

DEFERRED PROSECUTION AGREEMENT

This Deferred Prosecution Agreement (“DPA”) is entered into by and between Park Tudor School (“Park Tudor”), a private educational institution located in Indianapolis, Indiana, and the United States Attorney’s Office for the Southern District of Indiana (“USAO”).

WHEREAS, Kyle Edward Cox (“Kyle Cox”), an employee of Park Tudor, engaged a student at Park Tudor, Minor Victim 1, who was less than 16 years of age, in sexually explicit communications and caused Minor Victim 1 to produce sexually explicit images and videos at his request;

WHEREAS, the former Park Tudor Head of School (“Park Tudor Head of School”), was hired by and was responsible for reporting to the Park Tudor School Board of Directors.

WHEREAS, the Park Tudor Head of School became aware of the above-referenced sexually explicit communications and images and videos;

WHEREAS, the Park Tudor Head of School, through the actions of school official(s) and its agents, caused a materially false report to be made to the Department of Child Services (“DCS”) on or about December 15, 2015 (the “Report”) that omitted key facts and circumstances relating to the sexually explicit communications between Kyle Cox and Minor Victim 1 and the sexually explicit images and videos created by Minor Victim 1 at Kyle Cox’s request (“the Kyle Cox matter”);

WHEREAS, the USAO conducted an investigation of the Kyle Cox matter and the Report;

WHEREAS, since February 5, 2016, Park Tudor has actively and substantially cooperated with the USAO’s investigation into the facts and circumstances surrounding the Kyle Cox matter, the Report, and related issues;

WHEREAS, Park Tudor timely engaged the Hon. John Daniel Tinder (ret.) to serve as an independent monitor for Park Tudor, and with guidance of Judge Tinder, Park Tudor has

implemented revised and improved policies and procedures to address and better protect the children who attend Park Tudor; and

WHEREAS, the USAO believes it to be in its interest, the interest of Park Tudor, and the interest of justice to resolve this matter via a DPA:

Park Tudor agrees that through the actions of the Park Tudor Head of School, the Park Tudor Head of School would otherwise be subject to prosecution for the offense of Misprision of a Felony, in violation of 18 U.S.C. § 4, and further agrees and admits, solely for the purposes of and as are relevant to this Agreement, to the following facts:

- A. Between September and December 2015, Kyle Cox persuaded, induced, enticed or coerced a minor-aged Park Tudor female student to send him sexually explicit images and videos which constituted child pornography. Kyle Cox also attempted to persuade, induce, entice or coerce Minor Victim 1 to engage in sexual activity with him, which conduct would have violated Indiana law. Kyle Cox ultimately pleaded guilty to such conduct and was sentenced to 14 years in prison. Park Tudor School was cooperative with the USAO throughout that prosecution.
- B. No other person employed by Park Tudor is known to have been aware of the Kyle Cox/ Minor Victim 1 relationship until December 14, 2015, when evidence of the illegal exchanges was presented (via a laptop and hard copy documents) to the Park Tudor Head of School and Park Tudor's outside counsel. The evidence presented to the Park Tudor Head of School and outside counsel at that time included visual depictions of Minor Victim 1 engaged in sexually explicit conduct, the possession and solicitation of which images and videos was illegal under both Indiana law and federal law. Park

Tudor's outside counsel took physical possession of the subject laptop and hard copy documents at the close of the meeting.

- C. The Park Tudor Head of School was aware of the duty imposed by law to report allegations of sexual abuse involving a minor to the DCS but delayed making any report for approximately 24 hours. Some of this delay was based on conversations with Park Tudor's outside counsel.
- D. On December 15, 2015, the Park Tudor Head of School directed a second Park Tudor School official to make a report to the DCS. The Park Tudor Head of School failed to inform the second school official that Kyle Cox had exchanged sexually explicit images and videos with Minor Victim 1 and that Park Tudor's outside counsel had physical possession of same.
- E. On the afternoon of December 15, 2015, the Park Tudor Head of School was present when the second school official made a telephonic report of the matter to DCS over a speaker phone. The Park Tudor Head of School was present when the DCS official expressly inquired whether any pictures were exchanged. The Park Tudor Head of School was present when the other school official indicated that she had no information on that, and he did not correct that statement, even though the Park Tudor Head of School was aware that sexually explicit images and videos existed and had been exchanged between Kyle Cox and Child Victim 1.
- F. Notwithstanding the fact that the Park Tudor Head of School was personally aware of the existence of such photos and videos, the Park Tudor Head of School failed to report that information to the DCS on that date or any date thereafter.

- G. Beginning on December 14, 2015, the Park Tudor Head of School was aware that Park Tudor's outside counsel had taken and maintained physical possession of the images and videos of Minor Victim 1 engaged in sexually explicit conduct (or copies thereof) that Cox had coerced, enticed, induced or persuaded Minor Victim 1 to send to him.
- H. On December 15, 2015, the Park Tudor Head of School sent a Confidentiality Agreement to Kyle Cox which promised that Park Tudor would release a statement that Kyle Cox had resigned his employment in return for Kyle Cox's promises not to have communications with Park Tudor students and not to discuss the reasons for his resignation.
- I. On December 16, 2015, the Park Tudor Head of School personally returned the laptop containing the visual depictions of Minor Victim 1 engaged in sexually explicit conduct to Minor Victim 1's parent, rather than turn this laptop over to a law enforcement agency or disclose its existence to a law enforcement agency.
- J. Beginning on December 16, 2015, the Park Tudor Head of School authorized Park Tudor's outside counsel to negotiate a confidentiality agreement with Minor Victim 1's parents.
- K. On January 21, 2016, the Park Tudor Head of School made false and misleading statements to IMPD Detective Laura Smith, first, by failing to state that the Park Tudor Head of School was present when another Park Tudor school official made the Report and, second, by failing to state that, unlike the second school official, the Park Tudor Head of School had first-

hand knowledge of the existence of physical and digital evidence of the visual depictions of Minor Victim 1 engaged in sexually explicit conduct.

- L. There is no known evidence that any other Park Tudor employee, administrator, staff, faculty, or director had specific knowledge of the existence of the Kyle Cox matter sexually explicit images and videos prior to the start of the overt criminal investigation.
- M. Following the death of the Park Tudor Head of School, and after the arrest of Kyle Cox, the Park Tudor Board of Directors and its administrators, faculty and staff have taken positive and assertive steps to remedy this situation; including:
 - 1. Retaining former federal judge and former U.S. Attorney John D. Tinder to guide a comprehensive review and improvement of all Park Tudor policies and procedures with a focus on child abuse/neglect prevention, detection and reporting requirements.
 - 2. Making substantial revisions to Park Tudor's various handbooks and manuals on such matters as child abuse reporting procedures, digital communications policies and descriptions of prohibited employee conduct.
 - 3. Designating Judge Tinder to serve as Park Tudor's independent Monitor to assure ongoing compliance with the school's policies and all laws impacting child safety.
 - 4. Training all Park Tudor faculty, staff and Board members in programs presented by Prevent Child Abuse Indiana. Park Tudor has also committed to requiring the same training for all new faculty and staff

members in the future, as well as updating this training at least annually.

5. Providing full cooperation with the USAO in its investigation including extensive document production and witness reports.
6. Providing a public statement of regret and apology.

Based on the above, in consideration of the promises and agreements contained in this DPA, Park Tudor and the USAO agree as follows:

- I. The conduct of the Park Tudor Head of School subjects Park Tudor to prosecution for the offense of Misprision of a Felony, in violation of 18 U.S.C. § 4.
- II. This DPA shall become effective November 15, 2016 and remain in effect through March 15, 2018 (the "Term"), during which time the USAO will defer prosecution of Park Tudor for the offense of Misprision of a Felony. Should Park Tudor violate any of the conditions of this DPA during the period, the USAO may proceed with a prosecution of Park Tudor for the offense of Misprision of a Felony, in violation of 18 U.S.C. § 4, as described above. Should Park Tudor adhere with all of its obligations and the conditions of the DPA, the USAO will decline to proceed with such a prosecution and will take no further action against Park Tudor concerning the Kyle Cox matter and any matter arising therefrom, including the Report.
- III. During the term of this DPA and given the USAO's continuing criminal investigation of others, Park Tudor, and its officers, employees, agents, and attorneys, shall continue to cooperate fully with the USAO and, as directed by the USAO, with any other federal or state law enforcement or regulatory agency, regarding the matters described above. Park Tudor and the USAO agree that its cooperation shall include the following:

- A. Completely, truthfully, and reasonably promptly disclosing all non-privileged information in its possession about which the USAO may inquire;
- B. Providing reasonable access to Park Tudor's documents and facilities, and completely and accurately responding within a reasonable time to all USAO requests for documents;
- C. Providing reasonable access to Park Tudor's officers, employees, and agents for interviews and discussions;
- D. Providing testimony and other information deemed necessary by the USAO or the court to establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal proceeding, if any, against others; and
- E. The USAO agrees that it will make all such above requests for Park Tudor documents, information or personnel solely through Park Tudor's counsel.

IV. During the term of this DPA, Park Tudor, and its officers, employees, and agents, shall:

- A. not violate any law (federal, state and local);
- B. immediately, truthfully and completely report any allegations of suspected child abuse and neglect—e.g., sexually explicit communications and/or conduct with minors, to DCS and/or law enforcement;
- C. continue to formulate, implement, and enforce policies and procedures to ensure the immediate reporting of suspected child abuse and neglect to proper authorities;
- D. continue to provide training to all of its employees on the dynamics of child abuse, including child sexual abuse and abuse by authority figures, and training on how to make a truthful and complete report of suspected child abuse or neglect to the DCS and/or law enforcement. This training should be conducted by experts in the field of child abuse and neglect and the reporting thereof; and

- E. continue to develop, implement, and enforce policies and procedures regarding teacher-student contact that are designed to reduce the likelihood of the formation of illegal and inappropriate relationships between Park Tudor personnel and students.
- V. During the Term of this DPA, Park Tudor also agrees that it will continue to engage an independent monitor and that the monitor, when requested by the USAO, will provide periodic reports to the USAO regarding the matters set forth in Section IV, above. The independent monitor may not be employed by any law firm providing legal services to Park Tudor and should have no personal ties to Park Tudor, other than the services provided by the monitor (e.g., the monitor should not be related to anyone who attends the school).
- VI. Should the USAO determine that Park Tudor has breached the DPA, the USAO shall provide written notice to Park Tudor of the alleged breach and provide Park Tudor with a reasonable time period in which to make a presentation to the USAO to demonstrate that: (A) no breach has occurred; (B) the breach is not a knowing breach; or (C) the breach has been cured and Park Tudor should not be prosecuted for the breach. In the event Park Tudor breaches the DPA, and the USAO prosecutes Park Tudor, the USAO may use any Park Tudor documentary information provided by Park Tudor to the USAO pursuant to subpoena or as a result of its cooperation with the USAO.
- VII. In the event the USAO, in its sole reasonable discretion, determines that Park Tudor has breached the DPA, Park Tudor agrees to the following: (a) Park Tudor will not contradict any statement of fact to which it has admitted in this DPA; and (b) any statements or testimony by Park Tudor officers, employees, or agents (current or former), and any leads derived therefrom, shall be admissible as evidence against Park

Tudor. The parties understand and agree that this DPA is binding on Park Tudor and the USAO, but it does not bind any other federal, state, or local agencies or authorities.

- VIII. Except as explained below, nothing in this DPA confers any right on any individual or entity not a party to this DPA, and thus nothing in this DPA restricts in any way the ability of the USAO from prosecuting any other individual or entity. The USAO agrees that no other Park Tudor employee, administrator or director is subject to prosecution for conduct of its former Head of School.
- IX. At the request of the USAO, Park Tudor and the USAO agree that this DPA shall be made available to the public and at a time determined in the sole reasonable discretion of the USAO.
- X. Park Tudor warrants and represents that its Board of Directors has duly authorized the execution and delivery of this DPA by Park Tudor and that Tom W. Grein, Chair, Park Tudor Board of Directors, the signatory below, has the authority to bind Park Tudor.
- XI. This DPA constitutes the entire agreement of the parties on this matter and supersedes any and all other prior agreements and understandings, both oral and written, among the parties with respect to this matter.
- XII. This DPA may not be modified except in writing signed by both parties.
- XIII. This DPA may be executed in counterparts, each of which shall be deemed an original but all of which taken together constitute one and the same DPA. The DPA may be executed by facsimile or electronic transmission.
- XIV. The effective date of this agreement shall be the date upon which this DPA is fully executed by the parties.
- XV. Park Tudor is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right

to a speedy and public trial. Park Tudor is also aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information or in bringing a defendant to trial. By entering into this DPA, Park Tudor agrees and consents that any delay from the date of this DPA to the date of the initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at the request of Park Tudor, and Park Tudor waives any defense to such prosecution on the ground that such delay operated to deny its rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period of this DPA.



PARK TUDOR SCHOOL
TOM W. GREIN, CHAIR
BOARD OF DIRECTORS

BY: THOMAS W. GREIN

TITLE: CHAIR, BOARD OF DIRECTORS

DATE: NOVEMBER 14, 2016

DMS 4131537v1



UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF
INDIANA

BY: Josh J. Minkler

TITLE: United States Attorney

DATE: 11/13/16