

Office of the Superintendent of Schools  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, Maryland

June 27, 2005

MEMORANDUM

To: Members of the Board of Education

From: Jerry D. Weast, Superintendent of Schools

Subject: Settlement of Health Education Curriculum Lawsuit

WHEREAS, on May 5, 2005, in Citizens for a Responsible Curriculum v. Montgomery County Public Schools, Civil Action No. AW-05-1194 (D. Md.) (the "Lawsuit"), the United States District Court for the District of Maryland issued a temporary restraining order enjoining the Montgomery County Public Schools (MCPS), the Board of Education, and the superintendent from implementing a pilot program in six schools that would have modified the Health Education curriculum for Grade 8 and Grade 10; and

WHEREAS, on May 23, 2005, the Board, among other actions, withdrew the challenged curriculum revisions and associated resource materials and instructed the superintendent of schools to develop new revisions for approval by the Board; and

WHEREAS, it is in the best interests of MCPS and its students to resolve the Lawsuit on mutually agreeable terms; and

WHEREAS, the terms of the attached settlement agreement (the "Agreement") are reasonable and will achieve the desired goal of resolving the Lawsuit without further costly litigation and without compromising the sole right and responsibility of MCPS to determine the content of all curriculum, instructional materials, and associated resource materials, including curriculum that addresses the topic of sexual orientation; and

WHEREAS, the Plaintiffs in the lawsuit have agreed to and executed the Agreement; now therefore be it

Resolved, That the Board of Education hereby approves the terms of the Agreement and authorizes the President of the Board of Education and the superintendent of schools to execute the Agreement.

## SETTLEMENT AGREEMENT

CITIZENS FOR A RESPONSIBLE CURRICULUM and PARENTS AND FRIENDS OF EX-GAYS AND GAYS, on their own behalf and on behalf of their members (hereinafter referred to collectively as “Plaintiffs”), and THE BOARD OF EDUCATION OF MONTGOMERY COUNTY (the “Board”) (on its own behalf and on behalf of the Montgomery County Public Schools) and Superintendent of Schools, DR. JERRY D. WEAST (hereinafter collectively referred to as “MCPS”), for good and valuable consideration as set forth herein, enter into this Settlement Agreement (“Agreement”) through counsel effective on the date set forth below.

**WHEREAS**, on May 3, 2005, Plaintiffs filed a Complaint for Declaratory Judgment, Temporary, Preliminary and Permanent Injunctive Relief in United States District Court for the District of Maryland (Civil Action No. AW-05-1194) (“the lawsuit”) challenging revisions to the Comprehensive Health Education curriculum as a violation of the First and Fourteenth Amendments; and

**WHEREAS**, on May 5, 2005, the Court issued a Temporary Restraining Order which was subsequently extended by agreement of the parties; and

**WHEREAS**, on May 23, 2005, the Board passed a resolution which, among other things, withdrew revisions to the Grade 8 and Grade 10 Comprehensive Health Education curriculum that had been approved by the Board on November 9, 2004 and had been scheduled for a limited pilot program beginning in May 2005, and resolved that the terms of all current members of the Citizens Advisory Committee on Family Life and Human Development (“CAC”) expired as of May 23, 2005; and

**WHEREAS**, the parties hereto have agreed to resolve their dispute upon the terms and conditions more fully described herein.

**NOW, THEREFORE**, in consideration of the promises as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1.** Plaintiffs agree to execute and file, within two days after the date of this Agreement, a Notice of Dismissal in the form attached hereto as Exhibit A to cause the lawsuit to be dismissed with prejudice.

**2.** MCPS agrees that the revisions to the Grade 8 and Grade 10 Comprehensive Health Education curriculum recently requested by the Board in its May 23, 2005 resolution (the “Revisions”), as well as associated resource materials, will not discuss religious beliefs on the issues covered by the Revisions or characterize beliefs as attributed to specific religious denominations or sects. This would not preclude a general acknowledgement that there may be differing religious views on some of the topics discussed in the Revisions without discussion of what those differing beliefs are, which religious groups hold those beliefs, or which religious groups are supportive of homosexuality.

**3.** MCPS agrees to continue, consistent with the current directions provided annually to principals regarding implementation of programs on family life and human development, to provide parents of minor children eligible to receive instruction in the curriculum covered by the Revisions with notice of parent-information meetings at least three weeks before the first implementation date of the Revisions barring unforeseen circumstances, including notice that the Comprehensive Health Education curriculum and any teacher resource materials newly approved in connection with the Revisions will be available for inspection at those meetings and that the

Comprehensive Health Education curriculum (without any associated instructional or resource materials) will be available on the Montgomery County Public Schools website.

4. MCPS agrees to continue, consistent with the current directions provided annually to principals regarding implementation of programs on family life and human development, to hold parent-information meetings at least two weeks in advance of the first implementation date for the Revisions barring unforeseen circumstances, and to make any teacher resource materials newly approved by the Board in connection with the Revisions available for inspection at the parent-information meetings.

5. MCPS agrees that parent permission forms in connection with the implementation of the Revisions will specify the areas of emphasis set forth in COMAR 13A.04.18.03(B)(3)(c) to the extent such areas are subject to prior parental permission in the curriculum as it will be revised (including a statement that the “sexual variations” area of emphasis will include discussion of sexual orientation), and will indicate that the curriculum and any teacher resource materials newly approved by the Board in connection with the Revisions are available at the parent-information meetings.

6. MCPS agrees that the newly-constituted CAC, for the term during which the consultation on the Revisions contemplated by the Board’s May 23, 2005 resolution will occur, will include a maximum of 15 members and will include one representative of PFOX and one representative of CRC, to be selected by the Board in accordance with Section C(2)(a)(3) of Board Policy BMA, provided such representatives are Montgomery County residents and are otherwise qualified and able to serve on the committee. PFOX and CRC will inform the Board of their nominees in writing by July 1, 2005.

7. MCPS agrees that one representative of CRC and one representative of PFOX will be given the opportunity to comment within the current Board guidelines at the public comment session of the meeting where the Board takes action on this Agreement.

8. MCPS agrees to reimburse Plaintiffs in the amount of \$36,000, representing attorneys' fees incurred in connection with the proceedings on the temporary restraining order. Plaintiffs agree that they are not entitled to the payment by MCPS of any additional attorneys' fees or any other monies in connection with this litigation.

9. Nothing contained in this Agreement shall be construed to diminish or enlarge the legal right of MCPS to develop, revise or implement curriculum, including curriculum that provides information on sexual variations and promotes tolerance of others regardless of sexual orientation.

10. Nothing contained in this Agreement shall constitute, be treated, or be construed as an admission of liability or wrongdoing by either party, or in any way affect any position or argument that either party may wish to assert in any future litigation.

11. The parties agree that the temporary restraining order issued on May 5, 2005 and extended by agreement is dissolved upon approval of this Agreement by the parties, and that neither the Court's non-final temporary restraining order nor the associated opinion is preclusive of any issue in the event of future litigation.

12. This Agreement shall be binding upon the parties, their representatives and assigns.

13. This Agreement shall be governed and construed by the laws of the State of Maryland.

**14.** Should any provision of this Agreement be declared by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions will not be affected, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be part of this Agreement. Additionally, if any portion or portions of this Agreement may be held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such portion or portions are declared to be invalid and of no force and effect the Agreement shall be construed as if such invalid portion or portions had not been included herein.

**15.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes any prior or contemporaneous agreement, understanding or undertaking, whether written or oral, by or between the parties regarding these matters. The parties specifically agree that no representations or inducements other than the consideration recited herein have been made.

**16.** The parties represent that they have carefully read this Agreement and understand its terms and conditions without reservation. The parties acknowledge that they have had ample opportunity to consult with legal counsel of their choice regarding this Agreement. The parties further acknowledge that they are entering to this Agreement voluntarily.

**17.** The provisions of paragraphs 3, 4, 5, and 6 of this Agreement will expire at the end of the school year in which the Revisions are first implemented, excluding the test or pilot of the Revisions.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement as of the date set forth below through their duly authorized representatives.

**CITIZENS FOR A RESPONSIBLE CURRICULUM**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PARENTS AND FRIENDS OF EX-GAYS AND GAYS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE BOARD OF EDUCATION OF MONTGOMERY COUNTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DR. JERRY D. WEAST, SUPERINTENDENT OF SCHOOLS**

\_\_\_\_\_

Date: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

_____	)	
CITIZENS FOR A RESPONSIBLE	)	
CURRICULUM, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. AW-05-1194
	)	
MONTGOMERY COUNTY PUBLIC	)	
SCHOOLS, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE OF DISMISSAL WITH PREJUDICE**

Pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, plaintiffs Citizens for a Responsible Curriculum and Parents and Friends of Ex-Gays and Gays hereby give notice that all claims asserted in this action are hereby dismissed with prejudice.

Respectfully submitted,

\_\_\_\_\_

Counsel for Plaintiffs Citizens for a  
Responsible Curriculum and Parents  
and Friends of Ex-Gays and Gays

Dated: \_\_\_\_\_