

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This **SETTLEMENT AGREEMENT AND MUTUAL RELEASE** is entered into this 5<sup>th</sup> day of October, 2021 by and between **TOWN OF HAMPDEN and the BOARD OF SELECTMEN OF THE TOWN OF HAMPDEN** (hereinafter, collectively referred to as the “Plaintiffs” or “Hampden”), on the one hand, and the **HAMPDEN-WILBRAHAM REGIONAL SCHOOL DISTRICT and the HAMPDEN-WILBRAHAM REGIONAL SCHOOL COMMITTEE** (hereinafter collectively referred to as the “Defendants” or the “District”), on the other hand.

*WHEREAS* the Town of Hampden and the Town of Wilbraham are the member towns of a regional school district pursuant to the “Agreement Between The Towns of Wilbraham and Hampden, Massachusetts With Respect To The Formation Of A Regional School District as Amended” (hereinafter, the “Regional Agreement”); and,

*WHEREAS* on or about October 19, 2017, the School Committee voted to approve a so-called Reorganization Plan proposed by the Superintendent of Schools which provided for certain immediate actions including the closing of the Thornton W. Burgess Middle School (hereinafter, “TWB”) at the conclusion of the 2017-2018 school year; the return of TWB to the Town of Hampden effective on July 1, 2018; and the establishment of a grade K – 8 school at the Green Meadows School in Hampden commencing with the start of the 2018-2019 school year; and,

*WHEREAS* the Reorganization Plan also included certain other future components which would necessarily be dependent upon the amendment of the Regional Agreement between the Town of Hampden and the Town of Wilbraham. These future components included movement of all students in grade 8 from both Hampden and Wilbraham to Minnechaug Regional High

School effective at the start of the 2019-2020 school year; movement of all students in grade 7 from both Hampden and Wilbraham to Minnechaug Regional High School effective at the start of the 2022-2023 school year; reorganization in Wilbraham to reconfigure grade groupings including grade 6; and utilization of the Green Meadows School in Hampden as a K – 6 school effective with the start of the 2022-2023 school year; and,

**WHEREAS** on or about February 28, 2018, the Plaintiffs filed an action in Superior Court against the Defendants in which they sought both declaratory relief and injunctive relief to, among other things, prevent the closing of TWB and to prevent the merger of students in grades 6, 7 and 8 in Hampden with elementary students from Hampden at the Green Meadows School; and

**WHEREAS** the Plaintiffs also filed a motion for a preliminary injunction. The Court, after hearing from all Parties at a hearing on the requested preliminary injunction on March 30, 2018, advanced the matter for a trial on the merits and consolidated it with the preliminary injunction proceedings; and

**WHEREAS** the Defendants also filed a counterclaim against the Plaintiffs, which counterclaim is pending before the Court; and,

**WHEREAS** the Plaintiffs then subsequently filed an Amended Complaint; and,

**WHEREAS** the Parties have completed substantial pretrial discovery, which has included the exchange of automatic disclosures, the completion of eleven (11) depositions, the presentation to the Court of eleven substantive pre-trial motions, the exchange of voluminous documents, and the exchange of detailed expert witness disclosures; and

**WHEREAS**, the Parties submitted cross motions for Partial Summary Judgment and the Court allowed such motions in part and denied the motions in part; and

**WHEREAS** the parties are preparing for trial in this matter with plans to update discovery and conduct further depositions; and

**WHEREAS** the Plaintiffs contend that they have adequate grounds to prevail at trial and secure the relief requested in their Complaint; and,

**WHEREAS** the Defendants deny that the Plaintiffs have adequate grounds to prevail at trial and furthermore contend that they have adequate grounds to prevail in their counterclaim; and

**WHEREAS** the Plaintiffs deny that the Defendants have adequate grounds to prevail on their counterclaim; and

**WHEREAS** the Parties have expended substantial resources to date and are desirous of avoiding the additional cost, expense and uncertainty of a full trial involving the Parties and intend by this Agreement to resolve this dispute once and for all; and

**WHEREAS** there is a shared interest of the Parties to bring about an equitable and excellent education as expressed in the Regional School Agreement within the entire regional school district and a shared interest in capitalizing on the facilities and educational opportunities within the Hampden-Wilbraham Regional School District; and,

**WHEREAS** the Parties acknowledge that they are living in unprecedented times. The COVID-19 pandemic has changed education for all students in the School District, and there is great uncertainty concerning the impact the pandemic has had on the education of all students in the School District. The provision of an excellent and equitable education to all the District's students have and continues to be the highest priority of the Parties and the resolution of the outstanding litigation will serve to advance those interests; and,

**WHEREAS** the Parties are in agreement that it is essential for the members of the Hampden-Wilbraham Regional School District to engage in a meaningful and full-bodied process to create a Strategic Plan for the purposes of ensuring the continuation of an excellent and equitable education for all students in the system. The strategic plan contemplated will establish the future course for the District and identify critical areas of strengths and weaknesses. A strategic plan, which the Parties acknowledge is an evolving document which will change from time to time and will be subject to updates and modifications over time, is in the best interest of all HWRSD students, and both parties strongly desire a comprehensive, transparent, collaborative, process around its development; and

**WHEREAS** an essential step to demonstrate the cooperation of the Parties in participating in the creation of a Strategic Plan for such purposes, is that both parties agree to drop all legal claims asserted in the complaint and counterclaim and the Parties agree to do so in accordance with the terms of this Agreement; and

**WHEREAS** this Agreement will be entered into to advance the shared objectives of the Parties as identified herein and once signed will constitute a compromised settlement of disputed and contested claims and counterclaims between the Parties and will be the product of arms-length negotiations. It shall not be construed as an admission of any sort by the Parties.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual promises contained herein, and without conceding the merits of the positions of the Parties hereto, the Plaintiffs and the Defendants agree as follows:

1. To facilitate the development of a strategic plan which will provide for 21st century quality education and effectively maximize resources of the member Towns, the Parties enter into this agreement to settle this litigation and commit to a Strategic Plan process which shall include:
  - a) Two public forums in Hampden for data collection and community input phase of the Strategic Planning and at least two additional public forums in Hampden to present the draft and final report.
  - b) Membership on the strategic planning committee, subcommittees originating in the context of the strategic plan, and focus groups originating in the context of the strategic plan (collectively, the “committees”) to be comprised of the following representation. In the case of committees having a focus on issues of a global impact on the District, the composition should be of as nearly an equal number of members from both member towns as possible. In the case of committees having a focus which has a more pronounced or demonstrably greater impact on one of the member towns, the composition shall be appropriately weighted in favor of the town upon which the impact is greater, such weighting to be determined by the strategic plan managers. Appointments to the committees from each member town shall be made by that town’s board of selectmen.
  - c) A recognition that the School Committee has committed to resuming its previous approach to meeting sites, which contemplates the first meeting each month being held at Minnechaug Regional High School, and the remaining meetings each month being rotated at the District’s various other schools.
2. Upon approval of this Settlement Agreement the Parties agree to meet and engage, in good faith, for the purpose of discussing potential amendments to the current Regional School Agreement for the mutual benefits of all parties.
3. Among the topics to be included in the discussion shall be:
  - a. the town line borders used for purposes of assigning students to school buildings within the Regional School District;

- b. the language concerning the transfer of students within the Regional School District;
  - c. the process for calculating Assessments under the Regional School District including the potential for utilizing a rolling average; and
  - d. a comprehensive review of the Regional School Agreement as well as a periodic review at intervals in the future.
4. Upon Approval of this Settlement Agreement the School Committee agrees to maintain an educational configuration which will include operating at least one school in the Town of Hampden. This agreement would not serve as an impediment to exploration of any number of grade and school configurations across the District.
5. Upon approval of this Settlement Agreement by the Parties, a Stipulation of Dismissal with Prejudice in the form attached hereto as Exhibit A shall be filed with Hampden Superior Court in connection with the case captioned *Town of Hampden, et al. v. Hampden-Wilbraham Regional School District, et al, C.A. No. 1879-CV-00149*.
6. Further, the Parties agree to cooperate in the process of educating the District's stakeholders about the many positive aspects associated with resolving this litigation; conducting a transparent public process to create and implement a sustainable Strategic Plan; and conducting good faith discussions regarding potential changes to the Regional Agreement.
7. The strategic plan could help to inform potential amendments to the Regional Agreement.
8. The Plaintiffs acknowledge that by entering into this Settlement Agreement, they are waiving their claims to prevent the closure of TWB and to prevent the use of the Green Meadows School as a K – 8 school.
9. Except for the duties and obligations imposed by this Agreement, and in consideration of the terms and conditions stated herein, the sufficiency of which is hereby acknowledged, the Town of Hampden and the Board of Selectmen of the Town of Hampden, (hereinafter,

individually and collectively referred to as the “**TOWN RELEASING PARTIES**”), hereby release and forever discharge the Hampden-Wilbraham Regional School District and the Hampden-Wilbraham Regional School Committee (including its members William Bontempi, Michal Boudreau, Sherrill Caruana, Sean Kennedy, Patrick Kiernan, Lisa Murray and Maura Ryan, together with any former members), and their respective members, officers, agents, past and present employees, in both their individual and official capacities (hereinafter collectively referred to as “the **TOWN RELEASED PARTIES**”), from and against any and all debts, demands, actions, causes of action, suits, sums of money, contracts, controversies, agreements, promises, claims for attorneys’ fees, executions, liabilities, and any and all other claims of any kind, nature and description whatsoever, both known and unknown, both suspected or unsuspected, both anticipated or unanticipated, both in law and equity, which the **TOWN RELEASING PARTIES** has or ever had from the beginning of world through the date of this Settlement Agreement and Mutual Release as against the **TOWN RELEASED PARTIES** (or any of them), jointly or severally, relating in any way to the closing of the Thornton W. Burgess Middle School and the establishment of a K – 8 school at the Green Meadows School; and any claims raised or which could have been raised in *Town of Hampden, et al. v. Hampden-Wilbraham Regional School District, et al, Hampden Superior Court Civil Action No. 1879-CV-00149*. This release does not affect the rights and obligations of the Parties to this Agreement as to any lease between and among the Parties to this Agreement relating to the Thornton W. Burgess Middle School. The foregoing release shall become effective upon execution. This does not preclude the **TOWN RELEASING PARTIES** from filing or asserting claims for breach of this Agreement.

10. Except for the duties and obligations imposed by this Agreement, and in consideration of the terms and conditions stated herein, the sufficiency of which is hereby acknowledged, the Hampden-Wilbraham Regional School District and the Hampden-Wilbraham Regional School Committee, (hereinafter, individually and collectively referred to as the “**DISTRICT RELEASING PARTIES**”), hereby release and forever discharge the Town of Hampden and the Board of Selectmen of the Town of Hampden (including its members Donald Davenport, John Flynn and Craig Rivest, together with any former members), and their respective members, officers, agents, past and present employees, in both their individual and official capacities (hereinafter collectively referred to as “the **DISTRICT RELEASED PARTIES**”), from and against any and all debts, demands, actions, causes of action, suits, sums of money, contracts, controversies, agreements, promises, claims for attorneys’ fees, executions, liabilities, and any and all other claims of any kind, nature and description whatsoever, both known and unknown, both suspected or unsuspected, both anticipated or unanticipated, both in law and equity, which the **DISTRICT RELEASING PARTIES** has or ever had from the beginning of world through the date of this Settlement Agreement and Mutual Release as against the **DISTRICT RELEASED PARTIES** (or any of them), jointly or severally, relating in any way to the closing of the Thornton W. Burgess Middle School and the establishment of a K – 8 school at the Green Meadows School; and any counterclaims raised or which could have been raised in *Town of Hampden, et al. v. Hampden-Wilbraham Regional School District, et al, Hampden Superior Court Civil Action No. 1879-CV-00149*. This release does not affect the rights and obligations of the Parties to this Agreement as to any lease between and among the Parties to this Agreement relating to the Thornton W. Burgess Middle School. The foregoing release shall become effective upon



execution. This does not preclude the **DISTRICT RELEASING PARTIES** from filing or asserting claims for breach of this Agreement.

11. Any duly authorized amendment to the Regional Agreement made at any point in time in the future, whether the result of discussions contemplated by this Settlement Agreement or otherwise, would control and would supersede any contrary or conflicting language or contrary or conflicting provision contained in this Settlement Agreement.
12. This Settlement Agreement is intended to take effect as a sealed instrument and shall be governed by and construed under the laws of the Commonwealth of Massachusetts.
13. This Settlement Agreement contains the full and complete agreement by and between the Parties hereto. This Settlement Agreement may not be modified, amended, or otherwise affected except by writing signed by all Parties hereto.
14. All Parties have had the opportunity to review the terms of this Agreement with counsel of their own choosing.
15. Each party shall be responsible for its own attorneys' fees and costs, incurred in any way in connection with any matter which is the subject of this Settlement Agreement, including litigation of this case from its inception through the date of this Settlement Agreement.
16. The Plaintiffs and Defendants hereby acknowledge and represent to each other as a material inducement to their entry into this Settlement Agreement that each is entering into this Settlement Agreement as their respective free act and deed, after securing such legal and other advice as each wish, and not under any duress or compulsion.
17. Each of the parties hereto has been represented by counsel in the negotiating and drafting of this Agreement. Accordingly, the rules of construction of contracts relating to the resolution of ambiguities against the drafting party shall be inapplicable to this Agreement.

18. All Parties to this Agreement have received all approvals necessary to enter into this Agreement and have authorized the person signing the Agreement on its behalf to commit such party to each and all the terms and conditions hereof. It is expressly agreed that electronically transmitted or facsimile transmitted signatures shall be sufficient to bind the Parties, and that, if necessary, the document may be executed in multiple counterparts, with such duly executed counterparts constituting the entire enforceable integrated agreement.

19. To effectuate the settlement of this case and its dismissal in Hampden Superior Court, the Board of Selectmen of the Town of Hampden and the Hampden-Wilbraham Regional School Committee will each take the necessary vote in the form attached hereto as Exhibit B.

**EXECUTED** in triplicate as an instrument under seal on the date and year hereinabove set forth.

TOWN OF HAMPDEN and  
BOARD OF SELECTMEN OF TOWN OF HAMPDEN

\_\_\_\_\_  
By Donald Davenport,  
Chairman

\_\_\_\_\_  
Witnessed

Dated:

HAMPDEN-WILBRAHAM REGIONAL SCHOOL  
DISTRICT and HAMPDEN-WILBRAHAM  
REGIONAL SCHOOL COMMITTEE,

\_\_\_\_\_  
By Michal Boudreau,  
Chair  
Dated:

\_\_\_\_\_  
Witnessed

**EXHIBIT A**

**COMMONWEALTH OF MASSACHUSETTS**

Hampden, ss.

SUPERIOR COURT DEPARTMENT  
Civil Action No. 1879-CV-00149

TOWN OF HAMPDEN and BOARD OF  
SELECTMEN OF THE TOWN OF  
HAMPDEN,  
Plaintiffs,

v.

HAMPDEN-WILBRAHAM REGIONAL  
SCHOOL DISTRICT, HAMPDEN-  
WILBRAHAM REGIONAL SCHOOL  
COMMITTEE, AND ITS MEMBERS, IN  
THEIR OFFICIAL CAPACITY,  
Defendants.

**STIPULATION OF DISMISSAL WITH PREJUDICE**

It is stipulated that this action be dismissed with prejudice and without costs to either party under the terms and conditions set forth in the settlement agreement filed herewith.

Respectfully Submitted,  
Plaintiffs Town of Hampden and  
Board of Selectmen of Town of Hampden  
By Their Counsel,

Respectfully Submitted,  
Defendants Hampden-Wilbraham Regional  
School District and Hamden-Wilbraham  
Regional School Committee,  
By Their Counsel,

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Dated:

***EXHIBIT B***

On a motion made by \_\_\_\_\_  
Seconded by \_\_\_\_\_, it was voted to approve the settlement and mutual release in civil action number 1879-CV-149 pending in Hampden County Superior Court and to authorize our legal counsel to take all actions necessary to effectuate the settlement in the court.

Roll call vote: