

From: Clark, Charity <Charity.Clark@vermont.gov>
Sent: Tuesday, November 16, 2021 1:52 PM
To: Derek Brouwer <derek@sevendaysvt.com>
Subject: RE: A.M. et al v. French et al settlement

Hi, Derek,
Please see attached. Just let me know if these weren't what you had in mind.
Charity

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

A.M., by and through his parents and natural)	
guardians, Christopher Messineo and Jill)	
Messineo; E.M., by and through her parents)	
and natural guardians, Christopher Messineo)	
and Jill Messineo; CHRISTOPHER)	
MESSINEO, individually; JILL MESSINEO,)	
individually; A.S., by and through her parents)	
and natural guardians, Russell Senesac and)	
Selena Senesac; RUSSELL SENESAC,)	
individually; SELENA SENESAC,)	
individually; A.H., by and through her parents)	
and natural guardians, James Hester and)	
Darlene Hester; JAMES HESTER,)	
individually; DARLENE HESTER,)	
individually; and the ROMAN CATHOLIC)	Case No. 2:19-cv-00015-cr
DIOCESE OF BURLINGTON, VERMONT,)	
)	
<i>Plaintiffs,</i>)	
v.)	
)	
DANIEL M. FRENCH, in his official)	
capacity as Secretary of the Vermont Agency)	
of Education,)	
)	
<i>Defendant.</i>)	

STIPULATION FOR DISMISSAL WITH PREJUDICE

NOW COME the parties, through their respective counsel, and pursuant to Fed. R. Civ. Proc. 41(a)(1)(A)(ii), hereby agree that this action may be dismissed with prejudice and that, notwithstanding funds paid pursuant to the parties’ Final Settlement Agreement, the parties hereto shall bear their respective costs and expenses incurred in this action. The parties will not make motions under Federal Rule of Civil Procedure 54.

Respectfully submitted this 12th day of November 2021.

/s/ Thomas E. McCormick

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Counsel for Plaintiffs

**Admitted Pro Hac Vice*

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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Deputy Solicitor General
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Counsel for Defendant
Daniel M. French, Secretary of the
Vermont Agency of Education

Term Sheet

I. Parties

Plaintiff Roman Catholic Diocese of Burlington, Vermont

Plaintiffs A.H., James Hester, Darlene Hester

Defendant Daniel M. French, in his official capacity as Secretary of the Vermont Agency of Education (“AOE”)

II. Intent of the Parties

A. It is the intent of the Parties that this “Term Sheet” shall set forth principles of agreement upon which they will work in good faith to memorialize into a Final Settlement Agreement within 20 days from execution of this Term Sheet. This Term Sheet shall have no effect without such fully executed Final Settlement Agreement.

B. It is the intent of the Parties to settle all the claims related to the Vermont Dual Enrollment Program (16 V.S.A. § 944) that Plaintiffs raised or could have raised based on the facts alleged in or known to the Plaintiffs or their counsel during the pendency of *A.M., et al. v. Daniel M. French*, No. 2:19-cv-15 (D. Vt.) and *A.H., et al. v. Daniel M. French*, No. 20-1772 (2d Cir.) (collectively “the Dual Enrollment Litigation”). By executing this agreement, AOE does not admit fault, liability or any violation of law. This agreement does not address or cover claims in litigation related to Vermont’s Town Tuition Program in which any of the Plaintiffs in the Dual Enrollment Litigation are parties or claims based on facts unknown to Plaintiffs or their counsel.

C. If the Parties are unable to agree upon and execute a Final Settlement Agreement acceptable to all Parties within 20 days from execution of this Term Sheet, then upon notice of any of the Parties to the others, this Term Sheet shall be of no force or effect, and any party may move to lift any court-ordered stay of the Dual Enrollment Litigation, and may continue the Dual Enrollment Litigation, in whole or in part.

D. It is the intent of the Parties that, pending complete execution of a Final Settlement Agreement, secondary school students who reside in a Vermont school district that does not operate a public secondary school (“sending district students”) and who attend a Vermont State Board of Education-approved independent secondary school located in Vermont (“approved secondary school”) shall be deemed eligible by AOE for the Vermont Dual Enrollment Program notwithstanding any potential failure of any such students to satisfy the Dual Enrollment statutory eligibility requirement that “the student’s district of residence pays publicly funded tuition on behalf of the student.” 16 V.S.A. § 944(b)(1)(A)(i)(III) (hereinafter “AOE Eligibility Change”).

E. It is the intent of the Parties that the contemplated AOE Eligibility Change shall not apply to, nor have any effect on the Dual Enrollment eligibility of any student who resides in a Vermont school district that does operate a public secondary school (“non-sending district students”) and that the statutory “publicly funded tuition” requirement of 16 V.S.A. § 944(b)(1)(A)(i)(III) shall continue to apply to such non-sending district students.

F. It is acknowledged by the Parties that this Term Sheet and the contemplated AOE Eligibility Change are prompted by the uncertainties, risks and burdens for all Parties occasioned by the unresolved and pending Dual Enrollment Litigation. Therefore, the Parties agree, the contemplated AOE Eligibility Change shall not constitute an admission of unconstitutional or illegal conduct at any time by Secretary French, AOE, or any other agency, department, office, branch, instrumentality, official, employee, or agent, current or former, of the State of Vermont. The State of Vermont, its officials, employees, agents, and officers may deny all such unconstitutional or illegal conduct before any court or administrative body. This provision is not intended to restrict Plaintiffs’ speech in statements to media or other publicity regarding the Final Settlement Agreement, nor does it prevent Plaintiffs’ counsel from discussing any aspect of this case, including orders entered by the courts.

III. Terms

A. AOE agrees that it will revise, within 45 days of the complete execution of a Final Settlement Agreement, its Dual Enrollment Manual’s pertinent provisions consistent with the contemplated AOE Eligibility Change.

B. AOE agrees that it will send, unsolicited and within 45 days of the complete execution of a Final Settlement Agreement, AOE’s Dual Enrollment Participation Agreement form for the 2021-22 school year to all approved secondary schools with a covering letter explaining the contemplated AOE Eligibility Change and encouraging each eligible approved secondary school and their eligible students to apply for participation in the Dual Enrollment Program.

C. AOE agrees that it will revise, within 45 days of the complete execution of a Final Settlement Agreement, those pertinent portions of its official website to reflect the contemplated AOE Eligibility Change.

D. AOE agrees that it will make reasonable efforts, during the 2022 and 2023 legislative sessions, to encourage and assist the Vermont Legislature to approve legislation that revises the statutory “publicly funded tuition” requirement of 16 V.S.A. § 944(b)(1)(A)(i)(III) in a way that is consistent with the contemplated AOE Eligibility Change.

E. AOE agrees that it, or another agency of the State of Vermont on its behalf, will pay the Hester Plaintiffs the sum of \$10.00 in compromise and complete satisfaction of their disputed claim in the Dual Enrollment Litigation for nominal damages upon complete execution of a Final Settlement Agreement. Additionally, AOE agrees that it, or another agency of the State of Vermont on its behalf, will pay all Plaintiffs, through their counsel, Alliance Defending Freedom, the sum of \$249,990.00 in compromise and complete satisfaction of their disputed claim in the Dual Enrollment Litigation for attorneys' fees, costs, and expenses upon complete execution of a Final Settlement Agreement.

F. The Parties agree that, upon payments to Plaintiffs, directly and through Plaintiffs' Counsel, of the above-described sums, the Plaintiffs will execute and deliver to AOE a Release of all claims and demands for relief against Secretary French, AOE, the State of Vermont, and any other agency, department, office, branch, instrumentality, official, employee, or agent, current or former, of the State of Vermont that Plaintiffs raised or could have raised based on the facts alleged in or known to the Plaintiffs or their counsel during the pendency of the Dual Enrollment Litigation with respect to the Vermont Dual Enrollment Program, including claims for declaratory and injunctive relief, damages, attorney's fees, costs, expenses. The Release contemplated by this provision shall not apply to or be construed to apply to any litigation related to Vermont's Town Tuition Program in which any of the Plaintiffs in the Dual Enrollment Litigation are parties.

G. The Parties agree that Plaintiffs, subject to legislative action and without waiver of the sovereign immunity of the State of Vermont and its officials, shall retain the right, notwithstanding the above-described Release, to sue for enforcement of the obligations in the executed Final Settlement Agreement, as well as to raise claims that Plaintiffs did not raise and could not have raised based on the facts alleged in or known to the Plaintiffs or their counsel during the pendency of the Dual Enrollment Litigation with respect to the Vermont Dual Enrollment Program, including any pending litigation related to Vermont's Town Tuition Program in which any of the Plaintiffs in the Dual Enrollment Litigation are parties.

IV. Stay of the Case

A. Upon the execution of this Term Sheet, the Parties agree to jointly move the U.S. District Court for the District of Vermont and the U.S. Court of Appeals for the Second Circuit, as necessary, to stay the Dual Enrollment Litigation until the Final Settlement Agreement is complete and executed.

V. Termination of the Litigation

A. Once the Terms described above in Paragraphs A-C, E and F in Section III have been implemented consistent with the executed Final Settlement Agreement, the Parties shall file a

stipulated dismissal of the Dual Enrollment Litigation with prejudice in the U.S. District Court for the District of Vermont and the U.S. Court of Appeals for the Second Circuit, as necessary. The termination of the Dual Enrollment Litigation pursuant to the Final Settlement Agreement shall not constitute a favorable termination reflecting on the merits of such Dual Enrollment Litigation.

B. If Plaintiffs do not implement the Terms described in Paragraph F in Section III within 45 days of the complete execution of a Final Settlement Agreement, Plaintiffs shall remit to AOE all sums paid under Section III.E or AOE may sue for enforcement of the obligations in the executed Final Settlement Agreement.

C. If AOE does not implement the Terms described above in Paragraphs A-C, and E in Section III within 45 days of the complete execution of a Final Settlement Agreement, Plaintiffs may then sue for enforcement of the obligations in the executed Final Settlement Agreement, and/or move the U.S. District Court for the District of Vermont and the U.S. Court of Appeals for the Second Circuit, as necessary, and continue the Dual Enrollment Litigation, in whole or in part.

VI. General Provisions

A. Each Party to this Term Sheet represents and warrants that the person who signed this Term Sheet on behalf of his or her entity is duly authorized to enter into this Term Sheet and to bind that Party to the terms and conditions of this Term Sheet.

B. Other than as provided in Section III.E, the Parties will bear their own attorney's fees, costs, and expenses in connection with the Dual Enrollment Litigation, the Term Sheet, and the preparation and finalization of the Final Settlement Agreement.

C. The Term Sheet shall become effective upon the signature of all of the Parties. This Term Sheet may be executed in counterparts, each of which will be deemed to be an original, and the counterparts will together constitute one and the same document.

D. In the event of any material adverse change beyond the reasonable control of the Parties, including but not limited to legislative changes to Vermont statute or available funding for the Dual Enrollment Program, the Parties will meet and confer regarding whether any revisions to the Term Sheet or the Final Settlement Agreement are warranted. If revisions are warranted, the Parties will work in good faith to make sure that the core purpose of this agreement, *i.e.*, the contemplated AOE Eligibility Change, is preserved.

Confidential Settlement Communication
Subject to Fed. R. Evid. 408
Exempt from Public Inspection per 1 V.S.A § 317(c)(1), (c)(4) & (c)(14)

The undersigned agree to the form and content of this Term Sheet.

Vermont Agency of Education

June 17, 2021

By:  _____
Secretary Daniel M. French

Roman Catholic Diocese of Burlington, Vermont

May ____, 2021

By: _____
Bishop Christopher J. Coyne

May ____, 2021

James Hester

May ____, 2021

Darlene Hester

A.H., a minor

May ____, 2021

By: _____
Darlene Hester, parent

Confidential Settlement Communication
Subject to Fed. R. Evid. 408
Exempt from Public Inspection per 1 V.S.A § 317(c)(1), (c)(4) & (c)(14)

The undersigned agree to the form and content of this Term Sheet.

Vermont Agency of Education

May ____, 2021

By: _____

Secretary Daniel M. French

Roman Catholic Diocese of Burlington, Vermont

June
May 9, 2021

By: ** Christopher J. Coyne*

Bishop Christopher J. Coyne

May ____, 2021

James Hester

May ____, 2021

Darlene Hester

A.H., a minor

May ____, 2021

By: _____

Darlene Hester, parent

Confidential Settlement Communication
Subject to Fed. R. Evid. 408
Exempt from Public Inspection per 1 V.S.A § 317(c)(1), (c)(4) & (c)(14)

The undersigned agree to the form and content of this Term Sheet.

Vermont Agency of Education

May ____, 2021

By: _____

Secretary Daniel M. French

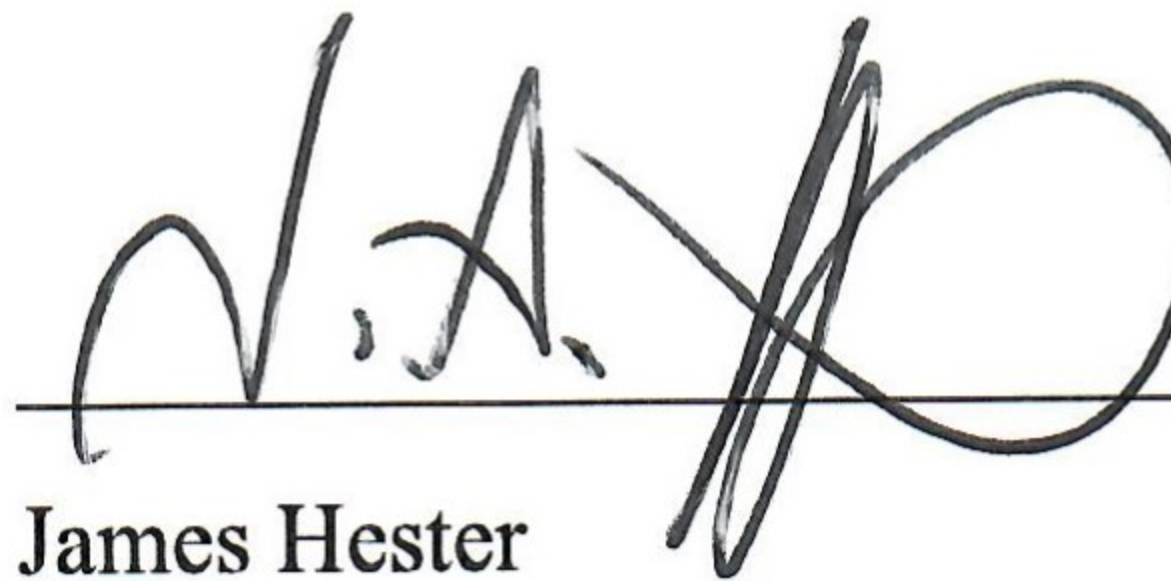
Roman Catholic Diocese of Burlington, Vermont

May ____, 2021

By: _____

Bishop Christopher J. Coyne

~~MAY~~
JUNE
May 16, 2021



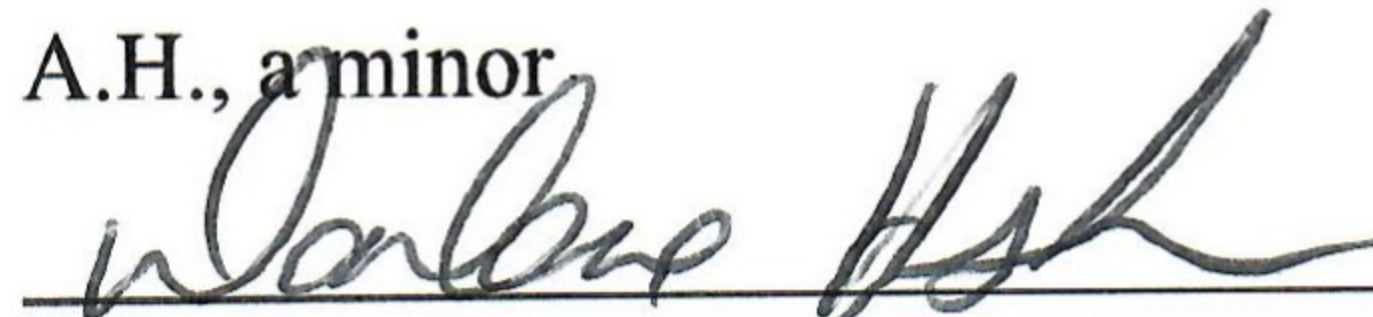
James Hester

~~MAY~~
JUNE
May 16, 2021



Darlene Hester

~~MAY~~
JUNE
May 16, 2021

A.H., a minor
By: 

Darlene Hester, parent

Final Settlement Agreement

I. Parties

Plaintiff Roman Catholic Diocese of Burlington, Vermont

Plaintiffs A.H., James Hester, Darlene Hester

Defendant Daniel M. French, in his official capacity as Secretary of the Vermont Agency of Education (“AOE”)

II. Intent of the Parties

A. It is the intent of the Parties to adopt and incorporate into this Final Settlement Agreement all terms set forth in their fully executed “Term Sheet,” last dated June 17, 2021, subject to the below stated amendments.

B. It is the intent of the Parties to settle all the claims related to the Vermont Dual Enrollment Program (16 V.S.A. § 944), as referenced in the Parties’ executed “Term Sheet” and related to the Dual Enrollment Litigation, *A.M., et al. v. Daniel M. French*, No. 2:19-cv-15 (D. Vt.) and *A.H., et al. v. Daniel M. French*, No. 20-1772 (2d Cir.).

III. Terms

The parties hereby incorporate by reference and adopt all provisions of the executed Term Sheet into this Final Settlement Agreement except as below stated. The provisions and terms set forth in the Term Sheet shall apply, with the following amendments related to the timing of settlement implementation:

A. AOE agrees that it will revise, by September 9, 2021, its Dual Enrollment Manual’s pertinent provisions consistent with the contemplated AOE Eligibility Change.

B. AOE agrees that it will send, unsolicited and by September 9, 2021, AOE’s Dual Enrollment Participation Agreement form for the 2021-22 school year to all approved independent Vermont secondary schools with a covering letter explaining the contemplated AOE Eligibility Change and encouraging each eligible approved independent Vermont secondary school and their eligible students to apply for participation in the Dual Enrollment Program.

C. AOE agrees that it will revise, by September 9, 2021, those pertinent portions of its official website to reflect the contemplated AOE Eligibility Change.

D. The Parties need not move to stay proceedings if the provisions of this agreement are executed in a timely manner. The parties adopt the provisions of the Term Sheet without regard to any time limitation or expiration mentioned therein.

The undersigned agree to the form and content of this Final Settlement Agreement.

Vermont Agency of Education

September 3, 2021

By:  _____
Secretary Daniel M. French

Roman Catholic Diocese of Burlington, Vermont

September ____, 2021

By: _____
Bishop Christopher J. Coyne

September ____, 2021

James Hester

September ____, 2021

Darlene Hester

A.H., a minor

September ____, 2021

By: _____
Darlene Hester, parent

Confidential Settlement Communication
Subject to Fed. R. Evid. 408

The undersigned agree to the form and content of this Final Settlement Agreement.

Vermont Agency of Education

August ____, 2021

By: _____
Secretary Daniel M. French

Roman Catholic Diocese of Burlington, Vermont

August 31, 2021

By: *Christopher J. Coyne*
Bishop Christopher J. Coyne

August ____, 2021

James Hester

August ____, 2021

Darlene Hester

A.H., a minor

August ____, 2021

By: _____
Darlene Hester, parent

The undersigned agree to the form and content of this Final Settlement Agreement.

Vermont Agency of Education

August ____, 2021

By: _____

Secretary Daniel M. French

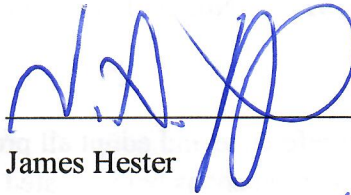
Roman Catholic Diocese of Burlington, Vermont

August ____, 2021

By: _____

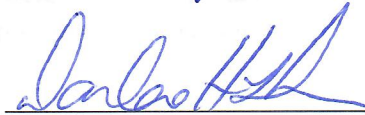
Bishop Christopher J. Coyne

August 31, 2021



James Hester

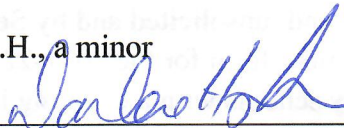
August 31, 2021



Darlene Hester

August 31, 2021

A.H., a minor

By: 

Darlene Hester, parent

I witnessed Darlene Hester's signature only.

