduct a school climate assessment of the Board's middle schools and high schools, which may include the use of anonymous student and staff surveys (which may be administered in conjunction with existing school climate surveys), to assess, at minimum:

- (i) the types (e.g., verbal, physical, electronic), frequency, locations (e.g., classrooms, school buses, cafeterias, gymnasiums), of bullying and harassment based on protected characteristics, including conduct based on sex, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes experienced by middle school and high school students; and
 - (ii) students' and staff members' knowledge of and comfort in reporting bullying and harassing conduct to appropriate school administrators.
- (c) prepare a written report that, at minimum:
- (i) summarizes the results of the comprehensive review;
 - (ii) makes recommendations to the Board for District-wide and school-level improvement of these policies, practices, procedures, trainings, and interventions; and
 - (iii) proposes a schedule and plan, including recommendations for the use of external consultants or trainers, to develop and conduct the annual trainings and school climate assessments required by §§ 6.d. and 6.e. below.

d. *Professional Development.* For at least three consecutive school years beginning in the 2023-24 school year, the Board will ensure that all school administrators, faculty, and other personnel that regularly interact with students or are involved in

receiving or investigating complaints of bullying and harassment, are trained by an external trainer with relevant expertise, on the following topics:

i. best practices for preventing, identifying, and responding to bias-motivated peer harassment against students based on sex, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes, and students of color who experience these forms of harassment;

ii. best practices for supporting students who experience adverse physical and mental health harms (including depression, suicidal ideation, and self-harming behavior), related to, resulting from, or exacerbated by bullying or harassment.

e. *School Climate Assessments.*

i. After the initial school climate assessment conducted by the external consultant pursuant to § 6.c.i.(b). above, the Board will conduct an annual school climate assessment in each of its middle schools and high schools (which may administered in conjunction with existing school climate surveys). These assessments shall include, at minimum, the administration of school climate surveys of middle school students and high school students to identify and assess:

(a) the types of bullying and harassing conduct experienced by students, by type (e.g., verbal, physical, electronic), location (e.g., classroom, school bus, cafeteria, gym), frequency, and basis/protected classification (including sex, gender, sexual orientation, gender identity, gender expression, and nonconformity to gender stereotypes, and other protected characteristics);

- (b) students' knowledge of the Board's bullying and harassment reporting and complaint procedures; and
- (c) students' comfort level in reporting bullying and harassing behavior to appropriate school administrators.

ii. The Board's Title IX Coordinator will review the results of the annual school climate assessments with the administrators of the Board's middle schools and high schools and assist school administrators in developing and implementing appropriate responses to issues identified through these assessments.

f. Tracking and Monitoring of Bullying and Harassment Incidents and Complaints.

i. No later than the beginning of the 2023-2024 school year, the Board will develop and implement uniform District-wide procedures for electronically recording and tracking all complaints and known incidents of actual or possible bullying, harassment, and harassing conduct directed at a student or group of students, including, to the extent practicable, the following information:

- (a) The date the complaint or other report was made or the date when the Board learned of the relevant incident(s) or conduct if no report or complaint was made;
- (b) The name(s); grade level(s); and school(s) attended by the targeted student(s);
- (c) The person reporting the incident (if known and if different than the targeted student(s)), including the person's name, role (e.g., student, parent, teacher), and contact information;

- (d) The names(s) of the individual(s) involved or alleged to be involved in the harassing or bullying conduct, including whether each such individual is a student, employee, or other third-party;
- (e) Specific details on the date(s), time(s), nature, content, and location(s) of the incident(s), including supporting documentation when available;
- (f) Whether the alleged bullying or harassment was based or believed to be based on the targeted student or students' race, color, national origin, sex, gender, sexual orientation, gender identity, gender expression, nonconformity to sex stereotypes, disability, or other classification protected by Board policy or applicable law;
- (g) The names of all known witnesses to the alleged incident(s) or conduct, specifying each witness's role (e.g., student, administrator, teacher) and contact information;
- (h) The employee(s) responsible for investigating the alleged conduct;
- (i) The status of the Board's investigation into the alleged conduct;
- and
- (j) A brief summary of the results of the investigation.

ii. The Board's Title IX coordinator will review the data tracked pursuant to § 6.f.i. above on a quarterly basis to assess whether the Board is handling complaints or incidents of harassment on a uniform and equitable basis and identify needs for specific interventions.

g. *Suicide Prevention Program.*

i. The Board agrees to continue to implement a suicide prevention program for students, which may include the ThriveWay P.A.T.H and ThriveWay Peer Helping programs currently in use, or similar programs that provide age-appropriate information to students on suicide prevention and school-based and external resources available to students who are experiencing suicidal ideation or thoughts of self-harm.

ii. The Board will consider and, as appropriate, adopt recommendations made by the external consultant(s) retained pursuant to § 6.c. above regarding potential improvements or changes to the Board's suicide prevention policies and practices.

h. *Reports.*

i. On an annual basis for at least the 2023-24, 2024-25, and 2025-26 school years, and no later than the last day of those school years, the Board, through its Title IX Coordinator, using the information obtained through the annual school climate assessments and data tracked pursuant to §§ 6.c.i.(b), 6.e., 6.f. above, will prepare an annual report that will be provided to counsel for Plaintiffs that:

- (a) Summarizes the school climate assessment results, by school and protected group;
- (b) Provides aggregate data of the number and types of bullying and harassment reports and investigations in the District's middle schools and high schools, by school, grade level, and, if any, the basis of the alleged conduct (i.e., sex, sexual orientation, gender

identity, gender expression, and nonconformity to gender stereotypes, or other protected classification); and

- (c) Describes and assesses the Board's efforts to prevent, investigate, and respond to harassment in its middle schools and high schools, including any plans for corrective action or additional attention needed to address issues identified by the Board, through its Title IX Coordinator, through review of the school climate and bullying/harassment information described above.

ii. The Board will send the reports to Plaintiffs' counsel required by § 6.h.i.

above to the following attorneys, by mail and email:

Joseph J. Wardenski
Wardenski P.C.
195 Plymouth Street, Suite 519
Brooklyn, NY 11201
joe@wardenskilaw.com

Adele Kimmel
Public Justice
1620 L Street NW, Suite 630
Washington, DC 20036
akimmel@publicjustice.net

If either of these attorneys is no longer the appropriate contact, or if their contact information changes, Plaintiffs will notify Defendants' counsel, in writing, of the updated information for the appropriate contacts.

7. Covenant of Payment of Taxes. Plaintiffs acknowledge that it is their sole responsibility to seek independent legal advice concerning the payment of any applicable state or federal taxes on payments made under this Agreement and that they do not rely on the Defendants or their attorneys for advice concerning taxes.

8. Non-Admission. Plaintiffs acknowledge that Defendants do not admit, and in fact deny, that they have violated any federal, state, or municipal constitution, law, order or regulation, or that the Defendants have violated any legal duty owed to Plaintiffs or have violated their rights

in any way. Plaintiffs agree that the payment of consideration for this Agreement is not an admission of liability on the part of the Defendants and merely a decision to avoid the costs and uncertainty of litigation.

9. Applicable Law. This Agreement is made in Alabama and shall be governed by Alabama law.

10. Merger of Prior Agreements/Integrated Agreement/Amendments. This Agreement contains the full, entire, and integrated agreement and understanding of Plaintiffs and the Board on the entire subject matter covered by this Agreement. All written or verbal discussions, negotiations, commitments, proposals and representations related to the subject matter of this Agreement are merged in this Agreement. This Agreement may not be changed, including additions, deletions or amendments, except by written agreement signed by the Parties.

11. Severability. If any part of this Agreement is finally adjudged to be unlawful, void or unenforceable by a court of competent jurisdiction, such part shall be deemed deleted, but such adjudication shall not affect the enforceability of any other part of this Agreement, and all other provisions of this Agreement shall continue in effect.

12. Knowing and Voluntary Waiver of Rights. The Parties acknowledge that they have read, understand, and voluntarily accept the terms of this Agreement. The Parties further acknowledge that they have consulted with their respective attorneys before signing this Agreement and that the terms and effect of this Agreement have been explained to them by their respective attorneys. The Parties acknowledge that other than the consideration contained in this Agreement specified above, other promise, commitment, or representation of any kind has been made to induce them to enter into this Agreement. The Parties acknowledge and agree that they have relied solely on their own reading of this Agreement and the advice, if any, given to them by

their respective attorneys. The Parties agree that, because the terms of the Agreement are the result of negotiations between their respective counsel, any ambiguity in the Agreement is not to be construed against any of the Parties.

13. No Further Payment of Monies. It is the purpose and intention of the Parties that the Defendants shall not either directly or indirectly, under any device, form of action, or proceeding, present or future, be liable for or be required to make any further payment of monies in any way arising in whole or in part out of or resulting from any and all losses or expenses related to the events set forth in the Action, whether known or unknown, including but not limited to any claim by the Centers for Medicare and Medicaid Services, and its agents, representatives and assigns, for interest or payment of any type or kind, or any claim by other third parties for payment of any type or kind, or any claim by Plaintiffs for payment of any type or kind.

14. Satisfaction of Liens. The Parties acknowledge that state and federal laws allow for the creation of liens (such as hospital liens, medical provider liens, Medicare and Medicaid liens) and subrogation claims, which could be made against settlement proceeds or any award of damages. The Plaintiffs agree to satisfy any and all such liens or subrogation claims. Any and all liens or claims for interest, payment, or repayment from a hospital or other medical provider, including but not limited to medical expenses or other expenses of any type that may exist now or in the future will be the sole responsibility of Plaintiffs, and Plaintiffs do hereby agree to indemnify and hold the Defendants harmless for payment and/or repayment of any and all expenses, interest, or other payments to any hospital or other medical provider claiming a lien on proceeds being paid as part of the settlement set forth in this Agreement.

15. Medicare/Medicaid. Plaintiffs warrant and represent that they are not and have not previously been Medicare beneficiaries. Plaintiffs warrant that Nigel Shelby was never a Medicare

beneficiary. Nigel Shelby received some treatment covered by Medicaid and Plaintiffs agree to be solely responsible for any subrogation claim relating to said Medicaid benefits and agree to indemnify the Board if one or more is made to pay any amounts to Medicaid as a result of this Agreement. Any and all liens or claims for interest, payment, or repayment by Medicare or any other third party, including but not limited to medical expenses or other expenses of any type that may exist now or in the future will be the sole responsibility of Plaintiffs and Plaintiffs do hereby agree to indemnify and hold the Board harmless for payment and/or repayment of any and all expenses, interest, or other payments to the Centers for Medicare and Medicaid Services or its subsidiaries, any other third party provider of medical services, any other entity or individual providing goods or services of any type arising in whole or in part from the events set forth in the Operative Complaint, or any other entity or individual that previously made or will make payment of any type arising in whole or in part from or surrounding the events set forth in the Operative Complaint. In the event that Medicaid or any other entity (including subsidiaries, affiliates, and agents), makes a claim for reimbursement from the Board for payment of medical or other treatment or services to Camika Shelby, Patrick Cruz, or Nigel Shelby arising out of or related to the Action, the Board agrees to provide notice of any such claim and to allow a reasonable opportunity to dispute and defend such claim prior to making any payment for which it would seek indemnification from Plaintiffs.

16. Stipulation of Dismissal. No later than two days following the Effective Date, the Parties agree to file a joint stipulation of dismissal, with prejudice, of the Action.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]