

McGivney & Kluger, P.C.
Chuck McGivney, Esq., #031901986
23 Vreeland Road- Suite 220
Florham Park, New Jersey 07932
(973) 822-1110
Attorneys for Plaintiff,

File No. 0032G-0310

CHRISTOPHER MOORE,

Plaintiff,

v.

TIM DELEA, THE TOWNSHIP OF
SPARTA, THE SPARTA BOARD OF
EDUCATION, ROBERT DELEA,
KAREN DELEA, JOHN DOES (1-10) and
ABC COMPANIES (1-5),

Defendants.

SUPERIOR COURT OF NEW JERSEY
SUSSEX COUNTY – LAW DIVISION
DOCKET NO. SSX-L-618-12

Civil Action

**FIRST AMENDED COMPLAINT, JURY
DEMAND AND DESIGNATION OF TRIAL
COUNSEL**

Plaintiff, Christopher Moore, residing at 460 Main Street in the Township of Sparta, County of Sussex, State of New Jersey, by way of the first amended Complaint against the defendants states as follows:

FIRST COUNT

1. On or about October 26, 2009, Plaintiff, Christopher Moore, was lawfully on the premises of the path from Sparta High School to Station Park in the Township of Sparta, County of Sussex, State of New Jersey, which is owned, controlled, operated and/or maintained by defendants, The Township of Sparta and/or the Sparta Board of Education.

2. On October 26, 2009, Christopher Moore was caused to be injured as a result of the dangerous and hazardous condition of the path from Sparta High School to Station Park. The Defendants were negligent in that they: (a) knew or should have known that the hazardous condition existed prior to the date and time of the accident and failed to use reasonable care in correcting the hazard or warning the plaintiff; (b) did not keep the premises in a safe condition; (c) did not exercise proper care; (d) caused a dangerous and hazardous condition to exist; (e) allowed a nuisance to exist; (f) failed to provide proper security and/or warnings on the subject property; (g) failed to provide proper safe and clear passage on the path for persons allowed and invited to use the property and/or; (h) were otherwise careless and negligent.

3. Due to the omissions committed by the Defendants, The Township of Sparta and the Sparta Board of Education, on October 26, 2009, the Defendant, Tim Delea, assaulted the Plaintiff, Christopher Moore.

4. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff, Christopher Moore was caused to suffer severe, painful and permanent bodily and emotional injuries which have caused and will in the future cause him to incur various and diverse expenditures for medical treatment and care which have, in the past, and will, in the future, continue to require him to undergo medical attention, procedures, therapies, consultations and other various treatments which have, in the past, and will, in the future, continue to incapacitate him and render him incapable of pursuing his regular and ordinary occupation activities and pursuits and also may result in significant lost wages as a result of the negligence of defendants.

5. Plaintiff timely filed his tort claims notice with the Township of Sparta and the Sparta Board of Education on or about January 22, 2010.

6. At the time of the accident, the Plaintiff, Christopher Moore, was a minor.

7. Defendants, John Does (1-10) and ABC Companies (1-5) are fictitious names representing one or more persons, partnerships, corporations or otherwise, whose identities are presently unknown to plaintiff and who are liable to plaintiff as fully and completely as set forth herein as to any other defendant. Despite diligent inquiry, the identities of these fictitious defendants are not known and will be more specifically named as the ongoing course of discovery reveals.

WHEREFORE, Plaintiff, Christopher Moore, demands judgment against Defendants, The Township of Sparta and The Sparta Board of Education for damages, together with interest, cost of suit and such further relief as the court may deem appropriate.

SECOND COUNT

1. Plaintiff repeats and realleges the allegations of the First Count of the First Amended Complaint as if set forth at length herein.

2. On or about October 26, 2009, Plaintiff, Christopher Moore, was lawfully on school grounds controlled by Defendant the Sparta Board of Education and/or Defendant the Township of Sparta, and more specifically, was on the premises of the path from Sparta High School to Station Park in the Township of Sparta, County of Sussex, State of New Jersey, when he was assaulted by Defendant Tim Delea.

3. Prior to the October 26, 2009 assault, Defendant Tim Delea exhibited a series of behaviors directed towards plaintiff tantamount to "harassment, intimidation, and/or bullying" as defined per N.J.S.A. 18A:37-13 and 14, *et seq.* (hereinafter referred to as the "Anti-Bullying Act").

4. The harassment, intimidation, and/or bullying perpetrated by Defendant Tim

Delea against Plaintiff, Christopher Moore, that pre-dated the October 29, 2009 assault, was of such a nature that a reasonable person should have known that it would have the effect of harming a student, such as Plaintiff; of placing a student in reasonable fear of harm to his or her person or damage to his or her property; or placing a student in reasonable fear of harm to his or her person or damage to his or her property; or having the effect of insulting or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, the orderly operation of the school.

5. Defendants, the Township of Sparta and the Sparta Board of Education, were on notice of the harassment, intimidation and/or bullying perpetrated by Defendant Tim Delea against Plaintiff, Christopher Moore that pre-dated the October 26, 2009 assault and failed to take reasonable action in accordance with the Anti-Bullying Act to prevent such conduct from occurring and/or to properly discipline Tim Delea in accordance with the Anti-Bullying Act subsequent to the aforementioned occurrence of conduct.

6. Prior to the October 26, 2009 assault, Defendant Tim Delea engaged in a series of conduct tantamount to harassment, intimidation and/or bullying as defined in the Anti-Bullying Act as directed against other students.

7. Defendants the Township of Sparta and the Sparta Board of Education were on notice of the harassment, intimidation and bullying perpetrated by Tim Delea as directed against other students and failed to take reasonable action in accordance with the Anti-Bullying Act to prevent such conduct from occurring and/or to properly discipline Tim Delea in accordance with the Anti-Bullying Act subsequent to the aforementioned occurrence of conduct.

8. Defendants the Township of Sparta and Sparta Board of Education, by and through its employees, agents, servants, and/or assigns, were responsible for the supervision of

the minor Christopher Moore, Defendant Tim Delea, and other students while they were on school premises and had a duty to provide a safe environment.

9. Defendants the Township of Sparta and Sparta Board of Education, by and through its employees, agents, servants and/or assigns owed to all members, of the public, and more specifically, to the Plaintiff, Christopher Moore, to exercise reasonable care for the supervision and safety of its students and act in accordance with the Anti-Bullying Act relative to any incidences of harassment, intimidation and/or bullying.

10. Both prior to and on the date of the aforementioned assault, October 26, 2009, Defendants the Township of Sparta and the Sparta Board of Education, by and through its employees, agents and/or assigns, supervised its students in such a careless and negligent manner and acted in violation of the Anti-Bullying Act so as to allow the Defendant, Tim Delea, to be unsupervised and to be given an opportunity to assault the Plaintiff, Christopher Moore, while on school property.

11. Plaintiff timely filed his tort claims notice with the Township of Sparta and the Sparta Board of Education on or about January 22, 2010.

12. At the time of the accident, the Plaintiff, Christopher Moore, was a minor.

13. As a direct and proximate result of the wrongful acts and omissions of the Defendants the Township of Sparta and Sparta Board of Education, by and through it employees, agents, servants and/or assigns, the Plaintiff, Christopher Moore, underwent and was exposed to prolonged history of harassment, intimidation, and/or bullying, culminating in the October 26, 2009 assault, causing him to suffer severe, painful and permanent bodily and emotional injuries which have caused and will in the future cause him to incur various and diverse expenditures for medical treatment and care which have, in the past, and will, in the future, continue to require

him to undergo medical attention, procedures, therapies, consultations and other various treatments which have, in the past, and will, in the future, continue to incapacitate him and render him incapable of pursuing his regular and ordinary occupation activities and pursuits and also may result in significant lost wages as a result of the negligence of defendants.

WHEREFORE, Plaintiff, Christopher Moore, demands judgment against Defendants, The Township of Sparta and The Sparta Board of Education for damages, together with interest, cost of suit and such further relief as the court may deem appropriate.

THIRD COUNT

1. Plaintiff repeats and realleges the allegations of the First Count of the First Amended Complaint as if set forth at length herein.
2. On or about October 26, 2009, Plaintiff, Christopher Moore, was lawfully on school grounds controlled by Defendant the Sparta Board of Education and/or Defendant the Township of Sparta, and more specifically, was on the premises of the path from Sparta High School to Station Park in the Township of Sparta, County of Sussex, State of New Jersey, when he was assaulted by Defendant Tim Delea.
3. Prior to the October 26, 2009 assault, Defendant Tim Delea exhibited a series of behaviors directed towards plaintiff tantamount to "harassment, intimidation, and/or bullying" as defined per N.J.S.A. 18A:37-13 and 14, *et seq.* (hereinafter referred to as the "Anti-Bullying Act").
4. The harassment, intimidation, and/or bullying perpetrated by Defendant Time Delea against Plaintiff, Christopher Moore, that pre-dated the October 29, 2009 assault, was based on the perceived sexual orientation of Plaintiff.
5. Defendants the Township of Sparta and Sparta Board of Education failed to

reasonably address the harassment, intimidation, and/or bullying perpetrated by Defendant Time Delea against Plaintiff, Christopher Moore, that pre-dated the October 29, 2009 assault, in violation of the New Jersey Law Against Discrimination, N.J.S.A. §§ 10:5-1 to -49, and in doing so, deprived Plaintiff of the school's accommodations, advantages, facilities and/or privileges.

6. As a direct and proximate result of the wrongful acts and omissions of the Defendants the Township of Sparta and Sparta Board of Education, by and through its employees, agents, servants and/or assigns, the Plaintiff, Christopher Moore, underwent and was exposed to prolonged history of harassment, intimidation, and/or bullying, culminating in the October 26, 2009 assault, causing him to suffer severe, painful and permanent bodily and emotional injuries which have caused and will in the future cause him to incur various and diverse expenditures for medical treatment and care which have, in the past, and will, in the future, continue to require him to undergo medical attention, procedures, therapies, consultations and other various treatments which have, in the past, and will, in the future, continue to incapacitate him and render him incapable of pursuing his regular and ordinary occupation activities and pursuits and also may result in significant lost wages as a result of the negligence of defendants.

WHEREFORE, Plaintiff, Christopher Moore, demands judgment against Defendants, The Township of Sparta and The Sparta Board of Education for damages, together with interest, cost of suit and such further relief as the court may deem appropriate.

FOURTH COUNT

1. Plaintiff repeats and realizes the allegations of the First and Second Counts of the First Amended Complaint as if set forth at length herein.

2. Defendants, Robert Delea and Karen Delea are the parents of Tim Delea, residing at 21 Stanhope Road, Sparta, New Jersey.

3. Defendants, Robert Delea and Karen Delea had a duty to prevent the risk of harm to Christopher Moore and others through the supervision and control of defendant, Tim Delea.

4. As a result of Tim Delea being the son of and residing with Robert Delea and Karen Delea, defendant parents had a duty to the public and individuals like Christopher Moore, to supervise and be aware of the conduct of defendant, Tim Delea. Defendant's parents failed to exercise their duty to Christopher Moore when defendant, Tim Delea was allowed to engage in the harassment of Christopher Moore.

5. Defendants, Robert Delea and Karen Delea knew or should have known of defendant, Tim Delea's activity based upon defendant, Tim Delea's prior conduct and the visible manifestations of his activity while residing with his defendant parents.

6. Defendant, Tim Delea's prior conduct and visible manifestations were sufficient to put defendant parents on notice that harm to Christopher Moore and others could occur.

WHEREFORE, Plaintiff, Christopher Moore, demands judgment against Defendants, Robert Delea and Karen Delea for damages, together with costs, fees, penalties, interest, disbursements and attorneys fees.

FIFTH COUNT

1. Plaintiff repeats and realleges the allegations of the First, Second, and Third Counts of the First Amended Complaint as if set forth at length herein.

2. On or about October 26, 2009, the Defendant, Tim Delea, with malice aforethought, intended to cause physical harm upon the Plaintiff, Christopher Moore.

3. The Defendant, Tim Delea, intentionally, maliciously, and without provocation, assaulted the Plaintiff.

4. As a direct result of the Defendant Tim Delea's negligence as aforementioned,

Plaintiff Christopher Moore was caused to suffer severe, painful and permanent bodily and emotional injuries which have caused and will in the future cause him to incur various and diverse expenditures for medical treatment and care which have, in the past, and will, in the future, continue to require him to undergo medical attention, procedures, therapies, consultations and other various treatments which have, in the past, and will, in the future, continue to incapacitate him and render him incapable of pursuing his regular and ordinary occupation activities and pursuits and also may result in significant lost wages as a result of the negligence of this defendant.

WHEREFORE, Plaintiff, Christopher Moore, demands judgment against Defendant, Time Delea, for damages, together with interest, cost of suit and such further relief as the court may deem appropriate.

JURY DEMAND

Pursuant to R. 4:35-1, Plaintiff, Christopher Moore, hereby demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-2, the Court is advised that Chuck McGivney, Esq., is hereby designated as trial counsel on behalf of the Plaintiff, Christopher Moore.

CERTIFICATION

I hereby certify that this matter is not the subject matter of any other suit presently pending in any other court or in any arbitration proceeding. At this time, I know of no other parties not named herein that should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CERTIFICATION OF SERVICE PURSUANT TO RULE 4:6-1(d)

I hereby certify that this pleading was served within the time period allowed by Rule 4:6.

**McGivney & Kluger, P.C.
Attorneys for Plaintiff, Christopher Moore**

By:



Chuck McGivney, Esq.

Dated: January 29, 2015

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is hereby entered into by and between the following Parties, effective May 26, 2016:

CHRISTOPHER MOORE, referred to herein as "PLAINTIFF" or "RELEASOR"; and

SPARTA BOARD OF EDUCATION, including but not limited to its present and former Board Members, Administrators, Teachers, Professional Staff, Employees, Agents, Servants, as well as its Joint Insurance Fund, School Alliance Insurance Fund and its Third Party Administrator Highland Claim Services, Inc. collectively referred to herein as "DEFENDANT" and "RELEASEE."

BACKGROUND

1. Plaintiff filed a Complaint and Amended Complaint against the Sparta Board of Education in the Superior Court of New Jersey, Law Division, Sussex County, under Docket No. SSX-L-618-12.

2. In order to avoid the uncertainties and expense of trial, all claims by and between Plaintiff Christopher Moore and Defendant Sparta Board of Education were settled on May 26, 2016. As set forth in detail below, Defendant Sparta Board of Education agrees to pay \$85,000 to Plaintiff in consideration of Plaintiff Christopher Moore's agreement to release and hold harmless Defendant Sparta Board of Education of any and all claims arising out of the underlying matter that is the subject of the litigation entitled Christopher Moore v. Tim Delea, et.als., Docket No. SSX-L-618-12.

RELEASE

3. Based upon the payment as set forth below, Plaintiff Christopher Moore does hereby release, hold harmless, and extinguish any and all liabilities, claims, actions, suits, damages, losses, costs, applications for reimbursement of attorneys' fees and litigation costs and expenses of any nature or kind whatsoever that have been, could have been or might in the future be asserted by Plaintiff Christopher Moore against Defendant Sparta Board of Education, specifically in regard to the allegations plead in the Complaint and Amended Complaints filed in the Superior Court of New Jersey, Law Division, Sussex County, entitled Christopher Moore v. Tim Delea et.als., Docket No. SSX-L-618-12.

4. Plaintiff agrees to satisfy any and all liens, claims or demands arising out of the underlying matter that is the subject of the litigation entitled Christopher Moore v. Tim Delea et.als., Docket No. SSX-L-618-12 and/or submitted against the proceeds of this settlement, including, but not limited to, any lien, claim or demand submitted by any medical provider, physician, hospital, therapist, or other health care giver or insurer seeking compensation or reimbursement for the services provided to Plaintiff; or any other lien arising out of the underlying matter that is the subject of the litigation entitled Christopher Moore v. Tim Delea et.als., Docket No. SSX-L-618-12.

5. With respect to Medicare, Defendant Sparta Board of Education has requested and Plaintiff Christopher Moore has agreed to determine whether Medicare has made conditional payments on behalf of Plaintiff, or is reasonably anticipated to make conditional payments in the future, (future treatment needed for a Medicare recipient, over the age of 62.5 or applied for Social Security Disability, et al.), or if Plaintiff is otherwise required to report the settlement due to eligibility as defined by 42 USC Section 1395(y), (the Medicare Secondary Payer Statute).

Plaintiff Christopher Moore agrees that if Medicare has made conditional payments or if Plaintiff is eligible as defined by 42 USC Section 1395(y), Plaintiff Christopher Moore will comply with Medicare Services ("CMS"), and/or allocate a portion of this settlement for future Medicare obligations, and/or submit a Medicare Set Aside ("MSA") to CMS prior to distribution of the settlement proceeds. Plaintiff Christopher Moore acknowledges that Defendant Sparta Board of Education, its attorneys and its insurers have taken Medicare's interests into consideration by requiring that Plaintiff comply with the Medicare Secondary Payer Statute as a condition of settlement and that Plaintiff Christopher Moore will hold harmless and indemnify Defendant Sparta Board of Education, its attorneys and its insurers for any non-compliance should CMS act against the Defendant, its attorneys or its insurers.

CONSIDERATION

6. Based upon the payment set forth below, Plaintiff Christopher Moore shall execute a Stipulation of Dismissal, with prejudice, in favor of the Defendant Sparta Board of Education, Only, with respect to the matter captioned "CHRISTOPHER MOORE v. TIM DELEA, THE TOWNSHP OF SPARTA, THE SPARTA BOARD OF EDUCATION, ROBERT DELEA, KAREN DELEA, JOHN DOES (1-10) and ABC COMPANIES (1-5)" that is filed in the Superior Court of New Jersey, Law Division, Sussex County, under Docket No. SSX-L-618-12 and return the same to Defendant to be filed with the Court.

7. Based upon the release and agreement as set forth above, The Third party Administrator for Defendant Sparta Board of Education's Joint Insurance Fund shall on behalf of the Sparta Board of Education pay \$85,000.00 to Plaintiff, contingent upon Plaintiff providing the necessary closing documentation, including this executed release with confidentiality clause, tax identification number and a Child Support Judgment Search.

MISCELLANEOUS

8. Governing Law. This Agreement shall be interpreted under and in accordance with the laws of the State of New Jersey without regard to its conflict of law provisions. Plaintiff agrees that any action to enforce or interpret this Agreement shall only be brought in a court of competent jurisdiction of the State of New Jersey, Sussex County.

9. Enforcement of Settlement Agreement. Each term of this Agreement is binding upon the Parties and their respective heirs, estates, predecessors, successors, transferees, assignees, representatives, elected officials, principals, agents, insurance entities, reinsurers, officers, directors, trustees, and past and present employees.

10. No Admission of Liability: It is expressly understood that neither the execution of this agreement nor any other action taken by or on behalf of Defendant Sparta Board of Education in connection with any of Plaintiff Christopher Moore's alleged claims, constitute an admission by the Defendant Sparta Board of Education of any violation of any law, duty or obligation, or that any decisions or actions taken in connection with Plaintiff was unwarranted, unjustified, retaliatory, discriminatory, wrongful or otherwise unlawful. The Parties agree that the Defendant Sparta Board of Education has entered into this agreement for reasons other than the merits of Plaintiff Christopher Moore's claims including to avoid the cost of litigation and that the Defendant Sparta Board of Education specifically denies any liability to Plaintiff or to any other person.

11. Tax Consequences: Plaintiff agrees to assume full liability for applicable State, Federal and Local taxes that may be required by law to be paid with respect to any settlement of payment described herein. Plaintiff further agrees that in the event the Internal Revenue Service

or any other taxing authority deems any tax, interest, penalties or other amounts to be due from the Defendant with respect to the settlement. Plaintiff Christopher Moore will fully and completely indemnify the Defendant Sparta Board of Education and its joint insurance fund for any sums the Defendant or its joint insurance fund may be required to pay, including reasonable attorney's fees and costs. It is the intent of the parties that the payment in paragraph seven above will be the Defendant Sparta Board of Education's total payments to, or for the benefit of, Plaintiff. Plaintiff Christopher Moore acknowledges and agrees that he is solely and completely responsible for any tax obligations, liabilities, or consequences arising out of the execution of this Release and the payment under paragraph seven. The parties intend this payment to compensate Plaintiff for solely physical, emotional and related injuries. Should it be determined that any portion of the payment described in paragraph seven is taxable, Plaintiff shall be solely responsible for same. Plaintiff further agrees that he shall indemnify and hold harmless Defendant for any and all claims, liabilities or consequences arising out of any unsatisfied tax obligations or liabilities. Plaintiff acknowledges that neither Defendant Sparta Board of Education, nor any of its representatives or attorneys, nor Plaintiff's attorneys, has made any promise, representation, or warranty, express or implied, regarding the tax consequences of the payment under paragraph seven. Plaintiff agrees and understands that his attorney has instructed him to consult with an accountant or other tax professional regarding the tax treatment of the sums paid pursuant to this Release.

12. Confidentiality: To the extent permitted by law, the Parties agree and warrant that unless directed to do so by Court Order, or in the case of the Sparta Board of Education, a valid Open Public Records Act request, they will not disclose, either directly or indirectly, in any manner whatsoever, including dissemination of documents, any information regarding the

existence or terms of this Agreement or the facts giving rise to the claims in the Action, to any person, or organization including, but not limited to, any governmental body, entity or official, members of the press or other media, present and former directors, officers, employees and agents of Defendant and other members of the public from the effective date of this Release.

This Paragraph shall not preclude Plaintiff from disclosing the existence or terms of this Agreement to his immediate family members, or to their accountant, attorney, or the appropriate taxing authorities.

Under circumstances expressly permitted above, Plaintiff shall advise all persons to whom he discloses the existence or terms of this Agreement pursuant to this Paragraph of the Confidentiality restrictions before making such disclosure and obtain from each such person, other than their attorney and immediate family members, an agreement to honor the Confidentiality provisions of this Agreement before making any disclosure. If asked by anyone about the status of their litigation against Defendant, Plaintiff may respond that "the matter has been resolved." The Parties understand that confidentiality is a material inducement to Defendants' entry into this Agreement.

13. Plaintiff covenants never to disparage or speak ill of the Sparta Board of Education in regard to all claims arising out of the underlying matter that is the subject of the litigation entitled Christopher Moore v. Tim Delea, et. als., Docket No. SSX-L-618-12.

14. Ann's Length Negotiations. This Agreement is a compromise and settlement of disputed claims and is the product of ann's length negotiations between the Parties.

(b) signed, sealed and delivered this document as his or her act and deed.

DATED: 6/15/10

Maria Marie Fenby
Notary Public



Maria Marie Fenby
COMMISSION # FF 146788
EXPIRES: JUL 31, 2018
BONDED THRU
1st FLORIDA NOTARY, LLC