

## **REDUCTION IN STUDENT DISCIPLINE AGREEMENT**

This REDUCTION IN STUDENT DISCIPLINE AGREEMENT (the "Agreement") is entered into by and between the Del Norte County Unified School District (the "District"), Samuel L. Gensaw, III, Lena-Belle Gensaw, Jon-Luke Gensaw, Peter Gensaw, William Ulmer-Gensaw, Charles Ulmer-Gensaw, and Teresita Ulmer Gensaw, through their guardians (the "Community Members" and, collectively with the District, the "Parties"). The Community Members and the District desire to avoid potentially costly and protracted litigation and have voluntarily agreed, as indicated by the signatures below, to resolve the disputes that have arisen between them by entering into this Agreement.

### **RECITALS**

WHEREAS, counsel for the Community Members have raised with the District concerns about disparate and discriminatory disciplinary treatment of Native American children in the District's schools;

WHEREAS, on or about January 16, 2008, counsel for the Community Members sent a letter to the District outlining concerns relating to documents produced by the District in response to a Public Records Act request (PRA request);

WHEREAS, counsel for the Community Members believe there is sufficient information to support several causes of action for violations of federal and state law, including violations of 42 U.S.C. § 1983, the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, Article I § 7 of the California Constitution, and the California Education Code (collectively, the "Claims");

WHEREAS, the District believes there is not sufficient information to support any such claims, and denies that it has engaged in disparate or discriminatory disciplining of Native American children in violation of federal and state law;

WHEREAS, the District nonetheless believes that improvements in the District's disciplinary practices and procedures are warranted;

WHEREAS, the District has begun to implement a cultural awareness program designed, among other things, to address issues of concern to the Community Members;

WHEREAS, counsel for the Community Members and the District have engaged in meetings with the District's Superintendent to discuss additional ways through which the District might improve the District's disciplinary practices and procedures;

WHEREAS, the Parties agree that it is in the best interests of the District, its students, and the community to work together to improve discipline practices and procedures for all students, including Native American students, and to resolve past disagreements without litigation; and

WHEREAS, the Parties have mutually agreed upon the terms set forth in this Agreement, which shall remain in force from June 30, 2009, through and until August 30, 2014 ("Effective Period"),

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants herein, the Parties agree to settle their disputes on the following terms:

## AGREEMENT

The Parties mutually recognize that fostering and promoting a positive school climate sensitive to the cultural histories and identities of all students, is a central component of academic achievement and the prevention and reduction of discipline of students.

To that end, the parties agree to the following:

**1. Staff Development.** The Parties acknowledge that the National Coalition Building Institute ("NCBI") has developed effective prejudice reduction programs, and offers programs through which participants are trained to become qualified to conduct such programs in their own workplaces. The Parties also acknowledge that the District has sent two staff members to NCBI to receive such training. The District agrees to maintain on staff at least two members who have attended and successfully completed the NCBI training or some other mutually agreed-upon "train-the-diversity-trainer" program. These staff members, who may be designated "Diversity Trainers" or other such title as deemed appropriate by the District, will then implement a professional development program for all other staff members in the District to help them develop the leadership skills necessary to build inclusive school environments and increase cultural awareness within the District, including providing instruction on how to properly implement the District's anti-discrimination, harassment, and discipline policies. The staff will then work together to ensure that students are not subject to discrimination, harassment or disproportionate discipline based on race.

(a) **Mandatory Professional Development Program.** The District's Diversity Trainers will prepare and implement all aspects of a Professional Development Program for the District's administrators, teachers and other staff who are responsible for student discipline ("Qualified Staff"). The District agrees to begin conducting the initial Professional Development Program for Qualified Staff at all Del Norte schools (including continuation schools) by June 2009, and to complete the initial Professional Development Program by the end of the 2009-2010 school year. The District further agrees to endeavor to have half of the Qualified Staff complete this initial Professional Development Program by December 31, 2009. Newly-hired Qualified Staff who did not attend the initial Professional Development Program shall do so by the beginning of the fall semester of the academic year subsequent to the academic year during which they were hired. Each initial Professional Development Program will:

(i) Provide professional development to staff on the District's anti-discrimination and harassment policies;

(ii) Provide professional development to staff on the District's discipline policies;

through: (iii) Enhance staff's understanding of issues related to cultural diversity

- (1) Discussing why it is important not to discriminate against students, particularly in the context of discipline;
- (2) Discussing the historical context of discrimination and harassment;
- (3) Discussing concrete strategies to incorporate what staff have learned into their everyday work with students, including culturally sensitive and educational modifications to their curricula; and
- (4) Discussing how to talk with students about issues related to cultural diversity, including how to address peer-to-peer discrimination or harassment. Such discussions shall be facilitated, at least in part, at regular staff meetings with the assistance of the District's Diversity Trainers.

procedures by: (iv) Educate appropriate staff regarding discipline practices and

- (1) Explaining the District's discipline policies;
- (2) Explaining that the purpose of discipline is to ensure that students learn from their mistakes while taking responsibility for their actions;
- (3) Explaining that suspension should, wherever possible, be used as a last resort;
- (4) Explaining to appropriate staff how to collect and enter data into the District's discipline data collection system;
- (5) Explaining that it is an important goal of the District to reduce racial disparities in discipline rates; and
- (6) Explaining that part of the performance evaluations of teachers and administrators will include their efforts to prevent and avoid discriminatory discipline.

(b) Beginning with the Fall 2009 semester, as one element of continuing education, the District, through the Diversity Trainers, will conduct annual staff Professional Development updates on preventing harassment and discrimination on the basis of race, including discriminatory discipline, which address the above-mentioned issues. These updates will be held in the Fall semester of each year for each Qualified Staff member, including those who have already participated in the initial Professional Development Program.

(c) The District will cooperate with the Diversity Trainers in conducting reasonably limited preparatory activities in advance of the Professional Development programs.

The District recognizes that the goal of the Professional Development Programs is to empower its staff to address issues of discrimination, harassment and discriminatory discipline in schools. Because the Parties acknowledge that these issues are complex, it is expected that the Professional Development Programs will require continuing education and discussion.

(d) **Increasing Staff Diversity.** The District will make every effort commensurate with state and federal law to hire a diverse staff of teachers, including seeking to hire staff from racially and ethnically diverse communities.

**2. Student Development.** Beginning not later than the Fall 2009 semester, and annually thereafter, the District will provide all students with instruction designed to address issues related to discrimination, harassment and discriminatory discipline, including those in continuation schools. This instruction should:

(a) Integrate conflict resolution and awareness of the value of cultural diversity into the day-to-day lives of students, including into their curricula;

(b) Empower student groups to participate in formulating and implementing programs addressing peer harassment, bullying and other mistreatment;

(c) Utilize programs specifically designed to provide support to students of color;

(d) Inform students of the District's policies on harassment and discrimination, including procedures for filing a complaint; and

(e) Inform students of the District's policies on discipline, including students' rights and responsibilities, and including procedures for challenging disciplinary decisions.

The Parties acknowledge the District's efforts already under way in implementing the Positive Behavior Support Program with teachers, addressing some of the above.

**3. Curriculum Development and Implementation.** The Parties acknowledge the District's efforts to develop and implement curricula focusing on local Native American cultures, particularly Tolowa language, history and culture.

The District will continue to work with the Yurok Tribe to create and implement developmentally appropriate curricula that meet state standards for grades 3, 4, 5, 7, 9 and 11 to teach students about the history, culture and language of the Yurok Tribe, as well as after-school programs and activities that educate students about and help preserve the history, culture and language of the Yurok Tribe, including programs and activities involving adult members of the Yurok Tribe, and including programs and activities at the Margaret Keating School located on the Yurok Tribe reservation.

**4. Policies and Handbooks.** No later than the beginning of the Fall 2009 semester, the District will revise its policies and student handbooks so that they expressly state in a conspicuous and easily accessible manner that harassment, discrimination and discriminatory discipline based on any protected category, including race, are expressly prohibited under the

District's policies as well as state and federal law. The District will also add Williams Complaint Forms to all student handbooks.

(a) **Description of Complaint Resolution Procedures.** No later than the beginning of the Fall 2009 semester, the District shall revise its policies, student handbooks and parents' rights handbook so that they clearly explain the complaint procedures for reporting harassment, discrimination and discriminatory discipline based on any protected category, including race. Specifically, these revisions shall:

(i) Include the Uniform Complaint Procedure in all student handbooks and parents' rights handbooks;

(ii) Remove inaccurate language about harassment and discrimination from the student handbooks and parents' rights handbooks; and

(iii) Ensure that the disciplinary provisions in the student handbooks and parents' rights handbooks accurately reflect state and federal law.

Further, these revisions shall clarify:

(iv) How investigations involving allegations of harassment and discrimination will be conducted by the District; (a) What District resources are available for victims of harassment, discrimination, and discriminatory discipline, including the existence and role of the Diversity Trainers; (b) What remedies or responses the District makes available for victims of harassment, discrimination, and discriminatory discipline;

(v) A reasonable timeline for the District's response to such allegations;

(vi) A clear statement that the District (as well as state and federal law) prohibit retaliation for complaining; and

(vii) An assurance that the District will promptly address any alleged retaliation.

(b) **Dissemination of Uniform Complaint Procedures.** No later than the beginning of the Fall 2009 semester, the District shall ensure that its Uniform Complaint Procedures are posted at every school site and on the District's website.

(c) **Identification of Complaint Resolution Facilitators.** The District shall ensure that every teacher and each school principal has reviewed, and is knowledgeable about, the District's policies described in Section 4(a) above. Such persons shall be available to act as a primary resource to individuals, including students, parents, or guardians seeking to file or otherwise pursue complaints of discrimination and/or harassment. In addition, the Diversity Trainers and/or Compliance Officers shall be available to take, and facilitate response(s) to, complaints made under the policies of Section 4(a), above.

## **5. Statistical Reporting and Evaluation.**

### **(a) Statistical Reporting.**

(i) **Student Discipline.** The District agrees to maintain data regarding school discipline in a form disaggregated by race, grade, type of offense, discipline imposed, referring teacher and school through its ARIES computer system. The District also agrees to train site staff on the inclusion of such information in all disciplinary entries made to the ARIES system. In addition, the District agrees to ensure that referrals for discipline, in addition to actual disciplinary actions, are recorded in the system. The District agrees to make that information available to counsel for the Community Members as requested. The names of individual students will be redacted to protect students' privacy rights. Instead of student names, the District will give each student a unique identification number, so that it will be possible to tell whether discipline statistics reflect a few students with significant disciplinary records, or numerous students with small disciplinary records. The District agrees to ensure that its computerized records are stored and maintained in a manner to permit compliance with this Section.

(ii) **Complaints.** The District agrees to maintain a written record ("Incident Report") of the following written complaints, verbal complaints by parents or guardians, and verbal complaints made by students to staff about a third party:

- (1) Complaints of physical harassment;
- (2) Complaints of verbal harassment or discrimination;
- (3) Complaints of two or more incidents of verbal harassment or discrimination reported by witnesses or persons who learned of such harassment secondhand; and
- (4) Complaints of discriminatory discipline whether reported by a student complainant, parent or guardian.

(iii) Each Incident Report will include:

- (1) The name (or unique student number) of the person making the allegation, and, if different, the name (or unique student number) of the alleged victim;
- (2) The nature of the allegation and the date of the alleged incident;
- (3) The race and grade of all persons alleged to have committed violations;
- (4) The race and grade of all persons alleged to have been the victims of the alleged violations;

(5) The race and grade of all persons who may have relevant information about the incident;

(6) The written statements of the complainant, the victim (if different from the complainant), and the alleged perpetrator; and

(7) The outcome of the investigation, including any action taken by the District. The District agrees to attach copies of any documents supplied to the District or created during the investigation or complaint process to the Incident Report. The District will provide copies of these incident reports to counsel for the Community Members as requested. The District agrees to ensure that any computerized records are stored and maintained in a manner to permit compliance with this Section.

(b) **Evaluation.** Counsel for the Community Members will review the information received pursuant to this agreement and provide feedback and suggestions for improvement, which the District will in good faith consider implementing.

## **6. Monitoring.**

(a) **Annual Updates.** The District agrees to furnish counsel for the Community Members with annual updates on its progress in implementing the provisions of this Agreement set forth in Sections 1 through 5 above. Each annual update will take the form of a memorandum setting forth (1) the efforts undertaken by the District during the previous academic year with respect to Sections 1 through 5 above; (2) the results of those efforts; (3) and the District's plans to continue those efforts in the coming academic year. To each such memorandum the District will attach supporting documentation evidencing the efforts described in the memorandum. The first annual update, reporting on the 2009-2010 academic year, will be delivered to counsel for the Community Members no later than July 1, 2010. Each subsequent annual update will be delivered to counsel for the Community Members no later than the first day of July after the academic year on which it reports.

(b) **Follow-up Conferences.** No more than 30 days after counsel for the Community Members receives each annual update, counsel for the Community Members and a representative from the District will have a conference in which the District representative will be prepared to answer questions about the information in the annual update and the District's implementation of this Agreement. During the Conference, the parties will discuss whether the efforts undertaken by the District with respect to Sections 1 through 5, above, have produced the results the parties wish to achieve by entering into this Agreement – *i.e.*, improving the District's discipline practices and procedures in order to avoid and prevent discriminatory discipline – and if either party or both parties conclude that the Agreement is not producing such results, the parties shall meet and confer in a good faith effort to reach an agreement on whether and, if so, how to amend or supplement the efforts provided for in Sections 1 through 5 above in an effort to achieve the mutually desired results. In the event they are not able reach such an agreement within a reasonable time, the parties shall engage in (non-binding) mediation, and split the cost thereof, in an effort to reach agreement. The parties shall mutually select the mediator and, if they are unable to do so, agree to use the mutual strike method for selection of a mediator based upon a list provided by the State Mediation and Conciliation Service. If mediation is

unsuccessful and notwithstanding any other provision of this Agreement the Community Members then may file suit relating to their concerns regarding discrimination or harassment.

**7. Consideration.** In consideration for the District's agreement to undertake and implement all the foregoing, and to comply with Sections 1 through 6 of this Agreement, the Community Members agree to waive any and all rights to claim damages as a result of any actual or alleged disparate and discriminatory disciplinary treatment in the District's schools occurring prior to the Effective Period. The Community Members also agree to refrain from filing suit relating to their concerns of discrimination and harassment. The Parties, however, agree that the running of any statutory or other time limitations applicable to the Community Members' time to assert any cause of action against the District based on the factual and legal contentions set forth above as "recitals" shall be and are hereby tolled during the Effective Period. The Community Members further agree that, thirty (30) days after the scheduled termination of this Agreement, any cause of action asserted by the Community Members based on discriminatory discipline or harassment occurring before the date of this Agreement shall be time-barred.

**8. Breach or Default.** Should the District fail to implement any of the provisions set forth in this Agreement, including but not limited to Staff Development, Student Development, Revisions of Policies and Handbooks, Statistical Reporting, and Monitoring, the Community Members shall have the right to bring an appropriate action for relief stemming from the District's failure to perform, including but not limited to an action seeking specific performance.

In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing specifying the nature of the alleged default or breach and the manner in which said default or breach may be cured. During any such thirty (30) day period, the party charged shall not be considered in default or breach for purposes of termination or institution of legal proceedings.

If the District is alleged to be the defaulting or breaching party, and it has not cured or is not diligently curing the breach or default in the manner set forth in the notice as of the expiration of the thirty (30) day period, the District may retain an individual from a mutually agreed-upon organization to visit the District to address the breach or default and implement a customized program for staff and student development. If the District declines to pursue a Customized Professional Development Program as an intermediate step towards resolving the breach or default, and has not otherwise cured the breach or default as set forth in the notice, the matter shall be scheduled for consideration and review by the District School Board. Counsel for the Community Members shall be notified of the date, time and location of the review by the District School Board, and shall be provided an opportunity to present evidence in connection with the review.

Following consideration of the evidence presented in connection with the review before the District School Board, and an additional thirty (30) day period to cure the breach or default, either party may give written notice of termination of this Agreement to the other party and institute legal proceedings. Under no circumstances shall the time to cure the breach or default, including retaining an individual qualified to implement a customized program for staff and/or



student professional development program or proceeding, exceed ninety (90) days from the date the initial notice is sent.

**9. Miscellaneous.**

(a) **No Admission of Liability.** The parties agree that his Agreement shall not constitute an admission of any violation of any provision of federal, state or local law or any liability, fault or other legal obligation by either Party.

(b) **Effective Period.** The effective period of this Agreement is June 30, 2009 through August 30, 2014. Either party may extend by 30 days the August 30, 2014 date in order to have a follow-up conference as described in paragraph 6(b) above.

(c) **Attorneys Fees.** The Parties each agree to bear their own attorneys' fees and costs in connection with this Agreement, not including any suit in the future on the underlying claims.

(d) **Counterparts.** This Agreement may be signed in counterparts, which shall constitute a single document when executed by the Parties. Signatures transmitted via facsimile shall have the same force and effect as the originals.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates indicated below.

**FOR THE COMMUNITY MEMBERS:**

DATED: \_\_\_\_\_

Name:

By: \_\_\_\_\_

DATED: \_\_\_\_\_

Name:

By: \_\_\_\_\_

**FOR THE DISTRICT:**

DATED: \_\_\_\_\_

Name:

By: \_\_\_\_\_

DATED: \_\_\_\_\_

Name:

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

DATED: 5.06.09

DATED: \_\_\_\_\_

Name:

By: Gary Stule

Name:

By: \_\_\_\_\_

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