

**IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

CASE: 18-001958CF10A

v.

JUDGE: SCHERER

NIKOLAS JACOB CRUZ,
Defendant.

**MOTION TO DISQUALIFY THE LAW OFFICE OF THE PUBLIC DEFENDER FROM
REPRESENTING DEFENDANT**

COMES NOW, ANTHONY BORGES, one of the surviving victims in this matter, by and through his undersigned counsel, and files this Motion to Disqualify the honorable Howard Finkelstein and the Law Office of the Broward County Public Defender from Representing Defendant in this case, and as grounds therefore states as follows:

1. On February 14, 2018, the Defendant, Nikolas Jacob Cruz, walked into the high school from which he was expelled, Marjory Stoneman Douglas High School, in Parkland, Broward County, Florida, and, armed with a semi-automatic AR-15 assault-style rifle, began shooting at students and teachers alike, killing 17 and injuring more than 20.
2. Anthony Borges is one of the students shot by the Defendant. He suffered a total of 5 gunshot wounds and is currently in intensive care at Broward General Hospital in Fort Lauderdale.
3. On or about March 7th, 2018, Mr. Borges, through undersigned counsel, notified various parties, including the Broward County Public Schools, Broward Sheriff's Office, and others of his intent to file a lawsuit for negligence, among other charges.
4. During the course of Mr. Borges' investigation, documents have been uncovered and actions were taken that undermine the credibility and integrity of the Broward Public Defender's Office in representing the Defendant.

5. Undersigned counsel found a document titled, "Collaborative Agreement on School Discipline" dated October 5th, 2016. A true and correct copy of this Agreement is attached hereto as Exhibit 'A'.
6. Clearly printed on the cover page of the agreement is the "Law Office of the Public Defender" for Broward County.
7. Page 13 of the agreement lists the Honorable Howard Finkelstein, Public Defender, and Gordon Weekes, Chief Assistant Public Defender, as receiving copies.
8. Page 19 of the agreement shows the signature of both Mr. Finkelstein and Mr. Weekes, for the Law Office of the Public Defender.
9. This written "Agreement" addresses student misbehavior and breaches of the code of student conduct. Article Definition 1.02, page 5, lists the misdemeanor crimes for which students will be "handled via the PROMISE program". This program avoids involving law enforcement for offenses such as those listed in paragraph 1.02, including "Affray, Theft, Vandalism, Criminal Mischief, Harassment (another word for Bullying), Possession of Marijuana, Possession of Drug Paraphernalia and Threats".
10. Once a defendant is entitled to counsel, several of the questions that follow include whether a conflict of interest exists and to what extent those conflicts of interest render counsel constitutionally ineffective. (*Strickland v. Washington*, 466 U.S. 668, 686 (1984) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980)). See also *id.* at 692 (citing *Fed. R. Crim. P. 44(c)*) ("In *Cuyler*, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest.")).
11. It is manifestly clear that an accused cannot be deprived of their Sixth Amendment right to effective assistance of counsel or of their Fifth Amendment right to due process.
12. The *Cuyler* opinion requires that the defendant presenting a postconviction challenge 'demonstrate [that] an actual conflict of interest adversely affected the lawyer's

performance. ' This requires a showing both that counsel was placed in a situation where conflicting loyalties pointed in opposite directions (an 'actual conflict') and that counsel proceeded to act against the defendant's interests ('adversely affect[ing] his performance'.

13. Any competent defense counsel, having found this information, would undoubtedly call the signatories of this document, namely Mr. Finkelstein and Mr. Weekes, as defense witnesses to show a pattern of callous indifference and negligence with regards to student misbehavior in our public-school system, which allowed, at least in part, the murderous rampage to be committed by the defendant.
14. Through cross examination of Mr. Finkelstein, Mr. Weekes and other signatories to this agreement, the defendant may be able to show complicity in permitting certain acts to go unchecked or unaddressed; the lack of any attempts at addressing the defendant's aggressive behavior before the shooting; and preventing this tragedy through some form of intervention – mental, legal or otherwise - that, pursuant to the Agreement, was to be avoided. Any failure of defense counsel to present these facts in defense of Mr. Cruz amounts to ineffective assistance of counsel entitling the defendant to a Rule 3.850 hearing, at the very least, and providing the grounds for a reversal of any conviction or plea.
15. A defense attorney's ability to defend a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.
16. Florida Bar Rule 4-1.7(a)(2), states in part:
 - (a) Representing Adverse Interests. Except as provided in subdivision
 - (b) a lawyer must not represent a client if:
 - (1) the representation of 1 client will be directly adverse to another client; or
 - (2) there is a substantial risk that the representation of 1 or more

clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

17. There is no question that the interests of the Law Office of the Public Defender are in significant conflict with the interests of the defendant, who will be defending himself against premeditated murder charges.
18. On Monday, March 12, 2018, the undersigned telephoned the public defender and left him a message to discuss this apparent conflict of interest.
19. A few hours later, having not received a call back, the undersigned emailed Mr. Finkelstein and explained in some detail about the apparent conflict of interest.
20. On Tuesday, March 13, 2018, the undersigned received an email from Mr. Weekes acknowledging receipt of the undersigned's email.
21. Because the public defender's office did not directly respond to the conflict of interest matter, Mr. Borges' finds himself with no alternative but to file the instant motion to disqualify them to prevent – however remote - a conflict of interest in this high-profile criminal matter.
22. The office of the State Attorney in Broward County has now announced that they will seek the death penalty. This undoubtedly will heighten appellate review if such is taken.
23. That the reason for Mr. Borges and his family to request this recusal is because they have undergone and are still going through an enormous amount of suffering and do not want to go through this traumatic experience again in a second trial if the conviction in this case is reversed.
24. Instead, the undersigned respectfully submits that the Office of Criminal Conflict and Civil Regional Counsel for the 4th DCA Region is in a much better position to provide competent and conflict-free legal representation to the defendant.

WHEREFORE, Anthony Borges, a victim in this matter, prays this Honorable Court grant this Motion to Disqualify the Law Office of the Public Defender from Representing Defendant and appoint such other counsel as the court deem proper, competent and conflict-free.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished via eservice through the efilings portal to: State Attorney's Office, 201 SE 6th St., Ft. Lauderdale, FL 33301, on this 13th day of March, 2018.

Respectfully submitted,

/s/ Alex Arreaza

Alex Arreaza, Esq.
Attorney for Anthony Borges
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Exhibit 'A'

COLLABORATIVE AGREEMENT ON SCHOOL DISCIPLINE

THIS AGREEMENT is made and entered into as of this 5th Oct. 2016 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),

a body corporate and political subdivision of the State of Florida

whose principal place of business is

600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CHIEF JUDGE OF THE SEVENTEENTH JUDICIAL CIRCUIT

whose principal place of business is

201 SE 6th Street, Ft Lauderdale, Florida 33301

and

OFFICE OF THE STATE ATTORNEY

whose principal place of business is

201 SE 6th Street, Ft Lauderdale, Florida 33301

and

LAW OFFICE OF THE PUBLIC DEFENDER

whose principal place of business is

201 SE 6th Street, Ft Lauderdale, Florida 33301

and

SHERIFF OF BROWARD COUNTY, FLORIDA

whose principal place of business is

2601 West Broward Boulevard, Fort Lauderdale, Florida 33311

and

CITY OF FORT LAUDERDALE

FORT LAUDERDALE POLICE DEPARTMENT

whose principal place of business is

1300 W Broward Boulevard, Fort Lauderdale, Florida 33312

and

FLORIDA DEPARTMENT OF JUVENILE JUSTICE

whose principal place of business is

2737 Centerview Drive, Tallahassee, Florida 32399

and

FORT LAUDERDALE/BROWARD BRANCH NAACP

whose principal place of business is

1100 Sistrunk Boulevard, Fort Lauderdale, Florida 33311

and

JUVENILE JUSTICE ADVISORY BOARD

whose principal place of business is

1100 Sistrunk Boulevard, Fort Lauderdale, Florida 33311

and

CITY OF HALLANDALE BEACH
HALLANDALE BEACH POLICE DEPARTMENT
whose principal place of business is
400 S Federal Highway, Hallandale Beach, Florida 33009

and

BROWARD COUNTY CHIEFS OF POLICE ASSOCIATION
whose principal place of business is
3501 Davie Road, Building 21, Davie, Florida 33314

and

CITY OF LAUDERHILL
LAUDERHILL POLICE DEPARTMENT
whose principal place of business is
5581 West Oakland Park Boulevard, Lauderhill, Florida 33313

and

CITY OF MIRAMAR
MIRAMAR POLICE DEPARTMENT
whose principal place of business is
2300 Civic Center Place, Miramar, Florida 33025

and

CITY OF WILTON MANORS
WILTON MANORS POLICE DEPARTMENT
whose principal place of business is
2020 Wilton Drive, Wilton Manors, Florida 33305

and in collaboration and consultation with a committee of stakeholders that include representation from the Broward Teacher's Union, Broward Principals' and Assistants' Association, District Advisory Council, Diversity Committee, Children's Services Council of Broward County, State Representative Bobby DuBose, State Senator Christopher Smith, and State Representative Gwyndolen Clarke-Reed for the purpose of establishing a cooperative relationship between agencies involved in the handling of student misbehavior.

WHEREAS, the parties acknowledge that law enforcement plays an essential role in maintaining safety in the community. However, the use of arrests and referrals to the criminal justice system may decrease a student's chance of graduation, entering higher education, joining the military, and getting a job.¹

WHEREAS, in the 2011-2012 school year, the Department of Juvenile Justice reported 1,062 school-related arrests in Broward County, the highest number in the state.² 71% of these arrests were for misdemeanor offenses. Over half of those students had never been referred to the Juvenile Justice System before.

WHEREAS, across the country, students of color, students with disabilities and LGBTQ students are disproportionately impacted by school-based arrests for the same behavior as their peers.³

WHEREAS, the Federal Every Student Succeeds Act (ESSA) includes Student Support and Academic Enrichment Grants to support designing and implementing of a locally-tailored plan to reduce exclusionary discipline practices in elementary and secondary schools, e.g., strategies aligned with long-term prison reduction via opportunities, mentoring, intervention support, and other education services;

WHEREAS, ESSA asks that States describe how the State will prioritize prevention and intervention programs for children and youth who are neglected, delinquent or at-risk, including prioritizing for such children to attain a regular high school diploma, to the extent feasible, and to participate in credit-bearing coursework while in secondary school, post secondary education, or career and technical education programming;

WHEREAS, The Florida Legislature "encourage[s] schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs" and has instructed school districts "that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances."⁴

WHEREAS, with a joint commitment to ending school-based arrests for minor misbehavior, school districts and law enforcement agencies across the country have improved school safety, school engagement and academic achievement. The parties to this Agreement are confident that by working together, they can return Broward County Public Schools to a culture of common sense discipline that allows all students to enjoy a safe and effective education.

BE IT RESOLVED, that the parties to this Agreement follow the letter and spirit of the ESSA provisions to reduce exclusionary disciplinary practices, while implementing prevention and intervention programs for children and youth who are neglected, delinquent or at-risk. The parties will also follow the Department of Justice and Department of Education Guidelines on School Climate and Discipline.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

In order to follow the guidelines set forth by the Legislature,⁵ the parties are entering into this cooperative effort among the public agencies named herein to establish guidelines for the handling of school-based student misbehavior. The guidelines are intended to establish uniformity in the handling of incidents while ensuring that

¹ See Kirk, David S, and Robert J Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*. 86 *Sociology of Education* 36 (2013).

² Florida Department of Juvenile Justice, *Delinquency in Florida Schools: An Eight Year Study* (Jan. 2013).

³ U.S. Department of Education, Office for Civil Rights, *The Transformed Civil Rights Data Collection* (Mar. 2012); Kathryn E. W. Himmelstein and Hannah Brückner, *Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*. *Pediatrics* (2010).

⁴ § 1006.13, Fla. Stat. (2013).

⁵ § 1006.13(4) Fla. Stat. (2013). "(a) Each district school board shall enter into agreements with the county sheriff's office and local police department specifying guidelines for ensuring that acts that pose a serious threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency. (b) The agreements must include the role of school resource officers, if applicable, in handling reported incidents, circumstances in which school officials may handle incidents without filing a report with a law enforcement agency, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes. Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000."

each case is addressed on a case-by-case basis. The manner in which each incident is handled by the Police, School System, and/or Court is dependent upon the many factors unique to each child, which include, but is not limited to; behavioral history; present circumstances; disciplinary record; academic record; general demeanor and disposition toward others; and, disability or special education status. Therefore, the parties acknowledge that students involved in the same incident or similar incidents may receive different and varying responses depending on the factors and needs of each student.

To address these issues and ensure that all students have access to a safe and effective learning environment, the parties agree to enter into this Cooperative Agreement governing appropriate responses and use of resources when responding to school-based misbehavior.

ARTICLE I. DEFINITIONS

1.01 **Student Misbehavior:** Breaches of the Code of Student Conduct, disruptions, and other transgressions or omissions by a student that occur on school grounds, school transportation or during a school sponsored or related event, except when involving a victim not affiliated with the school district unless the victim agrees to have the matter handled via the PROMISE program.

1.02 **Misdemeanors** are limited to:

Disrupting or Interfering with a School Function;
Affray;
Theft of less than \$300;
Vandalism of less than \$1,000;
Disorderly Conduct;
Trespassing;
Criminal Mischief;
Gambling;
Harassment;
Incidents relating to Alcohol;
Possession of Cannabis (misdemeanor, requires consultation with law enforcement to determine the level of offense);
Possession of Drug Paraphernalia;
Threats;⁶ and
Obstructing Justice without Violence.

1.03 **Student:**

For the purpose of this Agreement, a student is an individual enrolled in a K-12 SBBC program.

ARTICLE II. TERMS OF AGREEMENT

The parties agree that students need to be held accountable for misbehavior in order to learn from their mistakes, take responsibility for their actions, and reconnect to the school community. The parties also agree that the most effective means of holding students accountable for their actions include, providing them with continuity and support from school officials that interact with them on a daily basis.

2.01 **Responding to Student Misbehavior:**

In the event a student misbehaves, the school principal and/or their designees will be the primary source of intervention and disciplinary consequences. The Code of Student Conduct and Discipline Matrix provides detailed information on consequences and interventions and shall guide the responses to particular types of misbehavior. In addition, school officials should make every effort to connect students to school or community-based support services, such as counseling, mentoring, or extra-curricular activities.

Many types of minor student misbehavior may technically meet the statutory requirements for PROMISE-eligible misdemeanors, but are best handled outside of the criminal justice system. In any school year, the first instance of student misbehavior that rises to the level of a misdemeanor and requires consultation with a police officer should not result in arrest nor the filing of a criminal complaint, but instead be handled through the Code of Student Conduct and Discipline Matrix. Behavior that rises to the level of a felony offense under any of the above statutes are not included herein.

⁶ §1006.13, Fla. Stat. (2013), requires that certain felony threats (§ 790.162 and § 790.163, Fla. Stat. (2013)) be referred to the criminal or juvenile justice system. Felonies, including § 790.162 and § 790.163, fall outside of the scope of this agreement.

All parties involved in school discipline decisions shall consider the surrounding circumstances including the age, history, disability or special education status, and other factors that may have influenced the behavior of the student, the degree of harm caused and the student's willingness to repair the harm.

2.02 **Further Incidents:**

Repeated incidents of PROMISE-eligible misdemeanors as defined in section 1.02 shall result in graduated levels of school-based interventions and consequences by the administrators on campus, according to the Code of Student Conduct and Discipline Matrix, and may result in a referral to law enforcement. The Discipline Matrix outlines the specific incidents in which repeated misbehavior shall result in a referral to law enforcement. Records of section 1.02 incidents shall be maintained by SBBC, in a manner consistent with the requirements of a Probable Cause Affidavit as mandated by F.S. 985.13, and said information may be reported to law enforcement by SBBC should the youth willfully fail to complete sanctions.

In addition, a student who accumulates three incidents, as defined in section 1.02, in a school year shall be referred to the Behavior Intervention Committee. Upon a fourth incident, as defined in section 1.02, in a school year, the student shall be referred for consultation with law enforcement, unless any referral is required sooner by the Discipline Matrix.

2.03 **Consultations with Law Enforcement – Role of School Administrator:**

The school principal and/or their designee are encouraged to talk to the student and evaluate the unique circumstances surrounding each case. Before referring a student to law enforcement, the school principal and/or their designee shall:

STEP 1. **Consult the Code of Student Conduct and Discipline Matrix:**

Does the Code of Student Conduct or Discipline Matrix require consultation with law enforcement? If not, the school principal and/or their designee should determine the consequences and interventions to be used without involving law enforcement, including the PROMISE program.

STEP 2. **Consult with law enforcement:**

If the Discipline Matrix requires consultation with law enforcement, work with law enforcement to assess and respond to the situation. Consultation does not mean that an arrest is necessary or required.

STEP 3. **Collaborating with law enforcement to resolve the situation:**

If the law enforcement officer's efforts have been exhausted to resolve the situation, could the student be held accountable through further intervention by the Collaborative Problem Solving Team, the PROMISE program and/or community-based programs? Refusal by a student to participate in the offered alternatives to arrest may result in referral to the Juvenile Justice System of Care and, after input from the Office of the State Attorney, could be referred back to law enforcement. If further support is needed but not available at the school level, the school principal and/or designee may call the district designee at Student Support Initiatives for guidance.

Emergency and other situations may arise that require the immediate involvement of law enforcement. In such instances, school officials and law enforcement should confer after the situation has been diffused, but, if feasible, before any arrest is made, and follow the process outlined in this Agreement to ensure the most effective and least punitive means of discipline is being employed.

2.04 Consultations with Law Enforcement – Role of Officer:

Before making an arrest of a student for misbehavior on school grounds, school transportation or during a school sponsored or related event, a law enforcement officer shall follow the steps and guiding questions below and attached herein as Exhibit "A". If the situation is resolved at any point during this process, short of arrest, the officer does not need to move on to the next step.

STEP 1. Consult with the school principal and/or their designee:

Has the Code of Student Conduct or Discipline Matrix been followed in this instance? Could this be resolved by consequences within the school discipline system, utilizing alternatives other than arrest (such as detention, suspension, or interventions)?

STEP 2. Evaluate the situation:

Considering all the surrounding circumstances, does this incident rise to the level of a felony or pose a serious threat to school safety that constitutes a crime and necessitates an arrest? If so, the officer shall proceed to Step 6. If the behavior falls into the category of PROMISE-eligible misdemeanor, continue with the steps below. If the behavior is non-criminal or otherwise minor and not rising to any of these levels, it may be referred back to the school for consequences and interventions.

STEP 3. Issue a warning:

Can the situation be resolved with an intervention approach that may include the officer talking to the student about their behavior; a verbal warning; taking the student out of the situation in order to cool off or other intervention?

STEP 4. Talk to the parents or guardians:

Can the situation be resolved by the officer talking to the student's parents or guardians, utilizing alternatives other than arrest?

STEP 5. Consider alternatives with school principal and/or designee:

Could the student be held accountable through the Collaborative Problem Solving Team, PROMISE program or community-based programs? If further support is needed but not available at the school level, the officer and/or school principal designee may call the district designee at Student Support Initiatives for guidance.

STEP 6. After exhausting all of the above options, the officer may consider placing the student under arrest. The officer must ensure that the school principal or their designee is notified of any school-based arrest, upon removal from campus.

STEP 7. All contraband must be placed in the care and custody of the law enforcement personnel of the Department that initiates the arrest or the Special Investigations Unit (SIU) of SBBC if no arrest is made.

2.05 Discretion of Law Enforcement:

Nothing in this Agreement is intended to limit the discretion of law enforcement. Officers responding to an incident and/or consulting with school officials are encouraged to collaborate and use their discretion in determining the best course of action, especially when using alternatives to arrest. While the option to use the criminal justice system is available for many incidents, the totality of the circumstances should be taken into consideration and any less punitive alternatives that ensure the safety of the school community should be considered.

2.06 Parental Notification:

In addition to the required notification⁷ of parents and legal guardians by the law enforcement officer taking the student into custody, school principals and/or their designee are also responsible for an additional notification of parents and legal guardians upon a school-based arrest of their child.

2.07 Victim Notification:

The victim and parent or legal guardian shall be notified in writing by the school principal and/or their designee when an incident occurs on campus. A victim's rights booklet shall be provided to the victim and parent/guardian by the school district on-line*.

ARTICLE III. TRAINING

Parties will ensure that members of their respective agencies, especially those directly interacting with students and making discipline or arrest decisions, are trained in the content of this Agreement within three months of signing this Agreement. Training and implementation for existing parties should be an on-going process and any new officers, employees, agents, representatives, contractors or subcontractors, as well as school administrators whose work relates to this Agreement should be trained as they are hired.

ARTICLE IV. DATA COLLECTION AND OVERSIGHT

Data reflecting all school-based arrests, referrals to law enforcement, and filing of criminal complaints disaggregated by location of arrest/school, charge, arresting agency, gender, age, race/ethnicity, disability and English Language Learner (ELL) status shall be collected by SBBC and Department of Juvenile Justice. Data reflecting the number and nature of incidents of misbehavior is also collected by SBBC.

Annually this data will be delivered to the Circuit 17 Advisory Board and the Eliminating the Schoolhouse to Jailhouse Committee to monitor compliance with the terms of this Agreement, including the overall number of minor incidents being handled by the criminal justice system and reductions in racial disparities. In addition, these factors should be included in reviewing each school's overall school climate. This data will also be reported to the public at the end of each school year to monitor whether there have been reductions in the overall number of minor incidents being handled by the criminal justice system and reductions in racial disparities.

The parties agree to meet at least twice a year, with the Eliminating the Schoolhouse to Jailhouse Committee to provide oversight of the agreement and make recommendations to the heads of each agency on any modifications to the Agreement.

ARTICLE V. GENERAL CONDITIONS

5.01 No Waiver of Sovereign Immunity:

Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

⁷ § 985.101(3), Fla. Stat. (2013).

* Schools will accommodate individuals without access to the Internet.

5.02 No Third Party Beneficiaries:

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

5.03 Equal Opportunity Provision:

The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

5.04 Public Records:

The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. All Parties shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, all Parties shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. All Parties shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if all Parties does not transfer the public records to SBBC. Upon completion of the Agreement, all Parties shall transfer, at no cost, to SBBC all public records in possession of all Parties or keep and maintain public records required by SBBC to perform the services required under the Agreement. If all Parties transfer all public records to SBBC upon completion of the Agreement, all Parties shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If all Parties keeps and maintains public records upon completion of the Agreement, all Parties shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

5.05 Student Records:

Notwithstanding any provision to the contrary within this Agreement, all parties to this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, to fully indemnify itself, its officers, employees, agents, representatives, contractors or subcontractors, for any breach arising out of this covenant by the party, or an officer,

employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

5.06 Compliance with Laws:

Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

5.07 Place of Performance:

All obligations of the parties under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

5.08 Governing Law and Venue:

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

5.09 Entirety of Agreement:

This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements, whether oral or written.

5.10 Binding Effect:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5.11 Assignment:

Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement.

5.12 Incorporation by Reference:

Exhibit "A" and "B" attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

5.13 Captions:

The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in

any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

5.14 **Severability:**

In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

5.15 **Preparation of Agreement:**

The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

5.16 **Amendments:**

The Agreement may be modified at any time by a written amendment to the Agreement agreed to by all parties. In addition, the parties hereby authorize the Superintendent of Schools to execute addendums to this agreement using the form attached as Exhibit "B" to add additional municipalities to the Agreement.

5.17 **Waiver:**

The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

5.18 **Force Majeure:**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

5.19 **Survival:**

All representations and warranties made herein, indemnification obligations, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, and reporting requirements shall survive the termination of this Agreement.

5.20 **Chiefs of Police Association:**

The Broward County Chiefs of Police Association supports the Agreement in principle. However, the signature of the Association's president does not bind any individual municipality or agency to the terms and conditions contained in this Agreement.

5.21 **Authority:**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

5.22 **Indemnification:**

Each party agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

5.23 **Effective Date of Agreement:**

This Agreement shall become effective immediately upon its execution by signature.

5.24 **Withdrawal from the Agreement by a Party:**

A party may terminate their participation in the Agreement by providing written notice to all parties to this Agreement of their intent to withdraw ninety days from the date of the letter. Within thirty days from the date of a termination letter, the Eliminating the Schoolhouse to Jailhouse Committee shall convene. The party wishing to terminate may withdraw at the end of the original ninety days if a resolution is not reached. An updated Agreement reflecting that change shall be provided to all parties.

5.25 **Notice:**

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC:

Robert Runcie
Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to:

Broward District Schools Police Department
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard – Suite 355
Sunrise, Florida 33351

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| With a Copy to: | Michaelle Valbrun-Pope Executive Director Student Support Initiatives 1400 NW 14 th Court Fort Lauderdale, Florida 33311 |
| To Chief Judge of the 17 th Judicial Circuit: | Honorable Peter M. Weinstein Chief Judge of the 17 th Judicial Circuit 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| With a Copy to: | Honorable Elijah H. Williams Judge of the 17 th Judicial Circuit 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| To the Office of the State Attorney: | Honorable Michael J. Satz State Attorney 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| With a Copy to: | Maria Schneider Assistant State Attorney State Attorney's Office Room 640 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| To the Law Office of the Public Defender: | Honorable Howard Finkelstein Public Defender Third Floor, North Wing Broward County Courthouse 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| With a Copy to: | Gordon Weekes Chief Assistant Public Defender 201 SE 6th Street Ft Lauderdale, Florida 33301 |
| To Sheriff of Broward County, Florida: | Sheriff Scott Israel Broward Sheriff's Office 2601 West Broward Boulevard Fort Lauderdale, Florida 33311 |
| With a Copy to: | Major Oscar Llerena Youth and Neighborhood Services 2601 West Broward Boulevard Fort Lauderdale, Florida 33311 |

With a Copy to: Ronald M. Gunzburger
General Counsel
2601 West Broward Boulevard
Fort Lauderdale, Florida 33311

To the Fort Lauderdale Police Department: Chief Franklin Adderley
Fort Lauderdale Police Department
1300 W Broward Boulevard
Fort Lauderdale, Florida 33312

With a Copy to: Bradley H. Weissman
Police Legal Advisor
1300 W Broward Boulevard
Fort Lauderdale, Florida 33312

To the Florida Department of Juvenile Justice:
Secretary Christina K. Daly
Florida Department of Juvenile Justice
2737 Centerview Drive,
Tallahassee, Florida 32399

With a Copy to: Cassandra Evans, M.S.
Chief Probation Officer, Circuit 17
Probation & Community Intervention
5070 Coconut Creek Parkway
Margate, FL 33063

To the Fort Lauderdale/Broward Branch NAACP:
Marsha Ellison
President, Fort Lauderdale Branch of the NAACP
1100 Sistrunk Boulevard
Ft. Lauderdale, Florida 33311

To the Juvenile Justice Advisory Board: Marsha Ellison
Chair, Juvenile Justice Advisory Board
1100 Sistrunk Boulevard
Ft. Lauderdale, Florida 33311

To the Hallandale Beach Police Department:
Chief Dwayne Flournoy
Hallandale Beach Police Department
400 S Federal Highway
Hallandale Beach, Florida 33009

With a Copy to: V. Lynn Whitfield
City Attorney, Hallandale Beach
400 S Federal Highway
Hallandale Beach, Florida 33009

To the Broward County Chiefs of Police Association:
Dwayne Flournoy
President, Broward County Chiefs of Police Association
3501 Davie Road
Building 21
Davie, Florida 33314