

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

BRIGITTE MADDUX,)
Individually and as guardian of)
E.M., M.M., A.M., and A.M.,)
)
Plaintiffs,)
)
v.)
)
MATTHEW NIMMO,)
GARY ARTHAUD, and)
DALLAS COUNTY R-I SCHOOL)
DISTRICT,)
)
Defendants.)

Case No. 09-3030-CV-S-DGK

JOINT PETITION FOR APPROVAL OF MINORS' SETTLEMENTS

COME NOW, Plaintiffs, Brigitte Maddux, individually, and E.M., M.M., A.M. and A.M. minors, (hereinafter referred to as "Minor Children") by and through their Guardian and Next Friend Brigitte Maddux, by and through their attorneys Jerry M. Kirksey and the Kirksey Law Firm, LLC, and Defendant Dallas County R-I School District, (hereinafter referred to as "District"), by and through its attorneys Thomas A. Mickes, Natalie A. Hoernschemeyer and the law firm of Mickes Goldman O'Toole, LLC, and for their Joint Petition for Approval of Minors' Settlement pursuant to §507.184 R.S.Mo., the Court enters its findings and orders as follows:

1. Brigitte Maddux is the natural mother and duly appointed Next Friend of E.M., a minor, who was born in 1995.
2. Brigitte Maddux is the natural mother and duly appointed Next Friend of M.M., a minor, who was born in 1997.
3. Brigitte Maddux is the natural mother and duly appointed Next Friend of A.M., a minor, who was born in 2000.



4. Brigitte Maddux is the natural mother and duly appointed Next Friend of A.M., a minor, who was born in 2004.

5. Brigitte Maddux, individually and as Next Friend of the Minor Children, seeks damages of alleged violation by the District under the Equal Educational Opportunities Act suffered by the Minor Children.

6. District, while expressly denying any and all liability to the Minor Children for the damages herein recited, having fully considered the expense, delay and uncertainties of trial, has entered into a Settlement Agreement in full settlement, compromise and satisfaction of all claims, demands and causes of action which the Minor Children have or may have against District, as set forth in the Settlement Agreement, attached hereto as **Exhibit A** and incorporated herein by reference.

7. Brigitte Maddux, individually and as Next Friend of the Minor Children, having fully considered the circumstances of the occurrences, as well as the uncertainties, expense and delay the litigation of this matter may present, represents to the Court that she believes the settlement reached with the District is fair and reasonable.

8. Brigitte Maddux, as Next Friend of the Minor Children, further states that after having considered the nature of the damages of the Minor Children and disputed liability of this matter, she believes and represents to the Court that it would be in the best interest of the Minor Children to accept a settlement reached with the District. Brigitte Maddux, as Next Friend of the Minor Children, further states that she has accepted said offer of settlement in compromise on behalf of the Minor Children subject to the final approval of this Court. Brigitte Maddux, as Next Friend of the Minor Children, further requests the Court to enter an Order approving this proposed settlement with District.

9. Brigitte Maddux, as Next Friend of the Minor Children, further requests the Court to enter an Order authorizing and directing Brigitte Maddux to execute the attached Settlement Agreement and Release on the Minor Children's behalf releasing, waiving and discharging all actions, claims and demands whatsoever which the Minor Children, Brigitte Maddux and John Maddux, have or may have against the District, as a result of the occurrences hereinbefore recited.

10. In order to avoid litigation expenses and bring this matter to a conclusion, the parties have reached a compromise settlement of all issues. Due to the minority of the Minor Children, the parties request the Court to hear and approve said settlement.

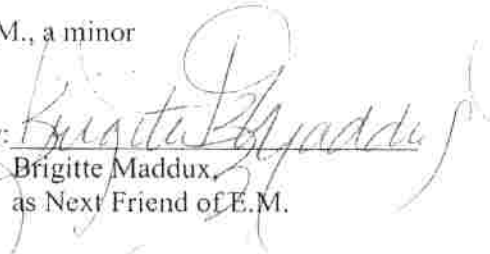
11. It is the position of the parties that this settlement is fair and reasonable and in the best interests of the Minor Children.

WHEREFORE, pursuant to R.S.Mo. §507.184, the parties pray that the Court approve the above settlement. The settlement monies are to be divided as follows:

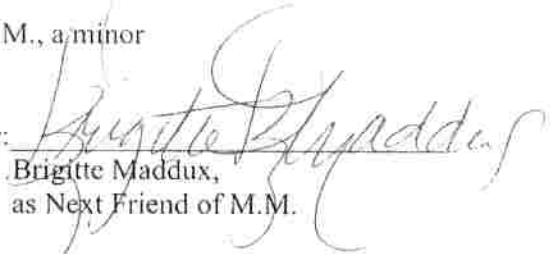
1. a. Within thirty (30) days of a court of general jurisdiction's approval of this Agreement and after the Agreement is fully executed by all parties, the District, by and through their insurer, shall pay in one check the total sum of Ten Thousand Dollars (\$10,000.00) payable to Jerry M. Kirksey, attorney, for settlement of the disputed claims in this matter, and said sum shall be apportioned as follows: Nine Thousand Dollars (\$9,000.00) to Brigitte and John Maddux, jointly in their individual capacities, (as recoupment of their attorneys fees expended) and Two Hundred and Fifty Dollars (\$250.00) to E.M., Two Hundred and Fifty Dollars (\$250.00) to M.M., Two Hundred and Fifty Dollars (\$250.00) to A.M., and Two Hundred and Fifty Dollars (\$250.00) to A.M.

b. Any and all additional attorneys' fees, costs, expenses incurred by Jerry M. Kirksey and the Kirksey Law Firm LLC, if any, will be paid by Plaintiffs and not by the District.

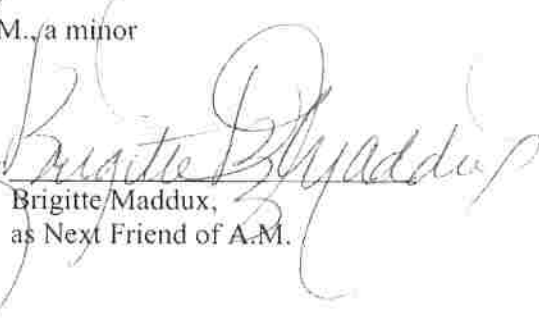
E.M., a minor

By: 
Brigitte Maddux,
as Next Friend of E.M.

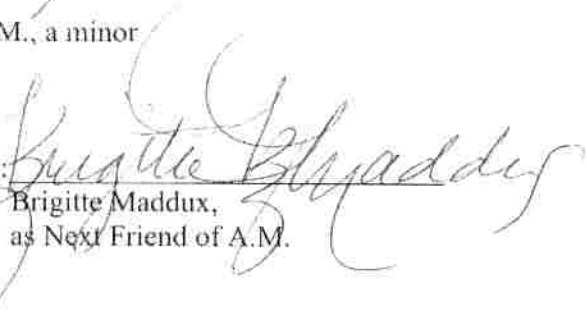
M.M., a minor

By: 
Brigitte Maddux,
as Next Friend of M.M.

A.M., a minor

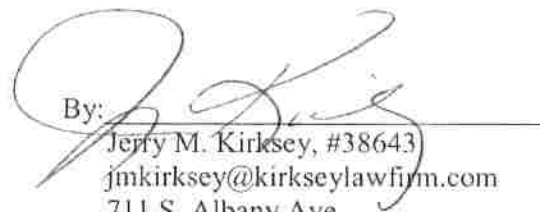
By: 
Brigitte Maddux,
as Next Friend of A.M.

A.M., a minor

By: 
Brigitte Maddux,
as Next Friend of A.M.

KIRKSEY LAW FIRM, LLC

MICKES GOLDMAN O'TOOLE, LLC

By: 
Jerry M. Kirksey, #38643
jmkirksey@kirkseylawfirm.com
711 S. Albany Ave.
Bolivar, Missouri 65613
Telephone: (417) 326-4529
Facsimile: (417) 326-8531

ATTORNEYS FOR PLAINTIFFS

By: 
Thomas A. Mickes, #28555
tmickes@mickesgoldman.com
Natalie A. Hoernschemeyer, #49692
natalie@mickesgoldman.com
555 Maryville University Dr., Suite 240
St. Louis, Missouri 63141
Telephone: (314) 878-5600
Facsimile: (314) 878-5607

ATTORNEYS FOR DEFENDANT
DALLAS COUNTY R-1
SCHOOL DISTRICT

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made this ____ day of June, 2010, between Dallas County R-I School District (hereinafter referred to as the "District") and Brigitte Maddux, individually, John Maddux, individually, E█████ M█████, a minor, M█████ M█████, a minor, A█████ M█████, a minor, and A█████ M█████, a minor, (the minors collectively referred to herein as "Children Plaintiffs") by and through their mother and court appointed Next Friend, Brigitte Maddux, witnesseth:

WHEREAS, the Children Plaintiffs and Brigitte Maddux filed suit in the United Stated District Court Western District of Missouri Southern Division in a case styled *Brigitte Maddux, Individually and as guardian of E█████ M█████ M█████ M█████, A█████ M█████ and A█████ M█████ v. Matthew Nimmo, Gary Arthaud, and Dallas County R-I School District*, Case No. 09-3030-CV-S-DGK asserting violations of the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) and 42 U.S.C. §1983 pursuant to the First and Fourteen Amendments to the United States Constitution for alleged retaliation against protected right to free speech.

WHEREAS the federal court, upon the District's motion, dismissed defendants Gary Arthud and Matthew Nimmo as defendants in the matter and dismissed the allegations under 42 U.S.C. §1983 pursuant to the First and Fourteen Amendments to the United States Constitution for retaliation against protected right to free speech.

WHEREAS, the District denies that the Children Plaintiffs, their Next Friend Brigitte Maddux, and/or Brigitte Maddux and John Maddux, individually, have valid causes of action against the District or any of its employees, current or former; and

WHEREAS, this Agreement does not constitute, nor shall be construed as, an admission of any liability or wrongdoing by any party; and

WHEREAS, in order to avoid the additional time and expense related to further litigation and trial, the Parties to this Agreement desire to settle all matters between them on the terms and conditions hereafter provided;

NOW THEREFORE, for good and valuable consideration of the mutual covenants, promises, and considerations contained herein, the Parties agree as follows:

1. Within 30 days of a court of general jurisdiction's approval of this Agreement, the District, by and through its insurer, shall pay in one check the total sum of Ten Thousand Dollars and No Cents (\$10,000.00) made payable to Jerry M. Kirksey, attorney as payment for settlement of the disputed claims of the Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually. The \$10,000.00 payment shall be apportioned as follows: \$9,000 to Brigitte and John Maddux, jointly, in their individual



capacities (as recoupment of their attorney fees expended), and \$250 to E█████ M█████, \$250 to M█████ M█████, \$250 A█████ M█████, and \$250 to A█████ M█████.

2. Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, hereby release, remise, and forever discharge the District, its affiliates and subsidiaries, its respective members, board members, directors, officers, agents, employees past and/or present, attorneys, insurers and self insurers, Missouri United School Insurance Council, United Educators, Arthur J. Gallagher & Co. and Gallagher Bassett Services, Inc. including its attorneys, and all of its parent companies, subsidiary companies, its past, present, and future predecessors, successors, assigns, officers, directors, shareholders, servants, agents, employees, and representatives from any and all claims, actions, causes of action, demand, damages or loss, administrative procedures or other procedures of any kind whatsoever, in law or in equity, they may have against them, including but not limited to any alleged rights or claims arising out of or related to claims asserted in the above-referenced causes of action, any rights or claims arising under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA"); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"); the Americans with Disabilities Act, 42 U.S.C. § 12131("ADA"), the ADA Amendments Act ("ADAAA"); the Missouri Human Rights Act, Section 213.010 et seq. RSMo ("MHRA"); 42 U.S.C. § 1883, 1985 ("§1983"), other alleged discrimination, breach of express or implied contract, and/or any other alleged violation of federal, state or local statutory or common law from the beginning of time up through the date on which this Agreement is fully executed.

3. Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, agree to hold the foregoing harmless against and to satisfy any and all liens including, but not limited to, attorneys, health and medical care providers, and governmental agencies.

4. Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, agree not to enter into any suit, action, or other proceeding at law or in equity as a party Plaintiff(s) or administrative procedures or other procedures or to prosecute further any suit or action that might presently exist, or to make any claim or demand of any kind against the District, or any of the District's affiliates or subsidiaries, its respective members, board members, directors, officers, agents, employees past and/or present, and attorneys, insurers and self insurers, Missouri United School Insurance Council, United Educators, Arthur J. Gallagher & Co. and Gallagher Bassett Services, Inc. including its attorneys, and all of its parent companies, subsidiary companies, its past, present, and future predecessors, successors, assigns, officers, directors, shareholders, servants, agents, employees, and representatives asserting any claim released by Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and/or Brigitte Maddux and John Maddux, individually, from this Agreement, other than an action to enforce their rights herein.

5. The District releases, remises, and forever discharges Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, and their respective attorneys and representatives from any and all claims or other causes of action, administrative procedures or other procedures it may have against them, including, but not limited to, any alleged rights or claims arising out of or related to claims asserted in the above-referenced cause of action, up to and including the date on which this Agreement becomes effective.

6. The District agrees not to enter into any suit, action, or other proceeding at law or in equity as a party Plaintiff or Plaintiffs or administrative procedures or other procedures or to prosecute further any suit or action that might presently exist, or to make any claim or demand of any kind against Children Plaintiffs, Brigitte Maddux, and John Maddux, or their attorneys, or representatives asserting any claim released by the District from this Agreement, other than an action to enforce its rights herein.

7. Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, acknowledge that this Agreement has been reviewed in detail with them and that its language and intended effect have been explained, and that they have had the opportunity to review this Agreement with an attorney of their choice. Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, acknowledge that they have voluntarily entered into this Agreement of their own free will based only upon the terms and conditions included in this Agreement.

8. This Agreement constitutes the entire Agreement between Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, and the District, and supersedes all prior understanding, whether oral or written, between the Parties. Any amendments or modifications to this Agreement must be in writing and signed by the Parties.

9. Brigitte Maddux expressly understands and agrees that she: (a) has had the opportunity to consider this Agreement for a full twenty-one (21) days before executing it (b) has carefully read and fully understands all of the provisions of this Agreement; (c) knowingly and voluntarily agrees to all the terms set forth in this Agreement; (d) knowingly and voluntarily intends to be legally bound by the terms set forth in this Agreement; (e) was advised and is hereby advised in writing to consult with legal counsel of her choosing prior to executing the Agreement; and (f) has a full seven (7) days following the execution of this Agreement to revoke this Agreement and has been hereby advised in writing that this Agreement shall not become effective or enforceable until the revocation period has expired. Brigitte Maddux also agrees and acknowledges that any revocation pursuant to this paragraph must be delivered on or before the final day of the revocation period, in writing, to counsel for the District, Natalie Hoernschemeyer 555 Maryville University Drive, Suite 240, St. Louis, Missouri 63141.

10. The Parties agree that the terms of this Agreement have been negotiated by all the Parties with the assistance of counsel. In the event of any litigation arising out of this Agreement, the Parties agree the draftsmanship of this Agreement shall not be constructed against any one particular party.

11. The provisions of this Agreement will be governed by the laws of the State of Missouri.

12. If a court of competent jurisdiction determines that any provision contained in this Agreement, or any part thereof, cannot be enforced, the Parties agree that such determination shall not affect or invalidate the remainder of this Agreement.

13. This Agreement constitutes the entire Agreement between Children Plaintiffs, Brigitte Maddux, in her capacity as Guardian and Next Friend of Children Plaintiffs, and Brigitte Maddux and John Maddux, individually, and the District, and supersedes all prior understandings, whether oral or written, between the Parties. Any amendments or modifications to this Agreement must be in writing and signed by the Parties.

14. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.

IN WITNESS WHEREOF, the Parties hereto set their hands the day and year written herein below. A photocopy of this fully executed and acknowledged document shall be considered as effective and valid as the original.

By: Brigitte B. Maddux
Brigitte Maddux, in her capacity as Guardian and
Next Friend of minor E [REDACTED] M [REDACTED]

Date: 6/18/10

By: Brigitte B. Maddux
Brigitte Maddux, in her capacity as Guardian and
Next Friend of minor M [REDACTED] M [REDACTED]

Date: 6/18/10

By: Brigitte B. Maddux
Brigitte Maddux, in her capacity as Guardian and
Next Friend of minor A [REDACTED] M [REDACTED]

Date: 6/18/10

By: Brigitte Maddux Date: 6/18/10
Brigitte Maddux, in her capacity as Guardian and
Next Friend of minor A [REDACTED] M [REDACTED]

By: Brigitte Maddux Date: 6/18/10
Brigitte Maddux, Individually

By: John Maddux Date: 6/18/10
John Maddux, Individually

By: David Beltz Date: 7/1/10
David Beltz
Board of Education President
of the Dallas County R-I School District

By: Mary Ellen Chapman Date: 7/1/10
Mary Ellen Chapman
Board of Education Secretary
of the Dallas County R-I School District

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