

NAME & TITLE	James L. Shea, City Solicitor	CITY OF BALTIMORE	
AGENCY NAME & ADDRESS	Department of Law Suite 101, City Hall		
SUBJECT	<i>Elijah Gorham</i> , Notices of Claim		

MEMO

TO: Honorable President and Members
of the Board of Estimates

Date: April 5, 2022

ACTION REQUESTED OF BOARD OF ESTIMATES

The Department of Law and the Office of Legal Counsel for Baltimore City Public Schools (“City Schools”) respectfully request authorization to approve the settlement of notices of claim arising from the death of a City Schools student named Elijah Gorham following a head injury that occurred during the football game between Paul Laurence Dunbar High School (“Dunbar”) and Mergenthaler Vocational-Technical High School (“MERVO”) on September 18, 2021.

AMOUNT OF MONEY AND SOURCE OF FUNDS

The total amount of the proposed settlement is \$345,000.00. Funds are available in account number 2044-000000-1450-703800-603070.

BACKGROUND/EXPLANATION

On September 18, 2021, Elijah played football for MERVO in a game against Dunbar. The game took place on the football field at Baltimore Polytechnic High School. During what appeared to be a routine and clean play in the endzone, Elijah and the defender from Dunbar both ran at full speed to catch a pass from the MERVO quarterback. Both athletes leapt for the football, and Elijah, unable to break his fall with his hands, was driven into the ground face-first by the momentum of the play, with the defender landing on top of him. Elijah did not immediately get up. After some time on the ground, he stood up on his own, appeared conscious, and began to walk back to his team’s sideline. Shortly thereafter, he collapsed and began seizing near the 10-yard line marker, until he became unconscious. Elijah was taken by ambulance to R. Adams Cowley Shock Trauma Center at the University of Maryland Medical Center, where he underwent surgery. He subsequently passed away on October 11, 2021 from cardiac arrest.

In order to avoid the expense, time, and uncertainties of protracted litigation, the City and City Schools have agreed to make payment of \$345,000.00 to Elijah Gorham’s parents, James Gorham Jr., and Shantres Shaw, individually, and as personal representatives of the estate of Elijah Gorham. In exchange, they have agreed to a full release of all claims against the Mayor and City Council of Baltimore and the Baltimore City Board of School Commissioners, including any claims for attorney’s fees.

In addition, the settlement lists a series of enhancements to health and safety protocols and programming for interscholastic athletics that City Schools has agreed to develop plans to implement, subject to budgetary approval and appropriations from its funding

authorities. These enhancements are part of City Schools' commitment to ongoing continuous improvement of its programming and based in part on recommendations shared by Ms. Shaw and Mr. Gorham.

Based on a review by City Schools and the Settlement Committee of the Law Department, a recommendation is made to the Board of Estimates to approve the settlement of this case to avoid potential litigation.



James L. Shea
City Solicitor

APPROVED BY THE BOARD OF ESTIMATES

Clerk

Date



By Unyime.Ekpa at 1:46:09 PM, 4/8/2022

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into this ____ day of _____, 2022, by and among Shantres Shaw and James Gorham, Jr., individually, and as personal representatives of the estate of Elijah Gorham (the "Releasing Parties"), and The Mayor and City Council of Baltimore (the "City"), and the Baltimore City Board of School Commissioners, which operates a system of public schools commonly known as the Baltimore City Public School System or Baltimore City Public Schools ("BCBSC" or "City Schools") (collectively, the "Released Parties"). The Released Parties together with the Releasing Parties are referred to herein as the "Settling Parties."

RECITALS

WHEREAS, the Releasing Parties filed notices of claims ("Claims") arising out of the death of Elijah Gorham following an injury on September 18, 2021 during a high school football game in Baltimore City (the "Occurrence"); and

WHEREAS, the Releasing Parties allege they sustained losses and/or other damages, whether presently known or unknown, related to the Occurrence (hereinafter "Releasing Parties' Losses"); and

WHEREAS, the Released Parties deny and dispute the allegations asserted in the Claims;

WHEREAS, the Settling Parties jointly support efforts to enhance health and safety protocols and programming for City Schools' interscholastic athletics; and

WHEREAS, the Settling Parties now desire to fully compromise and settle finally and forever the Claims and any other existing or future claims or disputes asserted or which could have been asserted of whatever nature, including without limitation, any and all claims, causes of action, costs and demands of whatever name or nature, in any manner by Releasing Parties arising, growing out

of, or on account of any Releasing Parties' Losses, the Claims, or the Occurrence against the City, BCBSC, including their officials, officers, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, entities, governmental entities, and corporations.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby covenant and agree as follows:

1. **Recitals:** The foregoing recitals are incorporated into and made part of this Agreement.
2. **Payment:** Within sixty (60) days of the approval of this Agreement by the Baltimore City Board of Estimates, the City shall make payments to the Releasing Parties totaling the sum of Three Hundred and Forty Five Thousand Dollars and no cents (\$345,000.00) (the "Settlement Sum"), as full and final payment for making the release herein and abiding by the terms set forth in this Agreement. The Settlement Sum shall be divided evenly between Mr. Gorham and Ms. Shaw.
3. **Approval by City's Board of Estimates:** The Settling Parties understand that payment of the Settlement Sum as set forth in this Agreement is subject to, and contingent upon, the prior approval of the City's Board of Estimates. In the event that the Board of Estimates rejects the settlement, this Agreement will become void and of no legal effect, whereupon the parties could continue to seek relief through the Claims regarding the Occurrence.
4. **City Schools' Programmatic Enhancements:** Subject to budgetary approval and appropriations from its funding authorities, City Schools is developing plans for the following

enhancements to its interscholastic athletics protocols and programming, which it will strive to implement beginning in the 2021-2022 school year and during the three subsequent school years (2022-2023 through 2024-2025):

- a. City Schools is working to create funded job positions and/or contractual arrangements for high school athletic trainers. City Schools intends to begin staffing these positions in the 2022-2023 school year and expand over time to all high schools that operate an interscholastic athletics program, no later than the 2024-2025 school year.
- b. City Schools is working to identify an individual with experience in athletic safety programs who will work in the Interscholastic Athletics Office, oversee athletic health and safety initiatives across the school system, and provide support and coordination for the work of the school-based athletic trainers.
- c. City Schools is collaborating with the Baltimore City Fire Department (and contracted ambulance providers, if necessary), as well as area hospital systems, to enhance emergency planning and protocols for each high school that operates an interscholastic athletics program, with the goal of providing adequate ambulance response times and reliability for emergencies at City Schools sponsored interscholastic events that occur on City Schools property.
- d. City Schools is enhancing its health and safety training, through a hybrid of in-person and on-line curriculum. City Schools will require this training to be completed by all head coaches, assistant coaches, and volunteer coaches who participate in interscholastic high school sports. Topics shall include athlete safety, concussion protocols, heat stroke awareness, and traumatic brain injury prevention, recognition, and responses.

- e. City Schools will develop requirements for each school that operates a high school athletic program to offer annual training sessions for student athletes on basic awareness of athlete safety, heat stroke, concussions, traumatic brain injuries, and associated protocols. The goal is to help students recognize potential issues ahead of time, play a part in avoiding them, and understand how to respond if they feel they have any type of injury.
- f. City Schools will offer Mr. Gorham and Ms. Shaw opportunities to participate in and share their experiences as part of the staff and student training sessions described above.
- g. City Schools will provide Mr. Gorham and Ms. Shaw with status updates on the progress of these initiatives, as well as opportunities to feedback to City Schools staff, through in-person meetings and/or written reports every six months through the beginning of the 2025-2026 school year.

5. **Warranty of Capacity to Enter Into Release:** The Releasing Parties represent and warrant that no other person or entity has any interest in the Claims, demands, allegations or causes of action referred to in this Settlement Agreement except as otherwise set forth herein and that they have the sole right and exclusive authority to execute this Settlement Agreement, to receive the sum specified in it and to release all claims on their behalf, as well as on behalf of the Estate of Elijah Gorham, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Settlement Agreement. If any person should assert a claim on behalf of the Releasing Parties for damages against any of the Released Parties claiming that the Releasing Parties did not have the right or authority to enter into this Settlement Agreement or receive the monies hereunder, the Releasing Parties agree to indemnify, defend, and hold harmless the Released Parties from any and all claims

or contentions, damages, costs, liability and attorneys' fees as a consequence or result of such claim or lawsuit.

6. **General Release and Covenant not to Sue:** In consideration of the payment of the Settlement Sum, and other good and valuable consideration, the Releasing Parties, their heirs, assigns, agents, representatives, attorneys, and successors in interest hereby unconditionally release and forever discharge and covenant not to sue the Released Parties, including their officials, officers, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, entities, governmental entities, and corporations from any and all Claims which the Releasing Parties may now or hereafter have or claim to have, arising out of, or in any way related to, the Occurrence, Releasing Parties' Losses, and/or the allegations or claims asserted, or that could have been asserted prior to the effective date of this Agreement, in the Claims; provided, however, the obligations of the Settling Parties under this Agreement shall continue in full force and effect. "Claims" includes, but is not limited to, any and all losses, costs, expenses, debts, actions (constitutional or statutory, in law or in equity), causes of action, suits, damages, claims, demands and all other claims, liabilities and obligations of any nature whatsoever, including but not limited to those arising under the laws of a local, municipal, or state government, the State of Maryland, any other state, the United States, or any foreign or other sovereign entity, whether presently known or unknown, including attorneys' and consultant's fees. The Claims shall also include without limitation any and all claims the Releasing Parties have for compensatory or punitive damages, lost income or wages, interest, or expenses of any kind resulting any acts or omissions, communications, conditions, events, transactions, or other matters that may or could have been raised, litigated, or compromised in connection with the Claims.

7. Costs and Expenses: Each party will be responsible for their or its own costs and expenses incurred in connection with the prosecution, defense, and settlement of the claims asserted by the Releasing Parties against the Released Parties. The Releasing Parties shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with all matters arising from the initiation of the Claims, as well as the preparation and execution of this Agreement, including the matters and documents referred to herein, and all other matters in any way related to or arising from the Claims. The settlement of the Claims does not in any way constitute the Releasing Parties as prevailing parties for attorney's fees and/or costs.

8. No Admission of Liability: It is understood and agreed by the Settling Parties that this Agreement and the releases contained herein shall not constitute an admission of the truth of any of the allegations made by the Releasing Parties, nor shall they be construed as an admission of liability on the part of the Released Parties, any such liability being expressly denied, and that rather, the purpose of this Agreement is to fully and finally resolve all differences amongst the Settling Parties and to allow the Settling Parties to avoid the time, expense and uncertainties of protracted litigation.

9. Medicare/Medicaid Liens: The Releasing Party understands that Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") imposes a lien (the "Medicare Lien") for reimbursement of certain payments made by Medicare. The Settling Parties understand and believe that there are no outstanding Medicare Liens. Notwithstanding this, in the event that payment of the claims results in an obligation to reimburse Medicare, the Releasing Party agrees to make such reimbursement and agrees that his attorneys may retain sufficient funds in the attorneys' escrow account to satisfy the Medicare Lien. If the Releasing Parties or their attorneys fail to satisfy a Medicare Lien, and that failure causes the Released Parties to pay or reimburse any person or entity any amount MMSEA specifies, the Releasing Parties agree to

reimburse the Released Parties' payment or reimbursement to such person or entity. Upon receipt of documentation from Medicare that any Medicare Lien is satisfied, the Releasing Parties will send a copy of such documentation to the Released Parties.

10. **No Evidence of Need to Indemnify**: It is understood and agreed by the Settling Parties that this Agreement and/or corresponding settlement or payment of the Settling Sum is not to be construed as evidence of an obligation on behalf of the City or BCBSC to indemnify any person who may be covered under this Agreement for claims of intentional conduct, as such contention is expressly denied.

11. **Entire Agreement of the Parties**: It is understood and agreed by the Parties that this Agreement constitutes the entire Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Agreement may only be amended by a writing signed by all parties hereto.

12. **Tax Consequences**: The Releasing Parties acknowledge that the Released Parties make no representation whatsoever concerning the tax consequences, if any, of this Agreement. The Releasing Parties agree that they are solely responsible for payment of all federal, state, and local taxes, interest, and penalties, if any, which are or may become due on account of this Agreement. The Releasing Parties further agree to indemnify, defend, and hold harmless the Released Parties from any liability for taxes that the Releasing Parties owes or will owe on account of this Agreement.

13. **Additional Documents**: The parties agree to cooperate and fully execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement. The Releasing Parties further

agree to cooperate, support, and not undermine the good-faith efforts of BCBSC to develop and implement the City Schools' programmatic enhancements described in paragraph four above.

14. **Drafting of the Agreement:** The Parties acknowledge and agree that this Agreement represents the product of negotiations by the Parties and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in this Agreement, the Settling Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party than the other.

15. **Validity of Agreement:** The parties herein agree that this Agreement is a legally valid, binding and enforceable obligation upon all parties in accordance with the terms contained herein.

16. **Severability:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision contained herein. If such condition, covenant, or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

17. **WAIVER OF JURY TRIAL:** TO THE EXTENT AN ACTION IS FILED IN ANY COURT IN CONNECTION WITH ANY COVENANT, TERM, OR CONDITION OF THIS AGREEMENT, THE SETTLING PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

18. **Knowing and Voluntary Act:** Each of the Settling Parties represents that each has read this Agreement and acknowledges that each has been represented or had the opportunity to be represented by legal counsel of their own choice throughout all of the negotiations which preceded

the execution of this Agreement and that each party has voluntarily and knowingly executed this Agreement of their own free will and/or with the consent and/or on the advice of such legal counsel. Each of the Settling Parties further acknowledges that each and/or such party's counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the considerations specified herein.

19. Survival of Terms: The Settling Parties agree that this Agreement shall upon approval inure to the benefit of and bind the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Agreement shall survive the closing of the Agreement.

20. Governing Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions, and any legal actions presenting disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the Circuit Court for Baltimore City, Maryland.

21. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. An emailed, facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:

Douglas Phillips

WITNESS

Shantres Shaw

SHANTRES SHAW (Mar 31, 2022 21:13 EDT)

(SEAL)

Shantres Shaw, individually, and as Personal Representative of the Estate of Elijah Gorham

John Macellan

WITNESS

James L. Gorham, Jr. (SEAL)
James Gorham, Jr., individually, and as Personal Representative of the Estate of Elijah Gorham

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

Christy Lewis
WITNESS

By: Sonja Brookins Santelises (SEAL)
Sonja Brookins Santelises
Chief Executive Officer

MAYOR AND CITY COUNCIL OF BALTIMORE

James L. Wilson
WITNESS

By: James L. Shea (SEAL)
James L. Shea, City Solicitor

Approved as to Form and Legal Sufficiency

By: Joshua Civin
Joshua Civin
Chief Legal Officer
Baltimore City Public Schools

Approved as to Form and Legal Sufficiency **APPROVED BY THE BOARD OF ESTIMATES**

By: Kurt Hank
Assistant Solicitor
Department of Law

By: _____ Date
Clerk