

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

**This Settlement Agreement and Release of All Claims** (the “Agreement”) is made and entered into by and between:

“Plaintiffs”      Citizens For Quality Education San Diego; San Diego Asian Americans For Equality Foundation; Scott Hasson individually and as next friend on behalf of his minor child, C.H.; Chaoyin He, individually and as next friend on behalf of her minor child, B.H.; Xuexun Hu, individually and as next friend on behalf of his minor child, R.H.; Kevin Steel and Melissa Steel, individually and as next friends on behalf of their minor child, K.S.; Jose Velazquez, individually and as next friend on behalf of his minor child, J.V.

“SDUSD”      San Diego Unified School District

### **Recitals**

- A.      Plaintiffs have filed a complaint in the United States District Court, Southern District of California, Case No. 17CV1054 BAS JMA (the “Action”) against Defendants Richard Barrera; Kevin Beiser; John Lee Evans; Michael McQuary; Sharon Whitehurst-Payne; and Cynthia Marten.
- B.      SDUSD denies Plaintiff’s material allegations and denies that Defendants are liable for any of the claims in the Action.
- C.      The parties desire to enter into this Agreement in order to avoid further costs of litigation and to resolve all claims which have been made, or which could have been made, related to or arising out of the Action.

### **Agreement**

The parties agree as follows:

#### **1.0      Information Circular**

SDUSD agrees to circulate the Information Circular attached hereto as Exhibit A to its area superintendents and principals in the ordinary course of business. SDUSD will enforce the provisions of the Information Circular consistent with its then-current policies and practices, which currently include the following (also attached as Appendix A):

- BP 6141.2 – Recognition of Religious Beliefs and Customs
- BP 6144 – Controversial Issues
- AR 6141.2 – Recognition of Religious Beliefs and Customs
- BP 0410(a) – Nondiscrimination in District Programs and Activities

## **2.0 Dismissal of Entire Action with Prejudice**

Plaintiff agrees to dismiss the entire Action with prejudice as to all Defendants in exchange for the consideration provided by SDUSD herein, within 10 days after the execution of the Agreement by all parties.

## **3.0 Attorneys' Fees and Costs**

Each party hereto shall bear all of its, his or her own attorneys' fees and costs arising from the Action, the facts and circumstances leading up to this Agreement, the preparation of this Agreement, any other actions required to effectuate the terms and conditions of this Agreement, and all related matters.

## **4.0 Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

## **5.0 Entire Agreement and Successors in Interest**

This Agreement contains the entire agreement between Plaintiffs and SDUSD with regard to the matters set forth in it and shall be binding upon and ensure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

## **6.0 No Admissions**

By entering into this Agreement, the parties are not making any admission that they have engaged, or are now engaging, in any unlawful conduct. It is understood that this settlement is not an admission of liability, but is in compromise of disputed allegations. The parties agree that their settlement and this Agreement shall not be admissible in any proceeding or action involving any party to this Agreement, except one to enforce this Agreement.

## **7.0 Counterparts**

This Agreement may be executed in counterparts and shall be binding on all Parties when each has signed either an original or copy of this Agreement. Facsimile signatures may be treated as originals.

**The Parties to this Agreement, with the benefit of representation and advice of counsel, have read the foregoing Agreement and fully understand each and every provision contained herein, and intend to be fully bound by its provisions.**

**WHEREFORE, the Parties have executed this Agreement on the date shown below.**

Citizens for Quality Education San Diego

Dated: 2/28/2019, 2019

By: Mary Baker  
Mary Baker  
Director

San Diego Asian Americans for Equality Foundation

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Frank Xu  
Vice President

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Scott Hasson individually and as next friend on  
behalf of his minor child, C.H.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
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behalf of her minor child, B.H.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Xuexun Hu, individually and as next friend on  
behalf of his minor child, R.H.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Kevin Steel, individually and as next friends on  
behalf of his minor child, K.S.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Melissa Steel, individually and as next friends on  
behalf of her minor child, K.S.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Jose Velazquez, individually and as next friend  
on behalf of his minor child, J.V.

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Director

San Diego Asian Americans for Equality Foundation

Dated: February 28th, 2019

By: Frank Xu  
Frank Xu  
Vice President

Dated: \_\_\_\_\_, 2019

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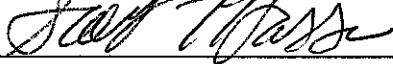
By: \_\_\_\_\_  
Mary Baker  
Director

**San Diego Asian Americans for Equality Foundation**

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Frank Xu  
Vice President

Dated: 3-3-19, 2019

By:  \_\_\_\_\_  
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Vice President

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
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Dated: 2/27, 2019

By:  \_\_\_\_\_  
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Dated: \_\_\_\_\_, 2019

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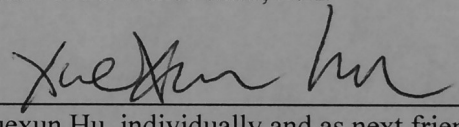
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By:   
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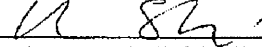
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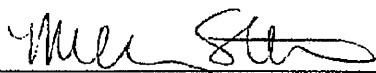
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By:  \_\_\_\_\_  
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Dated: 2/27/ \_\_\_\_\_, 2019

By:  \_\_\_\_\_  
Melissa Steel, individually and as next friends on  
behalf of her minor child, K.S.

Dated: Feb 27, \_\_\_\_\_, 2019

By: \_\_\_\_\_  
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Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Melissa Steel, individually and as next friends on  
behalf of her minor child, K.S.

Dated: February 28, 2019

By: Jose Velazquez  
Jose Velazquez, individually and as next friend  
on behalf of his minor child, J.V.

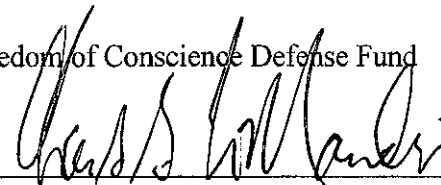
San Diego Unified School District

Dated: February 26, 2019

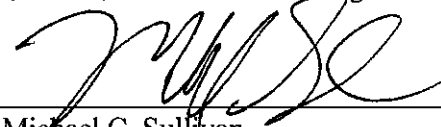
By: Andra M. Greene  
Andra M. Greene  
General Counsel

**APPROVED AS TO FORM AND SUBSTANCE:**

Dated: March 7, 2019

Freedom of Conscience Defense Fund  
By:   
Charles S. LiMandri  
Attorney for Plaintiffs

Dated: Feb. 26, 2019

Paul, Plevin, Sullivan & Connaughton LLP  
By:   
Michael C. Sullivan  
Attorneys for San Diego Unified  
School District

## **APPENDIX A**

### **Relevant Board Policies / Administrative Regulations**

- Information Circular No. 506 - Religion in Education
- BP 6141.2 – Recognition of Religious Beliefs and Customs
- BP 6144 – Controversial Issues
- AR 6141.2 – Recognition of Religious Beliefs and Customs

**SAN DIEGO UNIFIED SCHOOL DISTRICT**

**Date:** March 5, 2019

**To:** Area Superintendents and All School Principals; Division and Department Heads

**Subject:** RELIGION IN EDUCATION

**Department and/or Persons Concerned:** Area Superintendents, Principals

**Reference:** BP 6141.2, BP 6144, AR 6141.2, AR 6144, California Education Code section 51511, 20 U.S.C. section 6061 (School Prayer)

**Brief Explanation:**

The First Amendment to the United States Constitution establishes certain limits on the conduct of public school officials as it relates to religious activity, but does not prohibit the study of comparative religion, or the history of religion and its relationship to the advancement of civilization. The history of religion, comparative religion, the Bible (or other scripture) as literature (either as a separate course or within some other existing course), are all permissible public school subjects. However, the First Amendment requires that such material be presented in a neutral and balanced manner, which neither favors nor disfavors one religion over another.

San Diego Unified follows California state curriculum provided in the 2016 State of California History-Social Science Framework (“Framework”), which was adopted by the State Board of Education on July 14, 2016. Chapters 10 and 11 of the Framework cover World History and Geography in Grades 6 and 7, respectively. Included within the Framework is the study of world religions in the context of world history. Specifically, students are asked to evaluate the manner in which major religions such as Judaism, Christianity, Islam, Buddhism, Hinduism, and Sikhism and cultural systems such as Confucianism, the Reformation, and the Enlightenment developed, and changed over time and spread to multiple cultures. Students may be asked to read excerpts from religious texts in connection with their studies.

Appendix F of the Framework provides guidance to educators about how to present material about religion in a manner that is constitutionally and academically appropriate. The Framework specifies all instructional materials must be in accordance with the guidance provided in Appendix F.

Additionally, the Board of Education has adopted Board Policies (“BP”) and Administrative Regulations (“AR”) 6141.2, regarding the recognition of religious beliefs and customs in instruction, and 6144, regarding the presentation of controversial issues, in order to ensure the District’s programs and activity comply with the state and federal constitution as well as Education Code section 51511.

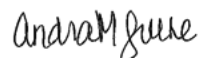
## INFORMATION CIRCULAR NO. 506

Legal Services

Page 2

In accordance with the above:

- Educational material on religious subjects must be neutral and may not be presented in a manner that promotes one religion over another.
- Educators should treat each religion with equal respect, with the time and attention spent discussing each religion being proportionate to its impact on history and human development and the material presented in its historical context.
- Belief systems must be presented in historical contexts and may not be presented as fact unless there is independent historical evidence justifying presentation in that manner.
- Religious texts, leaders and events must be examined using the same rigor and analytical methods and standards applied to other topics.
- Students who respond to class assignments with appropriately related religious content must be graded according to the same criteria applied to all other students and must not be penalized for expressions of belief or non-belief.
- Educators and other staff may not discuss or promote their personal religious views when acting in their official capacity. This includes displaying religious symbols, and encouraging or discouraging student participation in religious activities.
- Educators must allow students to freely express their religious beliefs, but may not indicate agreement or disagreement with those beliefs.
- Educators or other staff sponsoring guest speakers at District events must ask them not to use their position or influence on students to forward their own religious, political, economic or social views and shall take active steps to neutralize whatever bias has been presented. Guest speakers from religious organizations are not permitted to present to students on religious topics.



Andra M. Greene  
General Counsel

AMG:dmh

**RECOGNITION OF RELIGIOUS BELIEFS AND CUSTOMS**

The Board of Education recognizes that students' education would be incomplete without an understanding of the role of religion in society. As appropriate for a particular course, teachers may objectively discuss the influences of various religions, using religious works and symbols to illustrate their relationship with culture, literature or the arts. The Board expects that such instruction will identify principles common to all religions and foster respect for the diversity of religions and customs in the world.

*(cf. 6143 - Courses of Study)*

In order to respect each student's individual right to freedom of religious practice, religious indoctrination is clearly forbidden in the public schools. Instruction about religion shall not promote or denigrate the beliefs or customs of any particular religion or sect, nor should a preference be shown for one religious viewpoint over another. Staff members shall be highly sensitive to their obligation not to interfere with the religious development of any student in whatever tradition the student embraces.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 1330 - Use of School Facilities)*

*(cf. 1325 - Advertising and Promotion)*

*(cf. 5113 - Absences and Excuses)*

*(cf. 6145.5 - Student Organizations and Equal Access)*

Staff shall not endorse, encourage or solicit religious or anti-religious expression or activities among students during class time. As part of their official duties, staff shall not lead students in prayer or other religious activities. However, staff shall not prohibit or discourage any student from praying or otherwise expressing his/her religious belief as long as this does not disrupt the classroom.

*(cf. 5127 - Graduation Ceremony and Activities)*

Students may express their beliefs about religion in their homework, artwork and other class work if the expression is germane to the assignment. Such work shall be judged by ordinary academic standards.

*(cf. 5121 - Grades/Evaluation of Student Achievement)*

*(cf. 5145.2 - Freedom of Speech/Expression)*

*(cf. 6144 - Controversial Issues)*

*(cf. 6154 - Homework/Make-up Work)*

While teaching about religious holidays is a permissible part of the educational program, celebrating religious holidays is not allowed in the public schools. School-sponsored programs shall not be, nor have the effect of being, religiously oriented or a religious celebration. School and classroom decorations may express seasonal themes that are not religious in nature.

## **RECOGNITION OF RELIGIOUS BELIEFS AND CUSTOMS (continued)**

Music, art, literature or drama programs having religious themes are permitted as part of the curriculum for school-sponsored activities and programs if presented in an objective manner and as a traditional part of the cultural and religious heritage. The use of religious symbols that are part of a religious holiday is permitted as a teaching aid or resource provided that such symbols are displayed as an example of cultural and religious heritage of the holiday and are temporary in nature.

### *Legal Reference:*

#### EDUCATION CODE

38130-38138 Civic Center Act

46014 Absences for religious purposes

51511 Religious matters properly included in courses of study

51938 Right of parent/guardian to excuse from sexual health instruction

#### UNITED STATES CODE, TITLE 20

4071-4074 Equal Access Act

6061 School prayer

7904 School prayer

#### COURT DECISIONS

Lassonde v. Pleasanton Unified School District, (2003, 9<sup>th</sup> Cir.) 320 F.3d 979

Cole v. Oroville Union High School District, (2000, 9<sup>th</sup> Cir.) 228 F.3d 1092

Lemon v. Kurtzman, (1971) 403 U.S. 602

### *Management Resources:*

#### U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, February 2003

Religion in the Public Schools: A Joint Statement of Current Law, April 1995

#### WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education: <http://www.ed.gov>

CSBA: <http://www.csba.org>

Policy  
adopted: December 12, 2017  
Effective: February 1, 2018

**SAN DIEGO UNIFIED SCHOOL DISTRICT**  
San Diego, California



**CONTROVERSIAL ISSUES**

The Board of Education recognizes that the District's educational program may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. In alignment with LCAP Goal 2, instruction concerning such topics shall be relevant to the adopted course of study and curricular goals and should be designed to develop students' critical thinking skills, ability to discriminate between fact and opinion, respect for others, and understanding and tolerance of diverse points of view.

*(cf. 6141.2 - Recognition of Religious Beliefs and Customs)*  
*(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)*  
*(cf. 6142.3 - Civic Education)*  
*(cf. 6142.8 - Comprehensive Health Education)*  
*(cf. 6142.94 - History-Social Science Instruction)*  
*(cf. 6143 - Courses of Study)*

The Board expects administrators and teachers to exercise professional judgment when deciding whether or not a particular issue is suitable for study or discussion. They shall consult with the site principal or Area Superintendent as necessary to determine the appropriateness of the subject matter, guest speakers, and/or related instructional materials or resources.

*(cf. 6141 - Curriculum Development and Evaluation)*  
*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*  
*(cf. 6161.11 - Supplementary Instructional Materials)*

When providing instruction related to a controversial issue, the following guidelines shall apply:

1. The topic shall be suitable to the age and maturity of the students.
2. Instruction shall be presented in a balanced manner, addressing all sides of the issue without bias or prejudice and without promoting any particular point of view.
3. The teacher may express a personal opinion provided he/she identifies it as a personal opinion and clarifies that he/she is not speaking on behalf of the school or district. The teacher shall not express an opinion for the purpose of persuading students to his/her point of view.
4. No student's viewpoint shall be suppressed, provided such expression is not malicious or abusive toward others. Students shall be assured of their right to form and express an opinion without jeopardizing their relationship with the teacher or school.

*(cf. 5022 - Student and Family Privacy Rights)*  
*(cf. 5145.2 - Freedom of Speech/Expression)*  
*(cf. 6145.5 - Student Organizations and Equal Access)*

## **CONTROVERSIAL ISSUES (continued)**

5. Students shall be informed of conduct expected during such instruction and the importance of being courteous and respectful of the opinions of others.

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

6. Adequate factual information shall be provided to help students objectively analyze and evaluate the issue and draw their own conclusions.

7. The instruction shall not reflect adversely upon persons because of their race, ethnicity, national origin, sex, sexual orientation, gender identity or expression, disability, religion, or any other basis prohibited by law.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

8. The subject matter of the instruction shall not otherwise be prohibited by state or federal law.

When required by law or otherwise deemed appropriate by the teacher or administrator, parents/guardians shall be notified prior to instruction related to any controversial issue and parent/guardian consent shall be obtained for student participation. Pursuant to Education Code 51938, the district must notify parents/guardians of any sexual health and HIV/AIDS prevention instruction and of the opportunity to request that their child not receive the instruction. Students whose parents/guardians decline such instruction may be offered the option to participate in an alternative activity of similar value.

## **Guest Speakers**

When a guest speaker who is not a certificated employee of the district is invited to make a presentation related to a controversial issue, the Board requires that he/she be notified of this policy and the expectations and goals regarding the instruction. If the guest speaker is presenting only one point of view on an issue, the teacher shall be responsible for ensuring that students also receive information on opposing viewpoints.

*(cf. 6145.8 - Assemblies and Special Events)*

A candidate for elective office may be invited as a guest speaker only if all candidates for that office are invited.

## **CONTROVERSIAL ISSUES (continued)**

The following types of speakers are prohibited:

1. Anyone who advocates, by reputation, word, or example, of ideologies that seek to overthrow our economic and political way of life and American institutions and ideals.
2. Anyone who advocates, by reputation, word, or example, of race hatred, or those who in any way defame or belittle any race, religion, creed, color, marital status, veteran status, sex, sexual orientation, national or ethnic origin age, or disability.
3. Anyone who advocates of sectarian religion.
4. Anyone expressing philosophies inimical to our accepted mores and standards of morality.
5. Those speakers inappropriate to the maturity levels of students involved.
6. Those speakers whose topics would not be related to the instructional purposes of the classes or to the purposes of extracurricular or co-curricular activities.
7. Those who advocate use of drugs or hallucinatory compounds or any other substance deemed illegal or who oppose lawful activities of the police, courts, or other agencies established for protection of society.
8. Any speaker who makes demonstrations of hypnosis or any use of hypnosis in San Diego Unified School District involving students as observers or as subjects is prohibited.
9. Included in this prohibition are school assemblies or other meetings held during or outside the school day under supervision of school officials (including field trips outside the district).

A student or parent/guardian with concerns regarding instruction about controversial issues shall be directed to appropriate district complaint procedures.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.2 - Complaints Concerning Instructional Materials)*

*Legal Reference:*

**EDUCATION CODE**

220 *Prohibition of discrimination*

51500 *Prohibited instruction or activity*

51510 *Prohibited study or supplemental materials*

51511 *Religious matters properly included in courses of study*

51530 *Prohibition and definition regarding advocating or teaching communism with intent to indoctrinate*

51933 *Sex education courses*

**CONTROVERSIAL ISSUES** (continued)

*51938 Right of parent/guardian to excuse child from sexual health instruction*

*60040 Portrayal of cultural and racial diversity*

*60044 Prohibited instructional materials*

*60045 Criteria for instructional materials*

Policy  
adopted: December 12, 2017  
Effective: February 1, 2018

**SAN DIEGO UNIFIED SCHOOL DISTRICT**  
San Diego, California

**RECOGNITION OF RELIGIOUS BELIEFS AND CUSTOMS**

Staff shall make every effort to schedule one-time events, such as examinations, school-sponsored trips, special laboratories, picture-taking days and class parties, to minimize conflicts with major religious holidays of all faiths.

*(cf. 6111 - School Calendar)*

**Programs and Exhibits**

When school programs and exhibits are in any way related to instruction about religion or religious holidays, the following guidelines shall be observed:

1. The principal or designee shall ensure that school-sponsored programs are presented in an objective manner, consistent with Board policy.
2. The principal or designee shall be kept informed of the program's development.
3. Program or exhibit planners shall take into consideration the diverse religious faiths represented in the community, student body and staff.