

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter referred to as the "Agreement") is made and entered into, by and between Defendants Chawanakee Unified School District (hereinafter referred to as "CUSD" or "District"), Daniel Ching, made a party to this ACTION in his official and individual capacity as Principal of Minarets High School, Juan Ortiz, made a party to this ACTION in his official and individual capacity as Yearbook Advisor for Minarets High School (jointly with CUSD referred to as "DEFENDANTS"), and Plaintiffs Steven Madrid and M.G., a minor, by Darylin Reeder, her guardian ad litem (jointly referred to as "PLAINTIFFS") (PLAINTIFFS and DEFENDANTS are collectively referred to as the "PARTIES").

I.

GENERAL RECITALS

This Settlement Agreement and General Release is made for the following purposes and with reference to the following facts:

1.1 ACTION

On or about March 6, 2019, PLAINTIFFS filed a Complaint in the Superior Court of California, County of Madera, Case No. MCV080168, against DEFENDANTS, alleging causes of action for violation of the First Amendment, as applied to the States under the Fourteenth Amendment, violation of California Constitution, Article I, Section 2(a), violation of Civil Code Section 52(a), Unruh Rights Act 52.1(b), violation of California Education Code Section 48907, violation of California Education Code Sections 200 et. seq., violation of California Education Code Section 51500, and Article I, Section 7 of the California Constitution. PLAINTIFFS' Complaint will be referred to hereafter as the "ACTION."

1.2 PURPOSE

The purpose of this Agreement is to settle and compromise all disputes and controversies existing between the PARTIES hereto, including but not limited to any and all claims that are raised or might have been raised in the ACTION.

II.

SETTLEMENT OBLIGATIONS

2.1 OBLIGATIONS OF DEFENDANTS

Subject to the adherence to the terms of this Agreement, DEFENDANTS agree to the following:

- a) District agrees that it shall retain a qualified third-party consultant to provide professional development training for all District administrators on the

issue of student free speech. The training will be a one-time training session conducted within the school years of 2019-2020, and 2020-2021. Thereafter, all District certificated employees will receive training on the issue of student free speech by way of written memorandum prepared and presented by the District, and with consultation of a third-party consultant, during the school years of 2019-2020, and 2020-2021. The District will be responsible for any costs associated with the retention of the consultants.

b) District agrees that it will include a LGBTQ+ component, a half-hour in length, into its discrimination/harassment training provided to District employees within the 2019-2020 and 2020-2021 school years. District will consult with a qualified third-party professional for development of the LGBTQ+ component.

c) District agrees that by February 28, 2020, it will review Board Policies 0410, 5131, 5145.2, 5143.3, 5145.9 and Administrative Regulation 5145.2, 5145.3 and consider any California School Board Association recommended revisions if and where appropriate. Any such revisions are subject to review and consultation from the District's legal counsel and approval of the District's Governing Board. This Agreement does not create an obligation for District to revise and/or amend any existing Board Policies or Administrative Regulations including, but not limited to, Board Policies 0410, 5131, 5145.2, 5143.3, 5145.9 or Administrative Regulation 5145.2 and 5145.3, or create any new Board Policy or Administrative Regulation.

d) For the 2019-2020 school year, District will contract with and utilize the services of third-party vendor Catapult EMS which will offer the District's students, parents, community members, teachers and staff the ability to report incidents online. The District will make available the forms to report incidents on each of the school's websites within the District.

e) Beginning in the Fall 2020 semester the District will include California Education Code Section 51500 in the District's Parent/Student Handbook.

2.2 OBLIGATIONS OF PLAINTIFFS

a) Within five (5) days of the execution of this Agreement, PLAINTIFFS shall provide DEFENDANTS' counsel with a completed and executed Request for Dismissal, dismissing this action with prejudice. DEFENDANTS' counsel shall file the Request for Dismissal with the Court and provide PLAINTIFFS' counsel with a copy of the conformed Request for Dismissal.

b) In addition to the other obligations of PLAINTIFFS set forth herein, PLAINTIFFS agree that they will not file any claim or complaint in regard to the matters that were raised or could have been raised in the ACTION.

c) PLAINTIFFS covenant and represent that they have not filed any complaints or charges or lawsuits against DEFENDANTS with any governmental agency or court, except for the complaint in this ACTION, and PLAINTIFFS will not do so at any time hereafter with respect to the matters released under this Agreement.

d) PLAINTIFFS agree they will not, either individually or through their counsel, publically assert that the District's decision to enter into this Agreement represents an admission of liability through its press release.

III.

COMPROMISE OF DISPUTED CLAIMS

3.1 NO ADMISSION OF LIABILITY

PLAINTIFFS acknowledge that the settlement embodied in this Agreement is a compromise of disputed claims and is not an admission of liability by DEFENDANTS.

3.2 CALIFORNIA CIVIL CODE SECTION 1542

PLAINTIFFS understand that the releases provided for in this Agreement extend to all claims, whether or not claimed or suspected, up to and including the date of execution hereof, and constitute a waiver of each and all of the provisions of California Civil Code section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of the executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

PLAINTIFFS hereby acknowledge that the effect and import of this provision has been fully explained to them and that they are aware of its contents and legal effect.

IV.

GENERAL RELEASE AND WAIVER OF CLAIMS

4.1 GENERAL RELEASE

General Release by PLAINTIFFS. For and in consideration of the obligations described in section 2.1 of this Agreement, PLAINTIFFS, for themselves, and on behalf of their partners, agents, attorneys, representatives, successors and assigns, forever releases and discharges DEFENDANTS, and as applicable, its owners, parents, agents, partners, employees, former employees, board members, joint ventures, representatives, successors, insurers, assigns, customers, employees, officers, directors, and attorneys ("Releasees"), from any and all claims, demands, debts, liabilities, attorneys' fees, accounts, obligations, costs, expenses, liens, actions, causes of action (at law, in equity, or otherwise), rights, rights of action, rights of indemnity (legal or equitable), rights to subrogation, rights to contribution and remedies of any nature whatsoever, known or unknown (except for those arising as a result of a breach of any provision of this Agreement), including, but not limited to attorneys' fees and costs relating to the Action, the Complaint, including, but not limited to all loss, liability, damages, claims, charges, complaints, demands, and causes of action arising directly or indirectly out of or in any way connected with the Action, the California Education Code, the U.S. and California Constitutions,

the California Civil Code, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, and §§ 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination in Employment Act, including, but not limited to, all claims of unlawful harassment, discrimination, retaliation, notwithstanding anything to the contrary herein.

V.

MISCELLANEOUS PROVISIONS

5.1 ATTORNEY REVIEW

PLAINTIFFS represent and agree that they fully understand their right to discuss all aspects of this Agreement with PLAINTIFFS' private attorney, that to the extent, if any, that PLAINTIFFS desired, PLAINTIFFS have availed themselves of this right, that PLAINTIFFS have carefully read and fully understand all of the provisions of this Agreement, and that PLAINTIFFS are voluntarily entering into this Agreement without duress or undue influence on the part of any person, firm or other entity. PLAINTIFFS further represent and agree that PLAINTIFFS had the opportunity to consult an attorney prior to executing this Agreement.

5.2 ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the PARTIES with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto are hereby merged herein. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. Other than this Agreement, no other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the PARTIES hereto.

5.3 UNDUE DELAY

All PARTIES hereto agree, on the demand of the other Party hereto, to execute or deliver any instrument, furnish any information or perform any other act reasonably necessary to carry out the provisions of this Agreement without undue delay or expense.

5.4 INVALID PROVISION

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this Agreement.

5.5 BINDING

This Agreement shall bind and inure to the benefit of the PARTIES hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

5.6 CHOICE OF LAW

This Agreement is entered into pursuant to the laws of the State of California and shall be interpreted pursuant to those laws.

5.7 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

5.8 VOLUNTARY EXECUTION

By executing this Agreement, each Party represents that they do so freely and voluntarily and that each is fully aware of the contents and effects thereto and that this Agreement is entered into without duress or undue influence on the part of or on behalf of either of the PARTIES, or of any other person, firm or other entity. Each Party further warrants that they have the authority to execute and to enter into this Agreement. PLAINTIFFS warrant that they have not assigned any interest in any claim against DEFENDANTS to any individual or entity.

5.9 BREACH

No breach of any provisions of this Agreement can be waived unless in writing. Waiver of any one breach will not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.

5.10 JOINTLY DRAFTED


This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity will not be construed for or against any party based on attribution of drafting of any party.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on the date set forth below.

**APPROVED AS TO FORM
AND CONTENT:**

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Dated: 11/25/19

By: 
Andrew M. Aller, Esq.
Attorneys for Defendants, Chawanakee Unified
School District, Daniel Ching, and Juan Ortiz

Dated: 11/25/19

American Civil Liberties Union

By: 
Abre'Leann Conner, Esq.

Attorneys for Plaintiffs, Steven Madrid and
M.G., a minor, by and through Darylin Reeder,
her guardian ad litem


APPROVED AND ACCEPTED:

Dated: _____

Chawanakee Unified School District

By: _____
Darren Sylvia

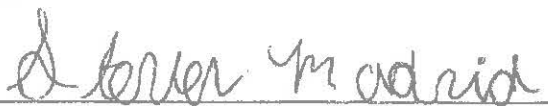
Dated: 11/26/19

Defendant
By: 
Daniel Ching

Dated: 11/26/19

Defendant
By: 
Juan Ortiz

Dated: 11/25/19

Plaintiff
By: 
Steven Madrid

Dated: 11/25/19

Plaintiff
By: 
Mikayla Garaffa

Attorneys for Plaintiffs, Steven Madrid and
M.G., a minor, by and through Darylin Reeder,
her guardian ad litem

APPROVED AND ACCEPTED:

Dated: _____

Chawanakes Unified School District

By: _____

Darren Sylvia

Dated: 11/26/19

Defendant

By: _____

Daniel Ching

Dated: _____

Defendant

By: _____

Juan Ortiz

Dated: 11/25/19

Plaintiff

By: _____

Steven Madrid

Dated: 11/25/19

Plaintiff

By: _____

Mikayla Garaffa