

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT ALLEN; MATTHEW FULLER; CAROL
LENNON; CLAUDIA MONTECALVO; EMILIJA
THEVANESAN,

Plaintiffs,

-against-

MARYELLEN ELIA, as Commissioner of the
New York State Education Department; and
NEW YORK STATE EDUCATION DEPARTMENT,

Defendants.

STIPULATION OF
SETTLEMENT AND
ORDER OF
DISCONTINUANCE
PURSUANT TO
RULE 41(A)

14-CV-1231

GLS/CFH

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for Plaintiffs Robert Allen, Matthew Fuller, Carol Lennon, Claudia Montecalvo, and Emilija Thevanesan (collectively "Plaintiffs") and Defendants MaryEllen Elia and New York State Education Department (collectively "Defendants"), parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties.

WHEREAS, in this action, Plaintiffs have raised questions regarding Exam Scoring Confidentiality Agreements ("Confidentiality Agreements") Plaintiffs signed in connection with the scoring of the 2014 English Language Arts ("ELA") Tests for grades

three through eight, administered by Defendant New York State Education Department (the "Department")¹; and

WHEREAS, the parties mutually desire to settle this matter without the need for further litigation; IT IS THEREFORE STIPULATED AND AGREED, that this matter is settled upon the following terms:

1. Defendants affirm that teachers and/or administrators who signed or sign Confidentiality Agreements in connection with the scoring of the ELA and Mathematics² Tests in grades three through eight, in 2016 and thereafter, may discuss any material publicly released by the Commissioner of Education (the "Commissioner") or the Department as soon as it has been publicly released. The parties acknowledge that Education Law § 305(51-a) requires that the Commissioner release the test questions, test answers, and corresponding correct answers on or before June 1st of the year in which the tests are administered, subject to the limitations set forth in that provision of law. The parties agree that a failure of the Commissioner to meet the June 1st deadline set forth in Education Law § 305(51-a) does not constitute a breach of this Stipulation of Settlement.

2. The Commissioner and the Department intend to release all constructed-response questions, that contribute to students' scores, on the ELA Tests for grades three through eight³, and associated materials, in accordance with Education Law § 305(51-a). The Commissioner may limit the number of multiple-choice and constructed-response questions and answers released only to the extent necessary to avoid hindering or

¹ Plaintiffs have raised similar questions regarding Plaintiff Fuller's execution of a Confidentiality Agreement in connection with the administration and/or scoring of the 2014 Grade 8 Science Test, which was required by his scoring center at a local Board of Cooperative Educational Services.

² In 2014, 2015 and 2016, the Department did not require that teachers or administrators sign Confidentiality Agreements in connection with the administration or scoring of the Science Tests. There has been no change in this policy to date.

³ In 2016, Books 2 and 3 of the ELA Tests for Grades 3-8 comprised the constructed-response questions.

impairing the validity and/or reliability of future examinations, pursuant to Education Law § 305(51-a).

3. Discussion of publicly released material after such public release is not a violation of the Confidentiality Agreements. To that extent, Defendants agree that Plaintiffs will not be subjected to discipline under Part 83 of the Commissioner's Regulations for any discussion of publicly released material related to the 2014 and 2015 ELA Tests which occurred after such public release, and Defendants agree to issue the following clarifying statement by publishing it on their website at the following location, <http://www.p12.nysed.gov/assessment/ei/eigen.html>:

Confidentiality Agreements signed by teachers and/or administrators in connection with the scoring of the 2014 and 2015 English Language Arts (ELA) and Mathematics Tests apply only to test material NOT publicly released by the Commissioner or the Department. Discussion of released materials following their release is not a violation of the Confidentiality Agreements.

4. Plaintiffs hereby discontinue this action with prejudice and without damages, and discharge and release Defendants, including their agents, subdivisions, employees, private contractors or assignees, of and from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising up until the date of this Stipulation of Settlement, whether presently asserted or not, which relate in any way to the underlying facts, circumstances or incidents that gave rise to this action, and further agree to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against Defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents, that arose up until the date of this Stipulation of Settlement.

5. Defendants discharge and release Plaintiffs from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising,

whether presently asserted or not, which relate in any way to the subject matter of this action.

6. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

7. The Parties agree that no provision of this Stipulation of Settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

8. This Stipulation of Settlement does not constitute a determination of, or admission by any party to, any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated herein. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to, any generally applicable policy or procedure in the future, except as set forth herein.

9. Following the execution of this Stipulation of Settlement, and its being ordered by the Court, payment shall be made on behalf of Defendants to Plaintiffs' attorneys, Richard E. Casagrande, Esq., Jennifer N. Coffey, Esq., of counsel, and Wendy M. Star, Esq., of counsel, in the sum of \$10,000.00 in negotiated attorneys' fees. Payment on behalf of Defendants of this amount shall be made by check payable to Richard E. Casagrande, Esq. and NYSUT, in the amount of \$10,000.00. This amount includes all sums to which Plaintiffs are entitled under the Stipulation of Settlement. The check will be mailed to Richard E. Casagrande, Esq., Jennifer N. Coffey, Esq., of counsel, New York State United Teachers, 800 Troy-Schenectady Road, Latham, NY 12110-2455.

10. Payment on behalf of Defendants of the amount specified in paragraph 9 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law.

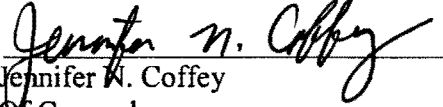
11. Payment of the amounts referenced in paragraph 9 will be made within one hundred and twenty (120) days after the approval of this Stipulation by the Court and receipt by Defendants' counsel of a copy of the so-ordered Stipulation.

12. In the event that the terms of paragraph 10 are satisfied, but payment is not made within the 120-day period set forth in paragraph 11, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the one hundred and twenty-first day after Court approval.

13. The foregoing constitutes the entire Stipulation of Settlement of the parties.

Dated: Latham, New York
December 16, 2016

RICHARD E. CASAGRANDE
Attorney for Plaintiffs
800 Troy-Schenectady Road
Latham, NY 12110
Telephone: (518) 213-6000

By: 
Jennifer W. Coffey
Of Counsel
Bar Roll No. 516881

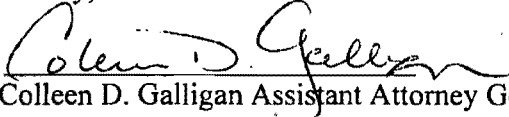
Dated: Albany, New York
December 15, 2016



ALISON BIANCHI
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department

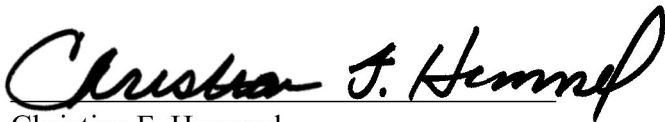
Dated: Albany, New York
December 15, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendants MaryEllen Elia and
NYS Education Department
The Capitol
Albany, New York 12224-0341

By: 
Colleen D. Galligan Assistant Attorney General,
Of Counsel
Bar Roll No. 105167

Dated: Albany, New York
December 19, 2016

SO ORDERED:



Christian F. Hummel
U.S. Magistrate Judge