



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

HH-1.

MEETING DATE

Sep 20 2016 10:15AM - Regular School Board Meeting

AGENDA ITEM

OPEN ITEMS

CATEGORY

HH. OFFICE OF THE GENERAL COUNSEL

DEPARTMENT

Office of the General Counsel

Special Order Request

Yes

No

Time

Open Agenda

Yes

No

TITLE:

Settlement Agreement between The School Board of Broward County, Florida and James Larkin

REQUESTED ACTION:

Approve the Settlement Agreement between The School Board of Broward County, Florida and James Larkin.

SUMMARY EXPLANATION AND BACKGROUND:

A lawsuit against the School Board was filed on or about September 2015 on behalf of James Larkin. The lawsuit alleges that a bus driver (Elcira Jofre De Campos) negligently operated a school bus and ran a stop sign causing the bus to collide with the vehicle driven by the Plaintiff as described in the action styled James Larkin v. School Board of Broward County, Case No. 15-017164 (12), before the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida.

See Supporting Docs for continuation of Summary Explanation and Background.

SCHOOL BOARD GOALS:

Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:

The financial impact to the District is \$396,465.92. The source of the funds is the District's self-insured fund and insurance money.

EXHIBITS: (List)

(1) Summary Explanation and Background Continued (2) Settlement Agreement between The School Board and James Larkin

BOARD ACTION:

APPROVED

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Aston A. Henry, Jr.

Phone: 754-321-1900

Name: Thomas W. Paradise, Esq.

Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

Barbara J. Myrick - General Counsel

Signature

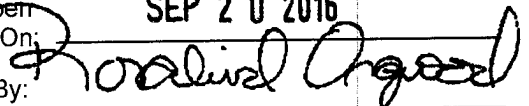
Barbara J. Myrick

9/6/2016 10:58:21 AM

Approved In Open Board Meeting On:

SEP 20 2016

By:



School Board Chair

Electronic Signature

Form #4189 Revised 07/16

RWR/ BJM/AAH/TWP:jcf

HH-1 Settlement Agreement between The
School Board of Broward County, Florida
and James Larkin
09/20/16 RSBM

SUMMARY EXPLANATION AND BACKGROUND

A lawsuit against the School Board was filed on or about September 2015 on behalf of James Larkin. The lawsuit alleges that a bus driver (Elcira Jofre De Campos) negligently operated a school bus and ran a stop sign causing the bus to collide with the vehicle driven by the Plaintiff as described in the action styled James Larkin v. School Board of Broward County, Case No. 15-017164 (12), before the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida.

The parties participated in negotiation and have agreed to the terms and conditions contained in the attached Settlement Agreement pending School Board approval. James Larkin has agreed to accept the total sum of \$396,465.92 in full and final settlement of the claim. Once the Settlement Agreement is approved, and all documents referenced in the Agreement have been exchanged, The School Board will pay the settlement sums in accordance with the Settlement Agreement.

Thomas W. Paradise, Esq., in conjunction with Johns Eastern Company (the District's Third Party Administrator), Risk Management, Britt Insurance, and the Office of the General Counsel, recommend approval of this Settlement Agreement, as a fair and reasonable resolution of this matter, which eliminates the additional financial expense associated with the possibility of protracted litigation.

End of Document

**SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS**

THIS AGREEMENT entered into on this 20th day of September 2016, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "The School Board")

and

JAMES LARKIN
(hereinafter referred to as "Plaintiff")

WHEREAS, the parties mutually agree to resolve all claims and disputes between them that were or could have been asserted by the Plaintiff, arising out of or related to an incident allegedly occurring on or about the 27th day of January 2015 in Hollywood, Broward County, Florida; and

WHEREAS, the Plaintiff filed a lawsuit against The School Board in the case styled James Larkin v. School Board of Broward County, Case No. 15-017164 (12), before the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. This release applies only to the claims against the School Board. The release does not apply to, include, and specifically excludes all claims against any other party, including but not limited to Maria Schmidt and/or the City of Hollywood, and

WHEREAS, the parties seek to settle all claims between them pursuant to the terms and provisions specified herein without any admission of fault, liability or wrongdoing of any kind.

NOW THEREFORE, in consideration of the foregoing representations of the mutual covenants, promises and considerations hereinafter set forth, it is agreed by between the parties as follows:

1. **Incorporation:** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Acknowledgement:** The parties acknowledge and agree that this Agreement is based upon the unique facts and circumstances of this case, that this settlement is a compromise of a disputed claim, and that the payment is not to be construed as an admission of guilt or liability by The School Board, its agents or employees, by whom liability is expressly denied, and that this settlement is a business decision that the parties reached upon the determination that the settlement is in the best interest of all parties.

3. **Settlement Payment:** The School Board agrees to pay Plaintiff the sum of three hundred ninety-six thousand four hundred sixty-five dollars and ninety-two cents (\$396,465.92), payable to Searcy Denney Scarola Barnhart & Shipley, PA for the benefit of James Larkin.

4. **Tax Liability:** Plaintiff understands and agrees that any tax liability for said settlement sum is to be borne by Plaintiff alone. As part of the consideration of this Agreement, the Plaintiff has executed an Affidavit of Release of all Claims, which is incorporated into this Agreement by reference.

5. **Dismissal:** As a condition of settlement, the parties agree to execute and file a Stipulation for Dismissal with Prejudice to the Court for dismissal of this lawsuit.

6. **Self Reliance:** In entering into this Agreement, the Plaintiff represents that he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal consequences of the Agreement; that the terms of the Agreement have been completely read and explained to the Plaintiff by his attorney and accept of his own free will and accord.

7. **Entire Agreement:** This Agreement and Affidavit of Release of All Claims incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that

are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

8. **Waiver:** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9. **Governing Law:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

10. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **Assignment:** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from The School Board.

12. **Severability:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement
on the date first above written.

FOR THE SCHOOL BOARD

(Corporate Seal)



THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: Rosalind Osgood
Dr. Rosalind Osgood, Chair

ATTEST:

Robert W. Runcie
Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:

[Signature]
Office of General Counsel

FOR PLAINTIFF

Brunica Larkin
Witness

James Larkin
Signature JAMES LARKIN

Brunica Larkin
Witness

James Larkin
Printed Name JAMES LARKIN

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

Before me, this day personally appeared James B. Larkin, who is personally known to me or who produced _____ as identification and who executed the foregoing Settlement Agreement and Affidavit and Release of All Claims, and acknowledged that they executed same as their free act and deed, for the purposes therein express on this 8th day of August 20 16 .

My Commission Expires:

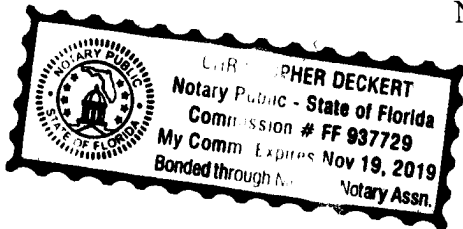
Christopher Deckert
Signature—Notary Public

(SEAL)



Christopher Deckert
Notary's Printed Name

FF 937729
Notary's Commission No.



AFFIDAVIT AND RELEASE OF ALL CLAIMS

That I, **JAMES LARKIN**, first party/releasor, for and in consideration of the sum of **THREE HUNDRED NINETY SIX THOUSAND FOUR HUNDRED SIXTY FIVE and 92/100 DOLLARS (\$396,465.92)**, or other valuable consideration, received from or on behalf of second party releasees, **SCHOOL BOARD OF BROWARD COUNTY, FLORIDA; ELCIRA JOFRE, INDIVIDUALLY; JOHNS EASTERN COMPANY; INC., BRIT INSURANCE SERVICES USA, INC.; and LLOYD'S LONDON** and present officers, directors, agents, employees, shareholders, subsidiaries, divisions, assigns, predecessors in interest and successors in interest, second party, the receipt whereof is hereby acknowledged,

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

I HEREBY remise, release, acquit, satisfy and forever discharge the said second party, of and from any and all, manners of action and actions, cause and causes of action, suits, debts, dues, sums of money, amounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands, and attorney fees and costs whatsoever, in law or in equity, which said first party ever had, now has, or which personal representative successor, heir or assigns of said first party, hereafter can, shall or may have, against said second party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day if these presents, arising out of each and every relationship between the party of the first and the party of the second part, including but not limited to the allegations and issues arising from that certain incident that happened on or about **January 27, 2015**, which is the subject matter of the litigation known as **JAMES LARKIN v. SCHOOL BOARD OF BROWARD COUNTY**, filed in the 17th Judicial Circuit in and for Broward County, **Case No.: 15-017164 (12)**, and pending before the **Honorable Michael Gates**, and in which the undersigned claims that said person or parties are legally liable in damages for monies owed, which legal liability and damages are disputed and denied. The release does not apply to, include, and specifically excludes all claims against any other party, including but not limited to Maria Schmidt and/or the City of Hollywood.

RELEASOR further states that while he hereby releases any and all claims against Releasees, for both past and future losses, the necessity for future medical treatment and expenses incurred therein is speculative and unknown at this time, and, therefore, as a result, the Releasor does not deem the settlement herein made to fully satisfy damages in the event future medical expense is incurred. As a result, Releasor reserves the right to pursue and recover future medical expenses from any person, firm or organization who may be responsible for payment for such expenses, including any first party health or automobile insurance coverage, but such reservation does not include the Releasees, their agents, or employees.

The Releasor, **JAMES LARKIN**, is not a Medicaid/Medicare beneficiary. In the event that it is determined that the Releasor has received Medicare/Medicaid benefits, or is otherwise qualified for Medicare/Medicaid benefits, whether known or unknown at the time of this settlement, the Releasor shall be solely responsible to CMS of any claim, right, lien, or cause of

action that Medicare/Medicaid may assert pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y (b)). In addition, the releasor hereby agrees to contact the MSPRC and pay or otherwise resolve any conditional payment asserted by CMS or the MSPRC related to this claim. The undersigned agrees to satisfy or otherwise resolve any lien or subrogated interest for workers compensation and health care benefits paid or payable to the undersigned as a consequence of the occurrence settled pursuant to this agreement.

Releasor has been apprised of his/her right to seek assistance from legal counsel of his/her choosing or directly from the Social Security Administration or other government agencies regarding the impact this Release may have on Releasor's current or future entitlement to Social Security or other governmental benefits. Releasor acknowledges that acceptance of these settlement funds may affect Releasor's rights to other governmental benefits, insurance benefits, disability benefits, or pension benefits. Notwithstanding this possibility, Releasor desires to enter into this Release agreement to settle his/her injury claim according to the terms set forth in this Release.

Releasor hereby declares that the terms of this Release have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final settlement of any and all claims, disputed or otherwise, on account of injuries and/or damages related to the Claims set forth herein, and for the express purpose of precluding forever any further additional claims against the Releasees arising out of the aforesaid incident, accident or occurrence.

THE FOLLOWING AFFIDAVIT is made to induce the said RELEASEE and those making payment for or on behalf of RELEASEE to enter such settlement and pay said sum of money to AFFIANTS based on AFFIANTS' sworn statements herein as follows:

STATE OF FLORIDA)

Broward COUNTY)SS

BEFORE ME, the undersigned authority, personally appeared, **JAMES LARKIN**, who being first duly sworn, deposes and says:

YOUR AFFIANT, to induce, RELEASEE to make payment herein, hereby swears that the following do not exist or will be satisfied from the settlement funds if same exists:

1. Any lien or subrogation right of hospital or hospitals in the State of Florida, under the laws of the State of Florida, or under any ordinances of any county or municipality;
2. Any lien or subrogation right of hospitals of the United States Government, including but not limited to, Veterans Hospital, military

hospitals, and other medical services, pursuant to the Federal Medical Recovery Act, or otherwise;

3. Any lien or subrogation right of Medicare or Medicaid;
4. Any lien or subrogation right of any employer or insurance carrier of employer, for benefits and services, medical and otherwise, paid by virtue of Workers' Compensation laws of the State of Florida, or any other state;
5. Any lien or subrogation right of any insurance carrier for benefits and services, medical vehicle law, or any other insurance policy, auto or otherwise;
6. Any lien or subrogation right by health care insurer for benefits paid or payable under any applicable health plan;
7. Any lien or subrogation right by any group, organization, partnership, corporation, or health insurer for benefits paid or payable under any applicable health insurance plan; and;
8. Any lien by any attorney or firm for fees and costs.

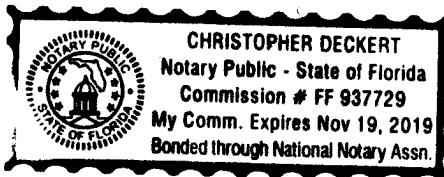
THIS RELEASE contains the entire agreement between the parties hereto, and the terms of the Release are contractual and not a mere recital.

I HEREBY SWEAR that the facts contained herein are true and correct.

Bruce Carter
WITNESS

James Larkin
JAMES LARKIN

The foregoing instrument was acknowledged before the undersigned on the 8th day of August, 2016, by **JAMES LARKIN**, who is/are personally known to me or who has produced _____ as identification and who did/did not take an oath.



Notary Public, State of Florida

Christopher Deckert
Printed Notary Name

11/19/19
My Commission Expires