



Office of the City Manager

INFORMATION CALENDAR

December 11, 2012

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Settlement of Lawsuit: *Cochrell v. Berkeley Unified School District and City of Berkeley*

INTRODUCTION

All settlements that are not announced at the conclusion of a closed session are provided to the Council and the public via an information report.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to the Council's authorization on September 4, 2012, the City Attorney has entered into the attached settlement agreement. The case was completely resolved on October 22, 2012 when BUSD executed the settlement agreement.

BACKGROUND

This case concerns personal injuries sustained by Mr. Terry Cochrell on July 25, 2010, when Mr. Cochrell was exiting the Warm Pool building on a disabled access ramp. The railing along the ramp had been destroyed by a car 68 days earlier, and as a result of its absence his wheelchair fell off the ramp. Mr. Cochrell broke his leg, sprained both knees, and suffered other bruising. His medical treatment included surgery to repair the broken leg and a four-day hospital stay. Mr. Cochrell sued, alleging negligence as well as violation of the ADA. Specifically, in addition to personal injury damages as a result of the fall, Mr. Cochrell sought damages for denial of access due to the condition of the City's pools; statutory attorneys' fees and costs due under the ADA; and injunctive relief under a theory that the ADA obligates the City to maintain a warm pool program as part of its aquatics program.

As a result of mediation, the parties agreed to a total settlement of \$175,000 in return for dismissal of all of Mr. Cochrell's claims. BUSD and the City further agreed to apportion liability two-thirds to the BUSD and one-third to the City. Accordingly the City's settlement cost is \$58,333.33.

FISCAL IMPACTS

Public Liability Fund No. [881-1702-410-8101]

\$58,333.33

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachment:

1: Release and Settlement Agreement