

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement ("Release" or "Agreement") is voluntarily executed on this \_\_\_ day of May, 2015, by Lisa Shively, for herself and on behalf of the estate of James Shively, and Taylor Shively ("Plaintiffs") in return for the economic and non-economic consideration as set forth below, the receipt of which is hereby acknowledged, in order to compromise, resolve, and settle the below-identified Lawsuit without further expense.

WHEREAS, Plaintiffs filed a lawsuit in the United States District Court, Northern District of Ohio, Eastern Division, styled *Lisa Shively, et al. v. Green Local School District Board of Education, et al.*, Case No. 5:11 cv 2398 ("Lawsuit"), asserting various claims against the Green Local School District Board of Education ("Board"), Michael Nutter, Wade Lucas, Cindy Brown, Mark Booth, Jeff Miller, and Jeff Wells ("Administrators," collectively "Defendants"). Plaintiffs sought various types of relief in the Lawsuit, including compensatory and punitive damages, as well as declarative and injunctive relief; and

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 trial, Plaintiffs and Defendants, through their insurer, The Liberty Mutual Insurance Company, wish to compromise, resolve and settle their claims and differences pursuant to and in consideration of the promises and covenants contained herein and the terms set forth below; and

WHEREAS, Plaintiffs have agreed to release Defendants from any and all claims and disputes concerning Taylor Shively's experiences at District schools, including claims asserted in the Lawsuit; for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged NOW, THEREFORE, the Parties affirm the following:

1. **Dismissal of Lawsuit.** In consideration of the payments described in Paragraph 3, Plaintiffs will dismiss the Lawsuit with prejudice. Plaintiffs will file the dismissal with prejudice within three (3) days after delivery of the settlement checks. Defendants shall deliver the settlement checks, via hand-delivery, within thirty (30) days of execution of this Release. The Parties shall bear their own costs.

**Release of All Claims.** Each party, together with all heirs, legal representatives, agents and assigns, past, present and future, knowingly and voluntarily, irrevocably and unconditionally release, acquit and fully and forever discharges each other party, together with each party's elected members, insurers, officers, employees, agents, directors and legal representatives, both past and present and in their individual and official capacities The Liberty Mutual Insurance Company ("Insurer"), and its past, present, and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns, from the beginning of the world to the date of the execution of this Release, from any and all claims, demands, obligations, judgments, actions, or causes of actions, suits, liabilities, debts, contentions, damages, benefits, levies and executions of any kind whether in law or equity, whether known or unknown, and from continuing effect from any such claims, including but not

limited to administrative complaints with the Ohio Department of Education or the United States Department of Education, Office for Civil Rights ("OCR"); and the claims asserted in Case No. 5:11 cv 2398. Further, this discharge of any liability includes, but is not limited to, a release of all claims arising under Section 1983 of the Civil Rights Act (42 U.S.C. § 1983), 20 U.S.C. §§ 1400 *et seq.* (i.e., the Individuals with Disabilities Education Improvement Act), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), the Americans with Disabilities Act (42 U.S.C. § 12101), Ohio Revised Code Chapter 3323, other civil rights laws, regulations that implement the above-referenced statutes, and the U.S. Constitution and Ohio Constitution. Notwithstanding the preceding, each party retains all its rights under applicable laws and regulations to enforce this Release.

2. **Consideration.** The economic and non-economic consideration set forth herein is tendered in full and complete satisfaction of any and all claims Plaintiffs brought or could have asserted against Defendants, its elected members, officers, employees, agents, directors and legal representatives, both past and present and in their individual and official capacities related to the claims raised in the Lawsuit.

In consideration of the Release set forth above, Defendants agree to pay the sum of five hundred thousand dollars (\$500,000.00).

B. The Board will invite OCR to provide anti-bullying training to all Green Local School District staff during the 2015-2016 school year, including training relating to bullying based on religion and gender, among others types. Should OCR be unavailable during the 2015-2016 school year, the Board will select another third party to provide such training before the end of the 2015-2016 school year.

C. During the 2015-2016 school year, the Board will submit its bullying, harassment, and intimidation policies to OCR for voluntary review and will provide verification of same to Plaintiffs' counsel.

D. The Board will stipulate to the filing of an amended complaint/dismissal of the related estates, with no other amendments unless mutually agreed.

3. **Taxation.** Plaintiffs acknowledge that neither Defendants, their Insurer, nor Smith Peters Kalail Co., L.P.A. warrant or represent to any other party the tax implications/deductibility/taxability of payments provided for hereinabove. Plaintiffs expressly acknowledge and agree to indemnify and hold Defendants, their Insurer, and Smith Peters Kalail Co., L.P.A. harmless from any taxes, penalties, or interests, by any governmental authority asserted against Defendants, their Insurer, and/or Smith Peters Kalail Co., L.P.A. because of Plaintiffs' failure to pay applicable taxes with respect to the amount paid pursuant to this Release. Plaintiffs acknowledge that the Defendants reserve the right to issue the tax reporting form

they deem appropriate. Payment described in 2(A) shall be for Taylor Shively's alleged physical injuries and sickness and the exacerbation thereof, attorneys' fees, costs, and expenses.

4. **Mutual Release and Settlement Costs and Attorney Fees.** As part of this Agreement, each party agrees to bear its own costs and attorney fees.
5. **Counterparts.** This Agreement may be executed in one or more counterparts, including multiple signature pages, and each shall be deemed to be one instrument. True and correct copies of the Agreement may be used in lieu of the original. In addition, for purposes of executing this Agreement, a document signed and transmitted by email or facsimile machine shall be treated as an original document. Each person signing this Agreement on behalf of any entity warrants or represents that he or she has the full and complete authority to enter into this Agreement on behalf of that entity.
6. **Other Proceedings.** Plaintiffs represent and confirm that they have not filed or otherwise initiated any other lawsuit, complaint, charge, or other proceeding against Defendants, together with their elected members, officers, employees, agents, directors and legal representatives, in any court or government agency based on events occurring on or prior to the date of signing this Release. Plaintiffs expressly waive any right to damages or other legal or equitable relief awarded by any court or government agency relating to any lawsuit, complaint, charge, or other proceeding (regardless by whom filed), that is pending or that is filed in the future and which is based on events occurring on or prior to the date of signing this Release. This Paragraph, however, does not apply to claims, lawsuits, complaints, or other filings to enforce the terms of this Agreement.
7. **No Admission of Liability or Wrongdoing.** This Release does not constitute nor shall it be construed as an admission of liability or wrongdoing by any party, its Insurer, their elected members, officers, employees, agents, directors, and legal representatives, with respect to any claims Plaintiffs asserted against Defendants. Defendants and their Insurer expressly deny that Defendants, their elected members, officers, employees, agents, directors, and legal representatives have done anything wrong or unlawful.
8. **Confidentiality.** Notwithstanding that this Agreement will be a public record, Plaintiffs agree that they will refrain from directly publicizing the Agreement and its terms, except to their tax preparer(s), attorneys, immediate family members, and as required under the law. Direct publication includes initiating, pursuing, or substantially responding to media requests or posting information about this Release and its terms in any social media forum. It shall not be considered a breach of confidentiality for Plaintiffs to acknowledge upon inquiry that any disputes they had with Defendants were satisfactorily resolved. All disputes relating to confidentiality shall initially be submitted to Susan Grody Ruben – or another mutually-agreed upon mediator. Should mediation fail and, if it is

determined by a court of competent jurisdiction that Plaintiffs or Defendants violated this Paragraph, the Parties understand that they may be liable for monetary damages and other relief as determined by a court of competent jurisdiction.

9. **Non-Disparagement.** The parties agree to refrain from making defamatory comments about each other. The term "defamatory comments" includes any negative comments specifying a Defendant by name or title. Plaintiffs agree that neither they, nor their attorneys, nor any organization involved with this lawsuit, including the Public Justice Foundation, will state that their actions directed the Board to change or reconsider any of its policies, practices, or procedures.
10. **Governing Law.** This Release shall be governed by the laws of the State of Ohio. The Parties acknowledge and expressly agree that Judge Benita Y. Pearson, on whose dockets the Lawsuit has been assigned, shall retain jurisdiction, if necessary, for purposes of resolving any dispute as to the enforceability of this Release or any of its provisions.
11. **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. Pursuant to *Hartmann v. Duffey (2002), 95 Ohio St. 3d 456; 2002 Ohio 2486; 768 N.E. 2d 1170; 2002 Ohio LEXIS 1387*, Plaintiffs specifically release any claims or causes of action that they had, have, or may have into the future for any form of interest from the date of the incidents, the date the claims were first made, or from the date of settlement.
12. **Entire Agreement and Voluntary Execution.** Each party affirms that the only consideration for signing this Release are the terms stated above and that no other promises or agreements of any kind have been made to cause it to execute this Release; that it fully understands the meaning and intent of the Release, including, but not limited to, its final and binding effect; and that it has executed the same freely and voluntarily, after the opportunity for explanation, review and approval by an attorney of its choosing.
13. **Construction.** This Agreement shall be deemed to have been jointly drafted by the respective parties, and the rule of construction that requires ambiguities to be construed against the drafting parties shall not apply against either party.
14. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
15. **Additional Documents.** The Parties understand and agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Release.

IN WITNESS WHEREOF, the Parties executed this Release in the County of Summit,  
State of Ohio.


  
\_\_\_\_\_  
Lisa Shively, Plaintiff

Signed before me this 1<sup>st</sup> day of <sup>June</sup>~~May~~, 2015.

June 1, 2015  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
NOTARY PUBLIC Summit County Ohio  
Kimberly Aysel

June 1<sup>st</sup> 2015  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Taylor Shively, Plaintiff


Signed before me this 1<sup>st</sup> day of <sup>June</sup>~~May~~, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC Summit County Ohio  
Kimberly Aysel

June 8, 2015  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Mr. Bob Campbell, Board President


Signed before me this 8 day of <sup>June</sup>~~May~~, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017

June 8, 2015  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Eydie Snowberger, Treasurer

Signed before me this 8 day of <sup>June</sup>~~May~~, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017

Jeff Miller  
Jeff Miller, Defendant

Signed before me this 8 day of ~~May~~ June, 2015.

June 8, 2015  
DATE

Alicia Austin  
NOTARY PUBLIC

Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017

Michael Nutter  
Michael Nutter, Defendant

Signed before me this 15 day of ~~May~~ June, 2015.

June 15, 2015  
DATE  
William P. Summutter, Attorney at Law  
Resident Cuyahoga County  
Notary Public, State of Ohio  
My Commission has no Expiration Date  
Sec 147.03 RC

William P. Summutter  
NOTARY PUBLIC

Wade Lucas  
Wade Lucas, Defendant

Signed before me this 16<sup>th</sup> day of ~~May~~ June, 2015.

June 16, 2015  
DATE

Kathleen S. Bowser  
NOTARY PUBLIC

KATHLEEN S. BOWSER  
Notary Public, State of Ohio  
My Commission Expires 4-16-18

Cindy Brown  
Cindy Brown, Defendant

Signed before me this 09 day of ~~May~~ June, 2015.

June 9, 2015  
DATE

Alicia Austin  
NOTARY PUBLIC

Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017

Mark Booth

Mark Booth, Defendant

Signed before me this 9<sup>th</sup> day of June, 2015.

6/9/15  
DATE

Alicia Austin  
NOTARY PUBLIC

Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017

Jeff Wells

Jeff Wells, Defendant

Signed before me this 10<sup>th</sup> day of June, 2015.

6/10/15  
DATE

Alicia Austin  
NOTARY PUBLIC

Alicia Austin  
Notary Public  
County of Summit  
My Commission Expires 1/11/2017