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## Kamehameha Schools settled lawsuit for \$7M

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By **Jim Dooley**  
Advertiser Staff Writer

Kamehameha Schools paid \$7 million to settle a lawsuit filed by an anonymous student who claimed the schools' Hawaiians-first admissions policy violates civil rights laws, according to an attorney involved in the case.

Terms of the confidential settlement have been a closely guarded secret since it was signed in May just before the U.S. Supreme Court was to decide whether to hear the case.

The settlement ended a four-year effort by a non-Hawaiian teenager, known only as John Doe, to enter the Kamehameha Schools system.

Attorney John Goemans — who planned the legal action, found the plaintiff and brought the case to Sacramento private attorney Eric Grant to litigate — revealed the amount of the settlement in an exclusive interview with The Advertiser.

"The amount of the settlement is important public information that should be disclosed by a charitable institution that receives tax-exempt status from the Internal Revenue Service," Goemans said in a telephone interview.

The lawsuit challenging the schools' admissions policy was the first case of its kind to reach the doors of the U.S. Supreme Court and stirred enormous controversy in Hawai'i.

Critics of the settlement pointed out that additional legal challenges could still be mounted against the admissions policy, and news of the \$7 million that the schools paid could increase the chances of new lawsuits.

Local attorney David Rosen, who made news last year by actively seeking plaintiffs for a new challenge to the admissions policy, said yesterday he is preparing a suit against Kamehameha Schools.

Kamehameha Schools, previously known as Bishop Estate, is a nonprofit organization with assets of \$7.7 billion.

Grant, appearing yesterday at a University of Hawai'i law school symposium on the lawsuit, known as John Doe vs. Kamehameha Schools, declined to discuss the settlement when told that Goemans had disclosed the \$7 million figure.

Kamehameha Schools' lead attorney in the lawsuit, Kathleen Sullivan, a former dean of the Stanford University law school, also declined comment.

"Terms of the settlement are inviolate," said Sullivan, also a participant at the UH symposium yesterday.

Ann Botticelli, spokeswoman for the Kamehameha Schools board of trustees, also declined to comment on Goemans' statements or the size of the settlement.

The settlement says that anyone who discloses its contents is subject to a \$2 million penalty, but



John Goemans




Eric Grant

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Goemans said he was not a party to the agreement and never signed it.

Goemans, who is recovering from heart surgery, said yesterday that he was opposed to the \$7 million settlement but that "it was the client's decision" to accept it.

#### **PART OF TAX RECORD**

Goemans said an attorney representing Grant breached the confidentiality clause by mailing a copy of the agreement to Goemans last year.

Goemans added that Kamehameha Schools must disclose details of the settlement on its 2007 tax return, which is due to be filed later this year, and on annual financial reports the charity is required to file with the state attorney general's office and with the state court.

Tax returns of nonprofit institutions such as Kamehameha Schools are public records under federal law. The institution's annual financial accountings — which date to its founding by Princess Bernice Pauahi Bishop in 1888 — are also open to the public.

Kamehameha operates three campuses — its flagship at Kapalama Heights on O'ahu, one on Maui and another on the Big Island — for the benefit of children of Hawaiian ancestry.

The institution plays a central role in Hawai'i society, in part because of its financial clout and in part because of its mission to educate children of Hawaiian ancestry. It is also the state's largest private landowner.

There are about 70,000 school-age children with Hawaiian blood, and 5,400 students were enrolled at Kamehameha's various schools last year. Kamehameha served 30,000 other children and adults through outreach programs and through its support of charter schools.

#### **TO SUPREME COURT**

Hawai'i federal Judge Alan Kay initially dismissed the John Doe lawsuit in November 2003, upholding the schools' argument that the admissions policy helped address cultural and socio-economic disadvantages that have beset many Hawaiians since the 1893 overthrow of the Hawaiian monarchy.

The plaintiffs appealed that decision to the 9th U.S. Circuit Court of Appeals, which overturned it in a three-judge decision in 2005. That ruling prompted protest rallies, prayer vigils and other gatherings around the state in support of the schools.

Lawyers for Kamehameha Schools then asked that all members of the appellate court review the matter and the full court reversed the three-judge panel's decision by an 8-7 vote in December 2006.

Grant then petitioned the U.S. Supreme Court to hear the case, and last May, on the eve of the high court announcement on whether it would take the case, the matter was settled out of court.

"We didn't think that there was a strong possibility (of losing) but that risk is always out there," J. Douglas Ing, chairman of the Kamehameha board of trustees, said in announcing the settlement in 2007. "There are no guarantees and there certainly were no guarantees from our lawyers that we would win the case."

Grant, the attorney for John Doe, said after the case was settled, "Obviously, a settlement is not exactly what either side wanted. But it is something both sides eventually came to terms on."

#### **SPATS OVER FEES**

Goemans is involved in a continuing dispute with John Doe, whose identity has never been revealed, and with Grant over how much money Goemans should receive for his part in the case.

Grant received 40 percent of the overall settlement — \$2.8 million — although he had to sue the plaintiff and the plaintiff's mother in federal court in Sacramento last year to collect the money, according to Goemans and federal court records.

That collection lawsuit was filed in June after Kamehameha had paid the \$7 million settlement. The dispute over the payment of Grant's fee was settled and dismissed in September.

Goemans said he asked John Doe and Jane Doe for 25 percent of the total settlement — \$1.75 million — but has not yet received a response.

Grant filed a separate lawsuit against Goemans in California state court last year regarding how much compensation Goemans is owed for his part in the case.

That suit is still pending, although Goemans said he believes it is groundless and will be dismissed.

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Grant yesterday declined comment on the collection lawsuit he filed in Sacramento against his own clients or the related action he filed against Goemans.

Goemans said he has received \$20,000 in compensation to date from John Doe and his mother and is contemplating filing a new legal action of his own against them.

Reach Jim Dooley at [jdooley@honoluluadvertiser.com](mailto:jdooley@honoluluadvertiser.com).

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