

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

20

Meeting Date: June 2, 2015 [X] Consent [] Regular
[] Public Hearing
Department
Submitted By: COUNTY ATTORNEY
Submitted For: DEPARTMENT OF COMMUNITY SERVICES

I. EXECUTIVE BRIEF

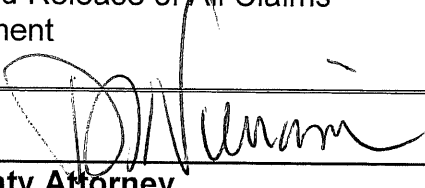
Motion and Title: Staff recommends motion to approve: Settlement Agreement in D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, Case No.: 502013CA013900XXXXMB AG (Fifteenth Judicial Circuit Court) for \$265,000.00, inclusive of attorney's fees and costs.

Summary: Plaintiffs D.D.D. and N.H.D. are the parents of Plaintiff K.D., a minor who participated in the County-administered Head Start program. Plaintiffs sued Palm Beach County alleging negligent supervision and training, following two incidents in January of 2013. The parties have drafted a proposed settlement agreement which would settle the claims of the three Plaintiffs in the amount of \$265,000, inclusive of attorney's fees and costs. Staff, including Risk Management and the Department of Community Services, recommends that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Plaintiffs, in order to limit the County's exposure in this case. Countywide (HH)

Background and Justification: In January of 2013, after observing bruising on K.D.'s legs, N.H.D., contacted the Director of K.D.'s Head Start program. The Director reviewed video monitoring taken in K.D.'s classroom on the day of N.H.D's report. The video revealed a teacher's failure to follow established policies and procedures regarding discipline of K.D. The program Director reported the incidents to the Florida Department of Children and Families, and the teacher was placed on Administrative Leave, and subsequently resigned. Psychological evidence from both K.D.'s treating physician and the County's examining physician revealed K.D. suffered personal injuries. K.D.'s physician causally related those personal injuries to the incidents depicted in the video. A guardian was appointed for K.D. by the Court, and the guardian recommended \$100,000 of the settlement be used to fund a Structured Settlement Annuity which begins payments to K.D. after the age of 18. The guardian's recommendation is made a part of the parties' Settlement Agreement. Staff, including Risk Management and the Department of Community Services, recommends that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Plaintiffs in order to limit the County's exposure in this case.

Attachments:

1. Settlement Agreement and Release of All Claims
2. Budget Availability Statement

Recommended by:  5/7/15
County Attorney Date

Approved by: N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$265,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$265,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511

Reporting Category _____

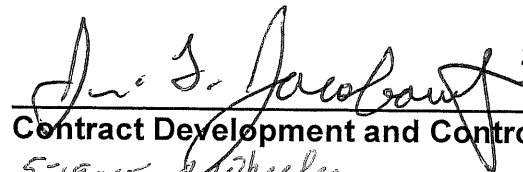
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

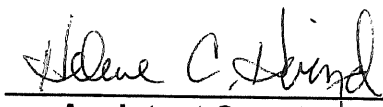
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


5/17 Sherry Brum
OFMB

 5/20/15
Contract Development and Control
5-19-15 J. Jacobson

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,
Plaintiffs,
vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

_____ /

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS is made and entered into this _____ day of June, 2015, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (COUNTY) and Darren Duncombe and Netoshia Howzell-Duncombe, individually and as Parents and Natural Guardians of Kansas Faith Duncombe (PLAINTIFFS).

WHEREAS PLAINTIFFS sued the COUNTY in a lawsuit presently styled D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, v. PALM BEACH COUNTY and DOROTHY KELLY, Case No. 502013CA013900XXXXMB AG, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the Pending Lawsuit), for damages arising from incidents that occurred in January, 2013, at a Head Start school located at 100 Chillingworth Drive in Palm Beach County, Florida.

WHEREAS the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, PLAINTIFFS and the COUNTY have agreed to adjust, compromise, and settle all controversies, disputes and differences existing between them which might have been raised in the above-entitled action, and to enter into a Stipulation for Dismissal of the Pending Lawsuit with Prejudice;

NOW THEREFORE, in consideration of the mutual promises and undertakings of the parties to this agreement, including, but not limited to, execution of a Stipulation of Dismissal, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. This Settlement Agreement and Release of All Claims is subject to the review and approval of the Palm Beach County Board of County Commissioners, and will be considered by the Board of County Commissioners at its scheduled meeting of June 2, 2015.
3. The undersigned PLAINTIFFS, being of lawful age, for the sole consideration of **TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000)**, to the undersigned PLAINTIFFS in hand paid, the receipt and sufficiency whereof is hereby acknowledged, do hereby for themselves and for Kansas Faith Duncombe and each of their executors, administrators, successors and assignees, release, acquit and forever discharge **PALM BEACH COUNTY**, and its officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the undersigned PLAINTIFFS, and all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned PLAINTIFFS may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, emotional, bodily and personal injuries and any and all consequences thereof, resulting or to result from alleged incidents which occurred on or about January, 2013, in Palm Beach County, Florida, which are the subject of the Pending Lawsuit. The COUNTY agrees to pay PLAINTIFFS the sole consideration referenced above as follows:
 - a. Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay to PLAINTIFFS the amount of **ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000)**, by a check made payable to Trust Account of Searcy Denney Scarola Barnhart & Shipley f/b/o Netoshia Howzell-Duncombe and Darren Duncombe.
 - b. Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay to PLAINTIFFS the amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**, by a check made payable to United of Omaha Life Insurance Company to fund a Structured Settlement Annuity which will provide periodic payments to Kansas Faith Duncombe according to the schedule as follows (the "Periodic Payments"):
 - \$10,000.00 semiannually, guaranteed 4 years, beginning after age 18 (on July 1, 2026);

- \$500.00 per month, guaranteed 4 years, beginning after age 18 (on July 1, 2026). The last payment will be made on June 1, 2030;
 - \$15,000.00 guaranteed lump sum payable at age 22 (on April 22, 2030);
 - \$27,357.85 guaranteed lump sum payable at age 25 (on April 22, 2033).
 - All sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.
 - PLAINTIFFS acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the PLAINTIFFS or any payee; nor shall the PLAINTIFF or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.
 - PLAINTIFFS' beneficiaries - Any payments to be made after the death of the Payee pursuant to the terms of this Settlement Agreement and Release shall be made to the Estate of the Payee. After the age of majority, Payee may submit a change of beneficiary in writing to the Assignee. The designation must be in a form acceptable to the Assignee.
4. Within five (5) days of the deposit of the check made payable to Trust Account of Searcy Denney Scarola Barnhart & Shipley f/b/o Netoshia Howzell-Duncombe and Darren Duncombe by Plaintiff's counsel, and the availability of those funds, Plaintiff's counsel shall execute and deliver to the Palm Beach County Attorney's Office the Stipulation and Final Order of Dismissal with Prejudice attached hereto as Exhibit A.
 5. PLAINTIFFS acknowledge and agree that the release and discharge set forth above is a general release. PLAINTIFFS expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which PLAINTIFFS do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect PLAINTIFFS' decisions to enter into this Settlement Agreement. PLAINTIFFS further agree that PLAINTIFFS have accepted payment of the sums specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact. PLAINTIFFS assume the risk that the facts or law may be other than PLAINTIFFS believe.
 6. PLAINTIFFS agree to satisfy or otherwise resolve any lien or subrogated interest arising from Medicare, Medicaid, workers compensation and/or health care benefits paid or payable to the undersigned as a consequence of the occurrence settled pursuant to this agreement, including but not limited to the known lien with Avmed. PLAINTIFFS

acknowledge and agree that they are responsible for the payment of any liens against this Settlement Agreement and that the COUNTY shall not be responsible for any portion of said liens.

7. PLAINTIFFS agree to be responsible for any claims or liens by Medicare and agree that PLAINTIFFS will defend the COUNTY from any liens, suits, or actions arising under the Medicare Secondary Payer Statute (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.
8. PLAINTIFFS declare and represent that any injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Settlement Agreement and Release of All Claims, PLAINTIFFS understand and agree that they relied wholly on their own judgment, belief, and knowledge of the nature, extent, effect, and duration of any injuries and liability therefore, without reliance on any statement or representation by the COUNTY, or by the COUNTY'S representatives or by any physician employed by the COUNTY.
9. Each party represents to the other that each party giving a release herein set forth knows, has examined, and has investigated to their full satisfaction all matters concerning the incidents and claims between or among them or at issue in the Pending Lawsuit, and that the settlement of their differences and the execution of this Settlement Agreement and Release of All Claims is not based on, or induced by, any representations made by the other party, their respective counsel, or by any person or persons representing or employed by such other party concerning the subject matter of the Pending Lawsuit.
10. Each party shall bear its respective attorneys fees and costs.
11. This Settlement Agreement and Release of All Claims does not constitute an admission of liability by any party.
12. In any litigation brought to enforce the terms, or remedy a violation, of this Settlement Agreement, the Settlement Agreement shall be construed in accordance with Florida law, and the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.
13. PLAINTIFFS declare and acknowledge that PLAINTIFFS have relied on the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to PLAINTIFFS by their attorneys; and the terms of this Settlement Agreement are fully understood and voluntarily accepted by PLAINTIFFS.

14. PLAINTIFFS represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release of All Claims, except as otherwise set forth herein; that PLAINTIFFS have the sole right and exclusive authority to execute this Settlement Agreement and Release of All Claims and receive the sums specified in it; and that PLAINTIFFS have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Release of All Claims.
15. This Settlement Agreement and Release of All Claims contains the entire agreement between the PLAINTIFFS and the COUNTY, and shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.
16. This Settlement Agreement and Release of All Claims may be modified only in writing when the modification is executed by all parties to this Settlement Agreement and Release of All Claims.
17. The parties have entered into this Settlement Agreement and Release of All Claims on the advice and consent of their counsel who have explained all of its terms and conditions to their complete satisfaction.
18. This Settlement Agreement and Release of All Claims shall become effective immediately following execution by each of the parties.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS HEREOF:

I, **DARREN DUNCOMBE**, have hereunto set my hand and seal this 7th day of May, 2015.

IN THE PRESENCE OF:

Catherine M. Coia
WITNESS

D L D
Darren Duncombe, Individually and as
Parent and Natural Guardian of
Kansas Faith Duncombe

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 7th day of May, 2015, by Darren Duncombe, who ☒ is personally known to me; OR ☐ has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.



Catherine M. Coia
Notary Public
My Commission Expires:

I, **NETOSHIA HOWZELL-DUNCOMBE**, have hereunto set my hand and seal this 7th day of May, 2015.

IN THE PRESENCE OF:

Catherine M. Coia
WITNESS

NSH-Dunc
Netoshia Howzell-Duncombe, Individually
and as Parent and Natural Guardian of
Kansas Faith Duncombe


STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 7th day of May, 2015, by Netoshia Howzell-Duncombe, who ☐ is personally known to me; OR ☐ has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

Catherine M. Coia
Notary Public
My Commission Expires:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Rosalya Sia Baker-Barnes, Esq.
Attorney for Plaintiffs

5-7-15

Date

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: Shelley Vana, Mayor
Board of County Commissioners

Date

Witness

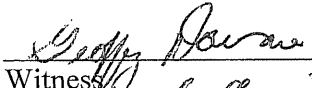
DEPARTMENT OF COMMUNITY SERVICES



By: Channell Wilkins, Director


5-18-15

Date



Witness *Geoffrey Downie*

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Helene C. Hvizd,
Assistant County Attorney,
Palm Beach County, Florida

5-18-15

Date

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,
Plaintiffs,

vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

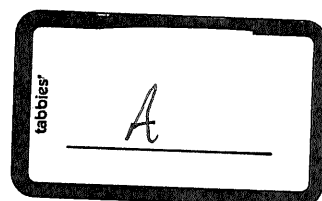
The Plaintiffs, D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D. with counsel, joined by co-defendant, Palm Beach County (the County), by and through its attorney, shows unto the Court that all matters in controversy have been compromised and settled to the satisfaction of Plaintiffs and the County. It is agreed that the action of the Plaintiffs against the County, be dismissed with prejudice, that the County be dismissed from this action, and that the Plaintiffs and the County each bear their own costs and attorney's fees. The Plaintiffs shall hold the County harmless from all subrogation claims and other liens that are or may be claimed by any party as a result of the matters giving rise to the Plaintiffs' claims against the County.

By:

Helene C. Hvizd Date
Florida Bar No. 868442
300 North Dixie Hwy, Suite 359
West Palm Beach, FL 33401
Attorney for the County
hhvizd@pbcgov.org
(561) 355-6337

By:

Rosalyn Sia Baker-Barnes, Esq. Date
Florida Bar No. 327920
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
Attorney for the Plaintiffs
rsb@searcylaw.com
(561) 686-6300



IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,
Plaintiffs,
vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

_____/

FINAL ORDER DISMISSING WITH PREJUDICE
CO-DEFENDANT PALM BEACH COUNTY

THIS CAUSE having come before the Court upon the foregoing Stipulation, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that Co-defendant PALM BEACH COUNTY, (the County), is hereby Dismissed with Prejudice from this action. Plaintiffs and the County shall bear their own costs and attorney's fees, and the Plaintiffs, D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, shall hold the County harmless from all subrogation and other liens that are or may be claimed by any party as a result of the matters giving rise to Plaintiffs' claims against co-defendant, the County.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2015.

DONALD W. HAFELE, Circuit Judge

Copies Furnished:

Rosalyn Sia Baker-Barnes, 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409

Helene C. Hvizd, 300 N. Dixie Hwy, Suite 359, West Palm Beach, FL 33401

Dorothy Kelly, 1210 West 26th Court, Riviera Beach, FL 33404

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

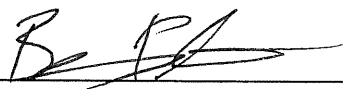
REQUEST DATE: 5/4/15 REQUESTED BY: County Attorney

REQUESTED FOR: D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor,
Case No.: 502013CA013900XXXXMB AG

REQUESTED AMOUNT: \$265,000 AGENDA DATE: June 2, 2015

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY:  DATE: 5/5/2015