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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RICHARD PANAS,

Plaintiff,

vs.

BOARD OF EDUCATION OF THE CITY  
OF VINELAND, CHARLES D.  
OTTINGER, and DONALD KOHAUT,

Defendants.

CIVIL ACTION

Case No.:

COMPLAINT

Richard Panas, by way of complaint against defendants,  
hereby avers:

**I. PARTIES**

1. Panas is an adult individual, residing at 60 Lisa Marie Terrace, Millville, New Jersey 08332. He is the assistant principal at the Landis Intermediate School in Vineland, New Jersey.

2. The Board of Education of the City of Vineland is a corporate governmental entity, with offices located at 625 Plum Street, Vineland, New Jersey. Pursuant to N.J.S.A. 18A:13-1 et

seq., it is the entity responsible for the administration and operation of the schools in the Vineland School District, including the Landis Intermediate School.

3. Charles Ottinger is an adult individual, residing at 2140 Adler Lane, Vineland, New Jersey 08360. At all relevant times, he was the superintendent of the Vineland School District.

4. Donald Kohaut is an adult individual, residing at 1721 Fiocchi Drive, Vineland, New Jersey 08360. At all relevant times he was the principal of the Landis Intermediate School.

## **II. JURISDICTION**

5. This is a civil rights action for deprivation of constitutional rights under color of state law, brought pursuant to 42 U.S.C. §1983, together with pendent state claims.

6. The Court has jurisdiction over plaintiff's federal claims pursuant to 28 U.S.C. §1331, as an action arising under the Constitution of the United States, and 28 U.S.C. §1343(a)(3), to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; and over plaintiff's pendent state claims under 28 U.S.C. §1367.

7. The Court has authority to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2001 et seq.

8. The Court has authority to award costs and attorney's fees on Panas's federal claims pursuant to 42 U.S.C §1988; and on his state claims pursuant to N.J.S.A 10:6-2(f) and N.J.S.A. 34:19-5(e).

9. Venue is properly laid in the District of New Jersey, pursuant to 28 U.S.C §1391(b), because all defendants reside in this district, and the events giving rise to this claim occurred in this district.

### **III. SUBSTANTIVE ALLEGATIONS**

10. Panas has been the assistant principal at the Landis Intermediate School since April 2004. During that period, he has been in charge of discipline at the school.

11. During the 2007-08 school year, Panas became aware of an increase in violent incidents among the students at the school. The number of incidents reported under the state Electronic Violence and Vandalism Reporting System (EVVRS) rose from three in 2006-07 to 36 in 2007-08. This increase in violence coincided with the elimination of a Landis-only disciplinary code and its replacement with a relatively less-stringent disciplinary code applicable uniformly to the district's four intermediate schools.

12. Concerned about this phenomenon, Panas brought it to the attention of Ottinger, Kohaut and the Landis school staff on

numerous occasions. He did so in writing, and afforded Ottinger and Kohaut a reasonable opportunity to correct the problem. Despite these efforts, neither Ottinger nor Kohaut made any serious effort to address the situation.

13. On December 10, 2008, during the public session of the board of education's regular meeting, a parent expressed her concern about the rise in violence at the Landis Avenue School, prompting a response from Mr. Ottinger in which he discounted the seriousness of the problem. Ottinger's remarks caused several district employees - including a teacher at Landis, a former Landis principal, and Panas - to write the board of education to protest Ottinger's remarks. Kohaut also sent a letter directly to the board as a result of this incident.

14. The escalation of violence at Landis worsened in January 2009. On January 7, police had to be called to the school as the result of a student's refusal to accept school discipline. While the recalcitrant student was in Panas's office, a scuffle occurred between police and the student in which the student was slammed against a wall and onto Panas's desk.

15. Panas subsequently prepared and sent to the board of education an e-mail and a binder of material describing the

deteriorating situation at Landis and his unsuccessful effort to bring it to the administration's attention.

16. On January 21, 2009, Panas appeared at the regular board of education meeting, together with approximately 15 teachers from the Landis Intermediate School. Panas and two of the teachers spoke to the board at the public session about the situation at Landis. They each described the situation and asked the board to consider re-implementing the more stringent disciplinary policy at Landis.

17. N.J.S.A. 18A:17-46 requires school districts to report to the state department of education, on a regular basis, certain incidents of violence, vandalism, weapons possession and substance abuse. The school principal is responsible for the reporting. After speaking to the board on January 21, Panas discovered that Kohaut had been underreporting the number of violent incidents that should have been reported pursuant to the statute and the EVVRS.

18. On January 26, the local newspaper reported Panas's appearance at the public meeting of the board. The article contained quotations from Panas's presentation to the board and additional quotations from Panas in response to a reporter's questions.

19. As a result of Panas' distribution of information binders to the board and his appearance at the public board of education meeting, Ottinger scheduled a meeting with Panas to review his conduct and consider imposing discipline.

20. That meeting occurred on February 2, 2009. Ottinger, Kohaut, two other members of the administration, and the school board solicitor were present. At that meeting, in addition to the discussion of Panas's recent conduct, Panas's counsel informed Ottinger and Kohaut that Panas had discovered what he reasonably believed to be 80 instances of Kohaut's underreporting of violence at the Landis School.

21. On February 4, 2009, Ottinger wrote Panas a letter imposing discipline on him. The letter stated that Panas had been found to have violated board policy 1100, dealing with the administrative "chain of command"; and board policy 9400, dealing with "media relations." Panas was placed on indefinite probation and informed his conduct was being "monitored." He was also told that any further violation of any district policy would result in a recommendation that the board withhold his salary increment and terminate him.

22. Panas grieved that discipline to the board of education, and was granted an informal hearing on his grievance, before the board's Personnel and Policy Committee, on June 10,

2009. After that hearing, the board determined to maintain Panas' probationary status but to modify the term to six months beginning June 10, 2009. The board declined to reverse the discipline or remove the probationary letter from Panas' file.

23. On March 16, 2009, Panas told the state Department of Education, the Cumberland County School Superintendent, and the board of education that Kohaut had been underreporting violent incidents at Landis School. He sent a packet of material to the state, county and local board documenting approximately 80 violent incidents that he reasonably believed Kohaut should have reported under EVVRS guidelines but did not.

24. Since January 21, 2009, Kohaut, Ottinger and the district have taken a series of adverse employment actions against Panas, including the following:

- On January 26, 2009, Kohaut ordered Panas to begin hallway monitoring duty.

- On January 26, 2009, Kohaut forbade Panas to summon police to school premises without his permission.

- On January 30, 2009, Kohaut forbade Panas to speak to teachers about the violence situation at the school.

- On February 4, after the February 2 meeting, Ottinger imposed an indefinite probation on Panas, as noted above.

- On April 15, the board solicitor sent Panas's counsel a letter incorrectly indicating that Panas and Kohaut's predecessor were "complicit" in underreporting of violence at Landis, stating that the district was investigating the matter, and intimating that Panas faced repercussions for that alleged conduct.

- On May 26, the board solicitor sent Panas's counsel a letter incorrectly indicating that Panas had violated the state law protecting the confidentiality of student records by sending reports of student violence, through his attorney, to the state.

- On June 2, Panas received his annual evaluation. After four consecutive years of being rated "Distinguished" (the highest possible rating), in 2009 Panas received an overall rating of "Competent," the district's lowest acceptable rating, and was rated "Unsatisfactory" in several areas. The reasons given for the reduced rating were his alleged violations of the chain of command and media policies, his alleged breach of confidentiality of student records, and his ostensible role in creating a "negative image" of the Landis School.

- On June 10, 2009, the board refused to repeal the improper discipline and, although it modified the term of probation to six months, it began the term on June 10 rather than February 4.

25. Although other employees of the district, including Kohaut, have communicated directly with the board of education about the situation at Landis School, only Panas has been disciplined.

26. The actions of the board, Ottinger and Kohaut, as described above, were undertaken under color of state law.

27. The actions of the board, as described above, were undertaken pursuant to an official policy, practice or custom of the board of education.

28. The actions of defendants, as described above, were willful, wanton, deliberate and malicious.

**COUNT ONE**  
**(First Amendment Violations)**

29. Panas incorporates the averments of paragraphs 1 through 28 as if fully set forth.

30. Panas has the right, protected under the First Amendment to the federal constitution, to speak freely as a citizen about matters of public interest, including matters pertaining to the increase in violence at the Landis Intermediate School. In communicating with, and appearing before, the Vineland Board of Education, and in speaking to the media about that situation, Panas was exercising that right.

31. Panas has the further right under the First Amendment not to be retaliated against by his employer or supervisors for

speaking out as a citizen on matters of public interest and concern, or for engaging in protected expressive activity.

32. The actions of defendants described above violated these rights by subjecting Panas to an extensive and ongoing campaign of retaliatory discipline and harassment, thereby punishing Panas for exercising his First Amendment rights.

33. As a proximate result of that violation of Panas's First Amendment rights, Panas has been injured in that he has suffered adverse employment action and improper discipline, injury to his reputation and to his standing as a school administrator, emotional and mental distress and other injury.

WHEREFORE, Panas demands judgment in his favor and against defendants as follows:

- A. For compensatory damages;
- B. For punitive damages;
- C. For appropriate declaratory and injunctive relief, including an order of the Court directing defendants to expunge the improper discipline imposed against Panas; revise his 2009 evaluation; and cease any further harassment of, or retaliation against, Panas for the exercise of his constitutional rights of free expression.
- D. For costs and attorney's fees pursuant to 42 U.S.C. §1988;

E. For all other appropriate relief.

**COUNT TWO**  
**(State Constitutional Violations)**

34. Panas incorporates the averments of paragraphs 1 through 33 as if fully set forth.

35. Panas brings this count pursuant to N.J.S.A. 10:6-2, the state Civil Rights Act, and directly under the state constitution.

36. Defendants' actions, as described above, violated Panas's rights of free speech and expression under Article I, Paragraphs 6 and 18 of the New Jersey Constitution.

37. As a proximate result of defendants' actions, Panas has been injured as set forth above.

WHEREFORE, Panas demands judgment in his favor and against defendants as follows:

- A. For compensatory damages;
- B. For punitive damages;
- C. For appropriate declaratory and injunctive relief, including an order of the Court directing defendants to expunge the improper discipline imposed against Panas; revise his 2009 evaluation; cease any further harassment of, or retaliation against, Panas for the exercise of his state constitutional rights of free expression;

D. For costs and attorney's fees pursuant to N.J.S.A. 10:6-2(f);

E. For all other appropriate relief.

**COUNT THREE**  
**(New Jersey Conscientious Employee Protection Act)**

38. Panas incorporates the averments of paragraphs 1 through 37 as if fully set forth.

39. Panas reasonably believed that the disciplinary policy and practice at the Landis Intermediate School was incompatible with a clear mandate of public policy concerning the public health, safety and welfare, and specifically, with the public policy, embodied in numerous state statutes and regulations, that public schools be safe and violence-free.

40. Panas objected to this policy or practice and attempted to have it changed. He notified his supervisors, Ottinger and Kohaut, in writing about it, and afforded them a reasonable opportunity to address and rectify the problem. When they did not do so, he disclosed the situation directly to the board of education.

41. In addition, Panas reasonably believed that Kohaut was underreporting violent activity at Landis Intermediate School in violation of state law. He objected to this underreporting, disclosed his belief both to the board and to Ottinger and

Kohaut, and further reported it to the state Department of Education and the county superintendent of schools.

42. Defendants retaliated against Panas for his objections and disclosures as described above, by imposing improper discipline, subjecting him to a campaign of retaliatory harassment, threatening him with prosecution for trumped-up violations of state law, providing him with an unjustified unsatisfactory evaluation, and by taking other similar adverse employment actions against him.

43. As a proximate result of defendants' actions, Panas has been injured as set forth above.

WHEREFORE, plaintiff demands judgment in his favor and against defendants as follows:

- A. For compensatory damages;
- B. For punitive damages;
- C. For appropriate declaratory and injunctive relief, including an order of the Court directing defendants to expunge the improper discipline imposed against Panas; revise his 2009 evaluation; and cease any further harassment of, or retaliation against, Panas for the exercise of his constitutional rights of free expression;
- D. For costs and attorney's fees pursuant to N.J.S.A. 34:19-5(e);

E. For all other appropriate relief.

BARRY, CORRADO, GRASSI & GIBSON, P.C.

DATED: 6/22/09

\_\_\_\_s/ Frank L. Corrado\_\_\_\_\_  
FRANK L. CORRADO, ESQUIRE

**DEMAND FOR JURY TRIAL**

Jury trial is herewith demanded on all issues raised herein.

BARRY, CORRADO, GRASSI & GIBSON, P.C.

DATED: 6/22/09

\_\_\_\_s/ Frank L. Corrado\_\_\_\_\_  
FRANK L. CORRADO, ESQUIRE

**A RESOLUTION AUTHORIZING THE SETTLEMENT  
OF LITIGATION FILED BY RICHARD PANAS**

**BE IT RESOLVED** by the Vineland Board of Education that:

1. The terms and conditions of the Settlement Agreement and Release on file with the Secretary of the Board relating to the Richard Panas v. Board of Education of the City of Vineland, et al lawsuit are hereby approved.
  
2. The Board hereby authorizes the New Jersey Insurance School Board Association Insurance Group to settle the aforementioned lawsuit subject to the terms and conditions of the Settlement Agreement and Release.
  
3. The President and Board Secretary are hereby authorized and directed to execute the Settlement Agreement and Release on file with the Board Secretary on behalf of the Vineland Board of Education.

**ADOPTED:** December 9, 2009

**ATTEST:**

**VINELAND BOARD OF EDUCATION**

BY: Kevin J. Franchetta  
KEVIN FRANCHETTA  
BOARD SECRETARY

BY: Frank Giordano  
FRANK GIORDANO  
BOARD PRESIDENT

**SETTLEMENT AGREEMENT AND RELEASE**

This Release, dated December \_\_\_\_\_, 2009 is given by the Releasor, **RICHARD PANAS**, complainant, referred to as "I", to the releasee(s), **BOARD OF EDUCATION OF THE CITY OF VINELAND, CHARLES D. OTTINGER, and DONALD KOHAUT**, "you", or "defendant(s)".

1. **Recitals.** On or about June 23, 2009, the Complainant(s) filed a complaint against the defendant(s) with the District Court of New Jersey, Docket No. 1:09-cv-03003-RBK-AMD. This complaint arose out of certain alleged violations of the First Amendment and the Conscientious Employee Protection Act and other acts or omissions by the defendant(s). In the complaint, the Complainant(s) sought to recover monetary damages and punitive damages from the defendant(s).

This insurer, the New Jersey School Board Association Insurance Group, (hereinafter, "NJSBAIG") is the liability insurer of the defendant(s), **BOARD OF EDUCATION OF THE CITY OF VINELAND**, (hereinafter, "the Board") and as such would be obligated to pay any judgment obtained against the Defendant(s) which is covered by the policy.

The parties have entered into a settlement agreement in order to provide that a certain payment be made and other conditions be met in full settlement and discharge of all claims against the

defendant(s) which are or might have been the subject matter of the complaint upon the terms and the conditions set forth in this release.

2. **Release and Discharges**. In consideration of the payment recited in Section 11 and the additional terms set forth in Section 12 of this release, I, **RICHARD PANAS**, completely release and forever discharge the defendant(s) of and from any and all claims made or not as yet made, whether known or unknown, including those of which I am not aware and those not mentioned in this Release, and all past claims, demands, obligations, actions, causes of action, damages, costs, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery and whether for compensatory or punitive damages, which I have now, which any way grow out of or which are the subject of the complaint (and all related pleadings), including without any limitation, any and all known or unknown claims for economic loss, bodily, emotional, and personal injuries, if related to this lawsuit, which may have resulted or may result from the alleged acts or omissions of the defendant(s). This release, on my part, shall be a fully binding and a complete settlement between myself, the defendant(s) and the insurer, their assigns and successors.

I specifically release the following claims: any and all claims arising out of a Complaint filed District Court of New Jersey with the caption **RICHARD PANAS V. BOARD OF EDUCATION OF THE CITY OF VINELAND, CHARLES D. OTTINGER, and DONALD KOHAUT**, bearing Docket Number 1:09-cv-03003-RBK-AMD. I will not file now, nor ever re-file the complaint, or assert the claims set forth therein, giving rise to the above referenced District Court Complaint, bearing Docket Number 1:09-cv-03003-RBK-AMD.

3. **Warranty of Capacity to Execute Agreement.** I represent and warrant that no other person or entity has now or has had any interest in the claims, demands, obligations, or causes of action referred to in this release and that I have the sole right and exclusive authority to execute this release and receive the sum specified. I further represent that I have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this release.

4. **Entire Agreement.** This release contains the entire agreement between the Complainant(s), the defendant(s) and the insurer concerning the matters set forth in this document and shall be binding upon and enure to the benefit of the executors,

administrators, personal representatives, heirs, successors and assigns of each.

5. **Representation of Comprehension of Document.** In executing this release, I represent that I have relied upon the legal advice of my attorney, Frank L. Corrado, Esq., who is the attorney of my own choice and that the terms of this release have been completely read and explained by my attorney and that those terms are fully understood and voluntarily accepted.

6. **No Admission of Liability.** It is further understood that in agreeing to settle this matter, the defendant(s) are not admitting to liability in any fashion but are authorizing their respective insurance companies, including the New Jersey School Board Association Insurance Group, to settle this claim.

7. **Liens.** I hereby certify that no liens exist against the proceeds of this settlement that are being paid to me, or that if any liens do exist, they will be paid in full, or compromised and released by me. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, I agree that I will pay that lien in full. This is intended to include all liens, including but not limited to attorney's liens, medical provider liens, Medicare and Medicaid

liens, worker's compensation liens, all statutory or common law liens, and judgment liens. I agree to indemnify and hold you and NJSBAIG harmless in connection with any claims made against you by anyone seeking payment of any liens. I will indemnify and hold you and NJSBAIG harmless for any money spent in paying any such liens and/or defending against such a claim, including but not limited to attorney's fees, costs of suit, and interest.

8. **Indemnification.** I agree to hold you and NJSBAIG harmless and indemnify you and NJSBAIG and defend you and NJSBAIG against any claim, suit or demand for payment of any claims, bills or expenses arising out of the events that prompted this lawsuit. I will not institute, pursue or participate in any action or proceedings of any kind or otherwise seek relief of any kind, including but not limited to damages, fees, costs, reimbursements, expenses or interest, against or from you and NJSBAIG, and hereby agree to indemnify, hold you and NJSBAIG harmless, release and forever discharge you from all suits, claims, actions, causes of action, obligations, liabilities or demands for any and all claims and rights referred to in this Release.

9. **Non-disparagement Agreement.** The parties mutually agree not to defame or disparage one another with respect to any matter stemming from the facts giving rise to this lawsuit, the lawsuit

itself, or as to Richard Panas' employment with the Board of Education of the City of Vineland prior to the date of this Settlement Agreement and Release.

10. **Attorney's Fees.** Each party hereto shall bear his own attorney's fees and costs arising from this action and in connection with the Complaint, this Settlement Agreement and Release, and the matters and documents referred to herein, the filing of a dismissal of the Complaint, and all related matters. I shall be totally responsible for the payment of my attorney's fees and any attorney's liens arising out of representation of me by any attorney which has been or may be asserted in connection with this claim or related matters.

11. **Payment.** No later than thirty (30) days from this executed Settlement Agreement and Release, the Board of Education of the City of Vineland and the New Jersey School Board Association Insurance Group will pay to Complainant Richard Panas the sum of \$60,000.00 as consideration for the undertakings of this Agreement. The settlement checks shall be made payable to "Frank L. Corrado, Esq., in trust for Richard Panas". I agree that we will not seek anything further including any other payment from you. I agree and acknowledge that payment is made in settlement of

a disputed claim to save further costs of litigation and it is not nor shall be construed as an admission of liability.

12. **Additional Settlement Terms.** In addition to the payment set forth in Paragraph 11 of this Settlement Agreement and Release, the following additional settlement terms are agreed upon:

1. Plaintiff's written reprimand for violations of the chain of command and media relations policies shall be expunged.

2. Plaintiff's 2008-09 evaluation shall be expunged from Plaintiff's personnel file. The administration shall place a memo in Plaintiff's personnel file stating that no negative inference should be drawn from the absence of a 2008-09 evaluation.

3. Defendants agree to not retaliate against Richard Panas in the future.

4. Absent some cause relating to Panas's character or his performance as an administrator, subsequent to the Board's approval of the Settlement Agreement and Release, the Board will provide a appropriately favorable recommendation to any future potential employer should Richard Panas seek employment outside the Vineland School District.

I agree and acknowledge that these additional terms are made in settlement of a disputed claim to save further costs of

litigation and it is not nor shall be construed as an admission of liability.

13. **Full and Final Agreement of the Parties.** This is a full and final Agreement covering all claims previously set forth and all unknown, undisclosed and unanticipated losses, wrongs, injuries, debts, claims or damages to the parties which may have arisen, or may arise from any act or omission prior to the date of execution of this Agreement.

14. **Severability.** The provision of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs will remain fully valid and enforceable.

14. **Modifications or Changes.** The parties expressly understand that any modification or change to this Agreement must be in writing and executed by all of the parties.

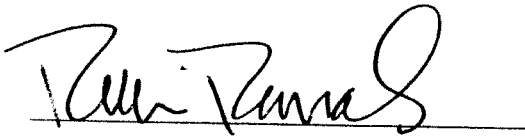
15. **Who is Bound.** This Agreement shall be binding upon and shall enure to the benefit of Richard Panas and the Defendants and their respective heirs, executors, administrators, successors and assigns. If it shall be necessary for any party hereto to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the

prevailing party in such action shall be entitled to costs and reasonable attorney's fees.

16. **Choice of Law.** This Agreement shall be construed and governed by the laws of the State of New Jersey.

17. Signatures. I understand and agree to the terms of this Settlement Agreement and Release. If this Settlement Agreement and Release is made by a corporation, its proper corporate officers sign and its corporate seal is affixed. The within Agreement may be signed in counterparts.

Witnessed or Attested by:

A handwritten signature in cursive script, appearing to read "Richard Panas", is written over a horizontal line.

Richard Panas, Complainant

Dated: 12/14/09

Witnessed or Attested by:

Frank N. Giordano

Frank Giordano, President, Board of Education of City of Vineland

Dated:

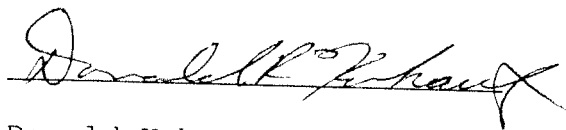
Witnessed or Attested by:

Charles D. Ottinger

Charles D. Ottinger

Dated:

Witnessed or Attested by:

A handwritten signature in cursive script, appearing to read "Donald Kohaut", written over a horizontal line.

Donald Kohaut

Dated: