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~~5/3/15~~

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division

LIBERTY CHRISTIAN ACADEMY,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 6:14-CV-00018-NKM
	)	
VIRGINIA HIGH SCHOOL LEAGUE, INC.,	)	
	)	
Defendant.	)	
_____	)	

**STIPULATION & SETTLEMENT AGREEMENT AND GENERAL RELEASE**

THIS STIPULATION AND SETTLEMENT AGREEMENT AND GENERAL RELEASE (the "Settlement Agreement" or "Agreement"), is made by and between Liberty Christian Academy ("LCA") and Virginia High School League, Inc. ("VHSL") (collectively, the "Parties").

WHEREAS, the VHSL and its members are governed by rules, regulations, bylaws and policies (the "VHSL Rules");

WHEREAS, certain VHSL Rules are contained or referenced in the VHSL Handbook and Policy Manual and are administered by, among others, the VHSL Executive Committee (the "Executive Committee");

WHEREAS, LCA is a non-boarding Virginia private school that has sought admission to the VHSL;

WHEREAS, the Parties are engaged in litigation before the United States District Court for the Western District of Virginia (the "Court"), in a matter styled *Liberty Christian Academy v. Virginia High School League, Inc.*, 6:14-cv-00018-NKM (the "Litigation");

WHEREAS, VHSL denies liability with respect to all claims asserted in the Litigation;

WHEREAS, the Parties desire to avoid the uncertainty, expense, inconvenience, and inherent risk of protracted litigation; and

WHEREAS, the Parties have agreed that it is in their mutual best interests to compromise and settle all issues and disputes existing among them by entering into this Settlement Agreement.

NOW THEREFORE, in full consideration of the foregoing premises, the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions herein, the Parties hereby covenant and agree as follows:

#### **GENERAL RELEASE AND AGREEMENTS**

1. LCA Release. Subject to and conditioned upon the provisions in this Settlement Agreement, LCA and its officers, directors, agents, employees, attorneys, subsidiaries, affiliates, predecessors in interest, heirs, successors in interest, and assigns (collectively, the "LCA Releasing Parties"), hereby fully and forever release, remise, acquit, and discharge VHSL and its officers, directors, agents, employees, attorneys, subsidiaries, affiliates, predecessors in interest, heirs, successors in interest, and assigns (collectively, the "VHSL Released Parties"), from any and all claims, actions, causes of action, suits, damages, losses, obligations, sums of money, attorneys' fees, liabilities, and demands whatsoever, in contract, tort, or otherwise, in law or in equity, whether or not well founded in fact, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, which the LCA Releasing Parties may now have or have ever had against the VHSL Released Parties, from the beginning of time to the date hereof, relating in any way to and including, but not limited to, the claims that were asserted or could have been asserted in the Litigation.

2. VHSL Release. Subject to and conditioned upon the provisions in this Settlement Agreement, VHSL and its officers, directors, agents, employees, attorneys, subsidiaries, affiliates, predecessors in interest, heirs, successors in interest, and assigns (collectively, the "VHSL Releasing Parties"), hereby fully and forever release, remise, acquit, and discharge LCA and its officers, directors, agents, employees, attorneys, subsidiaries, affiliates, predecessors in interest, heirs, successors in interest, and assigns (collectively, the "LCA Released Parties"), from any and all claims, actions, causes of action, suits, damages, losses, obligations, sums of money, attorneys' fees, liabilities, and demands whatsoever, in contract, tort, or otherwise, in law or in equity, whether or not well founded in fact, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, which the VHSL Releasing Parties may now have or have ever had against the LCA Released Parties, from the beginning of time to the date hereof, relating in any way to and including, but not limited to, the claims that were asserted or could have been asserted in the Litigation.

3. Formation of Private And Public School Divisions. VHSL will seek from the Virginia Independent Schools Athletic Association ("VISAA") an agreement to incorporate and include VISAA in VHSL as a private school division, which will have its own autonomous rules, governance, finances, and management, but will have VHSL member status (hereafter, the "private school division"). The private school division will exist alongside the current VHSL membership (hereafter, the "public school division"). In interscholastic sports, the private school division may have regular season and post-season playoff schedules that are separate from those of the public school division. The acceptance or refusal of this proposal by VISAA will have no effect on the other terms and conditions of this Agreement. LCA may, at its sole discretion, join the public school division of the VHSL if both private and public school divisions are formed.

LCA shall not be required to be part of, or suffer any adverse competitive consequences for not joining, any private school division of the VHSL.

4. Admission of LCA and Other Private Schools into VHSL Public School

Division.

(a) VHSL shall amend the VHSL Rules (including but not limited to VHSL Bylaws 8-1-1 *et seq.*) to permit non-boarding Virginia private schools, including but not limited to LCA, to join the VHSL (including as members in the public school division if both private and public schools divisions are formed), provided that LCA and any other non-boarding Virginia private school that wishes to join the VHSL agrees to comply with all VHSL Rules on the same basis as public schools, except for the rule changes specifically identified in this Agreement. LCA shall be entitled to join the VHSL as of the 2015-2016 school year as a full dues-paying member, and to continue thereafter as such a full VHSL member, with all of the rights and privileges of such membership.

(b) VHSL and its conferences and divisions shall not treat LCA differently than any other member due to its private school status, except as specifically provided in this Agreement, and none of VHSL's conferences or divisions shall take any action that is inconsistent with the terms of this Agreement.

(c) VHSL also agrees that it will (a) revise all VHSL Rules to the extent necessary to effectuate this Agreement, and to be consistent with the admission and status of LCA and other non-boarding Virginia private schools as VHSL members, including without limitation in any public school division if such a division is created; and (b) require all of its members to comply with all terms of this Agreement and all VHSL Rules adopted pursuant to this Agreement.

5. Adherence to Public School Rules. LCA agrees that it will be required to and must agree to comply with all existing VHSL Rules as a condition of membership, except for the rule changes and other terms specifically identified in this Settlement Agreement.

6. Transfer Rule. VHSL's Transfer Rule (Bylaw 28A – 7-1 et seq.) shall apply to all public schools and all private schools which join the VHSL public school division. Provided however, that for purposes of the VHSL Transfer Rule, any student who transfers from a non-VHSL member school (including non-Virginia or non-United States schools) or home school shall be eligible immediately, provided that any student transferring after having established enrollment in any high school shall have continued that enrollment for one calendar year prior to such transfer.

(a) Any student who transfers to and enrolls in LCA or any other private school member of the VHSL from any Virginia public school (or any private school that joins the VHSL public school division), who is then resident in LCA's or the private school member's Attendance Zone as defined in paragraph 6(c) below, shall immediately be eligible to participate in VHSL interscholastic competitions, without any loss of eligibility due to the Transfer Rule or any similar rule. Any student who transfers to and enrolls in LCA or any other private school member of the VHSL from a Virginia public school (or any private school that joins the VHSL public school division), from outside of LCA's or the private school member's Attendance Zone and is not resident in LCA's or the private school member's Attendance Zone, shall be subject to the Transfer Rule on the same basis as any other public school students. As stated in the Transfer Rule, a student may transfer to a particular high school without losing one year of eligibility when that transfer is made in connection with a bona fide move by the student's

parents, parent, or guardian into the attendance zone of that high school (i.e., for LCA, into LCA's Attendance Zone).

(b) Notwithstanding anything else in this Agreement, any student who transfers to and enrolls in a private school member of VHSL from a non-VHSL member school (including non-Virginia or non-United States schools) or home school shall immediately be eligible to participate in VHSL interscholastic competitions, without any loss of eligibility due to the Transfer Rule or any similar rule, provided that such student transferring after having established enrollment in any high school shall have continued that enrollment for one calendar year prior to such transfer.

(c) For the next five school years, i.e., through the end of the 2019-20 school year, VHSL will count a private school's student body with a multiplier as follows:

(i) 2.0 if that private school elects to define its attendance zone as including any one additional public school attendance zone contiguous to the public school attendance zone in which it is physically located but that is not in the same County or City in which the school is located.

(ii) 1.5 if that private school elects to define its attendance zone as including any one additional public school attendance zone contiguous to the public school attendance zone in the same County or City in which it is physically located.

(iii) 0.0 should the private school elect not to add a second attendance zone.

Such election shall be made at the time of the admission of the private school to VHSL, and may be re-elected at the time of Redistricting and Reclassification.

(d) Notwithstanding anything else in this agreement, a student may transfer without a one-year eligibility delay from a member public school or member private school in a private

school's Attendance Zone to that private school one time during the student's high school eligibility without a corresponding parent move, and likewise may transfer from a private school to a VHSL member school in the private school's Attendance Zone without a one-year waiting period.

(e) Any student who was enrolled in LCA as of the date of this Agreement, or who has agreed as of the date of this Agreement to be enrolled in LCA for the 2015-16 school year, shall immediately be eligible to participate in VHSL interscholastic competitions, without any loss of eligibility due to the VHSL Transfer Rule or any other similar transfer rule.

7. Potential Multiplier After Five Years. The VHSL Executive Committee may evaluate whether the above Multipliers, or any Multiplier, is warranted for LCA after the 2019-20 school year. Any application of a Multiplier to LCA after the 2019-20 school year must be done on a fair and equitable basis, and further based on objective criteria that demonstrate the proposed revised Multiplier is necessary for fair competition, which conclusion is subject to arbitration at LCA's option as provided in Paragraph 8 below. Notwithstanding anything else in this Agreement, VHSL shall also be free to apply a 2.0 Multiplier to any private school that serves students of one gender (e.g., an all-boys high school).

8. Multiplier Dispute Resolution. If the VHSL determines at any time that it wishes to apply a Multiplier to LCA at any time after the 2019-20 school year, and LCA disagrees with that determination, LCA may submit such disagreement to arbitration and the Parties will abide by the arbitrator's decision. The Parties shall make good faith efforts to select a single arbitrator by mutual consent, and the arbitration will be conducted under American Arbitration Association Commercial Arbitration Rules and Mediation Procedures, including those rules regarding

selection of an arbitrator if one is not agreed upon by the parties within thirty (30) days after the initiation of such arbitration. The situs of the arbitration shall be in Richmond, Virginia.

9. Geographic Assignment. VHSL shall place LCA in a geographical district and school-size conference and region for Fall 2015 play on the same basis as would be applied to a new VHSL public high school member, eligible to schedule local member schools in competition as schedules permit; provided, however, that LCA shall be assigned for the 2015-16 school year to the Seminole District. By the 2017-18 school year, LCA shall have the full benefits of all required scheduling with all VHSL members in LCA's geographical district, conference and region. During LCA's initial placement (i.e., the first two school years following the execution of this Agreement), VHSL staff will encourage current VHSL members in LCA's geographic area to schedule contests with LCA as much as possible subject to the constraints of their existing game contracts. After LCA's initial placement, LCA shall play all of its fellow district public school members in regular season athletic competitions. LCA shall always be placed in a geographical district, conference and region that would be appropriate for comparable member public schools.

10. Football Power Ratings. Beginning with the 2015-16 school year, VHSL will amend its football power-rating system (Bylaws 68-4-6 *et seq.*) to ensure that games with non-boarding Virginia private schools count equally for all competitive purposes, including the current or any modified playoff point system, on the same basis as games with public school VHSL members.

11. Semester Rule. Current non-boarding Virginia private school students who may be in violation of the Semester Rule (Bylaws 28A-6-1 *et seq.*) because they participated in varsity athletics in 8th grade, or because they repeated a high school grade and therefore are, or



in the future will be, a fifth-year senior, will not lose any eligibility as a consequence of the Semester Rule. Each private school including LCA that joins the VHSL will present to the VHSL a list of all students who require an exception to the Semester Rule. The VHSL shall approve the requested exceptions, subject to review and confirmation as to the accuracy of the list. This waiver of the Semester Rule for currently enrolled students does not constitute a waiver of the Age Rule (Bylaw 28A-1-1 *et seq.*) or the Scholarship Rule (Bylaw 28A-5-1 *et seq.*).

12. Coaches Rule. The coaches currently employed by LCA who are not also certified teachers regularly employed by the school board and responsible to the school principal (Bylaw 27-2-1), as identified on Exhibit A hereto, shall be permitted to coach high school athletics pursuant to the Exceptions to the Coaches Rule (Bylaw 27-2-2 *et seq.*).

13. Approval. This Agreement is subject to (a) unconditional approval by the LCA school board, and (b) unconditional approval by the VHSL membership, and (c) unconditional approval and entry by the Court as a stipulated Order. The VHSL and LCA shall each provide written notice to the other Party upon effectuation or any rejection of such approval.

Notwithstanding anything else in this Agreement, in the event such approval by LCA and the VHSL is not granted and confirmed in writing within forty-five (45) days of the execution of this Agreement, or in the event this Agreement is not SO ORDERED by the Court in its entirety:

(i) this Agreement shall be void *ab initio*, (ii) the Litigation be restored to its status as of the date of this Agreement, *nunc pro tunc*; and (iii) this Agreement may not be referred to in, or otherwise in connection with, the Litigation for any purpose other than court-ordered mediation, except to enforce the terms of this Paragraph 13.

14. Dismissal of Lawsuit. Promptly after both Parties and the Court have approved this Agreement as provided in Paragraph 13 above, LCA will file a motion seeking dismissal of the Litigation with prejudice.

15. Public Statements. Upon approval by both Parties of this Agreement as provided in Paragraph 13 above, both Parties will issue a mutually acceptable joint press statement to announce the terms of this Agreement, and such joint press statement will be the only official public statement regarding the settlement made by the Parties about the Litigation for a period of eighteen (18) months from the date of this Agreement, without the mutual consent of the Parties. VHSL will use its best efforts to discourage individual member schools during such time period from commenting publicly about the settlement made by the Parties.

16. Confidentiality. The Parties acknowledge and agree that the terms and contents of this Settlement Agreement are confidential and will not be disclosed by them except pursuant to an order entered by a court of competent jurisdiction, as necessary to their accountants or tax advisors, as required by law, or as necessary to give effect to this Agreement. Notwithstanding the above, the general terms of this settlement will be described in the joint press release to be agreed upon.

17. No Assignment. The Parties warrant and represent that they have not assigned, transferred, or conveyed any rights or claims they may have against the other party to any other person or entity.

18. No Representations. This Settlement Agreement represents the entire agreement between the Parties and there are no oral or written representations or promises other than what are contained in this Agreement. Once the Parties have entered into this Agreement, all previous

agreements between the Parties shall be superseded by this Agreement and shall no longer have any effect.

19. No Admissions. The actions taken in accordance with this Agreement are done to compromise and settle disputed claims and are not to be construed as an admission of any liability or facts on the part of any party, predecessors or successors in interest, officers, directors, employees or agents.

20. Attorneys' Fees and Costs. Each party hereto shall bear its own attorneys' fees and costs related to the Litigation and to the negotiation of this Agreement.

21. Authority. Each party signing this Agreement warrants to the other party that it possesses the full and complete authority to covenant and agree as provided in this Agreement. Each party signing this Agreement warrants to the other party that the person signing this Agreement on its behalf is who he or she purports to be, that he or she holds the office or status disclosed in connection with his or her signature, and that he or she is duly authorized to sign this Agreement for and on behalf of such party.

22. Modification. This Agreement cannot be amended except in writing signed by both of the Parties hereto.

23. Governing Law. All questions relating to this Agreement, whether of interpretation, performance, or otherwise, shall be governed by the laws of the Commonwealth of Virginia.

24. Enforcement. The U.S. District Court for the Western District of Virginia shall have exclusive continuing jurisdiction to enforce the terms of this Agreement.

25. Headings. The headings of this Agreement are for convenience or reference only, and shall not limit, expand, modify or otherwise affect the meaning hereof.

26. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the predecessors in interest, heirs, successors in interest, and assigns of the Parties hereto.

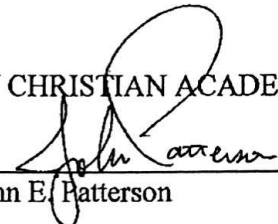
27. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same document. Signatures on this Agreement may be transmitted electronically by facsimile or email.

28. Terms Read and Understood. Each party hereto represents that it has carefully read and fully understands the terms, conditions, meaning and intent of this Agreement, and that each party has had an opportunity to discuss the terms, conditions and provisions with legal counsel prior to the execution hereof. Each party specifically hereby acknowledges receipt of a copy of this Agreement before signing it and understands that each and every provision of this Agreement, including the introductory "Whereas" clauses, is contractual, legally binding and not mere recitals.

29. No Duress. Each of the Parties hereto has reviewed the provisions contained in this Agreement, has been advised by counsel as to the meaning and effect of such provisions, and, without duress and with full and complete understanding of the contents, meaning, and effect hereof, has freely and voluntarily agreed to execute this Agreement.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date indicated below.

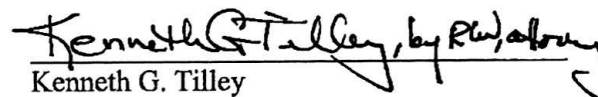
LIBERTY CHRISTIAN ACADEMY

By:   
John E. Patterson

Its: Superintendent

Date: 5/4/15

VIRGINIA HIGH SCHOOL LEAGUE, INC.

By:   
Kenneth G. Tilley

Its: Executive Director

Date: 5-4-15

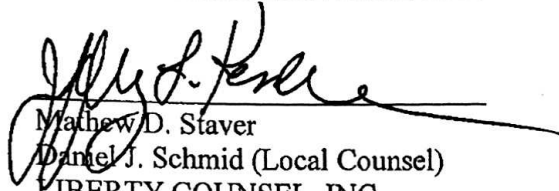
SO ORDERED:

Entered: May \_\_, 2015

\_\_\_\_\_  
Norman K. Moon  
United States District Judge

We Jointly Ask for This:

LIBERTY CHRISTIAN ACADEMY



Matthew D. Staver  
Daniel J. Schmid (Local Counsel)  
LIBERTY COUNSEL, INC.  
P.O. Box 11108  
Lynchburg, Virginia 24506-1108  
Telephone: (800) 671-1776  
Email: court@lc.org  
dschmid@lc.org

Jeffrey L. Kessler (Lead Counsel)  
David G. Feher  
Timothy M. Nevius  
Rebecca L. Seif  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, New York 10166  
Telephone: (212) 294-6700  
Email: jkessler@winston.com  
dfeher@winston.com  
tnevius@winston.com  
rseif@winston.com

*Counsel for Plaintiff Liberty Christian  
Academy*

VIRGINIA HIGH SCHOOL LEAGUE



Howard Feller (VSB No. 18248)  
Seth A. Schaeffer (VSB No. 74509)  
Providence E. Napoleon (VSB No. 82932)  
MCGUIREWOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Telephone: (804) 775-1000  
Facsimile: (804) 698-1061  
Email: hfeller@mcguirewoods.com  
sschaeffer@mcguirewoods.com  
pnapoleon@mcguirewoods.com

R. Craig Wood (VSB No. 24264)  
MCGUIREWOODS LLP  
Court Square Building  
310 Fourth Street, N.E., Suite 300  
Charlottesville, VA 22902-1288  
Telephone: (434) 977-2500  
Facsimile: (434) 980-2222  
Email: cwood@mcguirewoods.com

*Counsel for Defendant Virginia High School  
League*