

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between the Bishop Union Elementary School District, which includes Home Street Middle School ("BUESD" or the "District"), Thomas Stone, Erika Stone, and Kayla Stone, through their guardians, (the "Community Members" and, collectively with the District, the "Parties"). The Parties to this Agreement desire to avoid potentially costly and protracted litigation and have voluntarily agreed, as indicated by the signatures below, to resolve the dispute that has arisen between them by entering into this Agreement.

### RECITALS

WHEREAS, Community Members contacted counsel regarding concerns of discriminatory discipline and harassment of Native American children at the District's schools, including the conduct of School Resource Officer McClinton during an October 11, 2005 incident at Home Street Middle School where Officer McClinton allegedly physically harmed several Native American students and threatened others (the "October Incident");

WHEREAS, the counsel for the Community Members sent a Public Records Act (PRA) request to the District's Superintendent on April 11, 2006, to which the District produced responsive documents;

WHEREAS, counsel for the Community Members reviewed the District's production and engaged in other due diligence prerequisite to filing a lawsuit under Federal Rule of Civil Procedure 11;

WHEREAS, counsel for the Community Members believe that 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.*, the California Constitution, Article I § 7, and the California Education Code (collectively, the "Claims");

WHEREAS, on November 29, 2006, the District's Interim Superintendent met with counsel for the Community Members to discuss a demand letter relating to the investigation;

WHEREAS, preliminary statistics provided by the District indicate that incidents of suspension have significantly decreased during the First Quarter of the 2006-07 school year as compared to the First Quarter of the 2005-06 school year, but continue to reflect racial disparities;

WHEREAS, correspondence sent by the Interim Superintendent indicates that the District has begun to implement a cultural awareness program to, among other things, address issues of concern to the Community Members;

WHEREAS, the District denies that it has engaged in violations of federal and state law or discriminatory discipline and harassment of Native American children at the District's schools;

WHEREAS, the Parties agree that it is in the best interests of the BUESD, its students, and the Community Members to resolve their past disagreements without litigation; and

WHEREAS, the Parties have mutually agreed upon the terms set forth in this Agreement, which shall remain in force for from September 1, 2007 until August 1, 2012 ("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**

1. **School Resource Officer (SRO).** At the time of the execution of this Agreement, the District has eliminated the presence of an SRO at all of the District's schools. BUESD agrees to not reinstitute the SRO program unless, by a vote of a majority of the BUESD Board, the Board determines that the presence of an SRO officer will materially improve the safety of students at the campus(es) at which the SRO program is reinstated. BUESD further agrees that if the SRO program is reinstated, it will require that the police officer(s) receive professional development and training on juvenile needs and behaviors, as well as on sensitivity to racial and gender discrimination. BUESD further agrees to instruct its staff members to limit requests for police involvement on any school campus to situations appearing to pose a serious threat to the safety of students or staff or substantial property damage to the District's schools.

2. **Enforcement and Monitoring of Juveniles on Probation.** The District agrees that it will not request, nor will it review, confidential information regarding terms of probation of any student, except as required by court order or to investigate a student or staff member's legitimate concerns of grave injury to body or person. In the event the District requests or reviews probation information relating to any student, the District shall inform both the student and his or her parent, legal guardian or next of kin. The District agrees to ensure that confidential information regarding the terms of a student's probation is not circulated to teachers, other members of the District's staff, or law enforcement personnel, except as required by court order or to prevent grave injury to body or person. The Parties agree that this paragraph does not apply to non-authorized conduct of staff members or other non-officer level employees of the District.

3. **Staff Development.** The District agrees to: send at least one staff member to a "train-the-trainer" program. This staff member or "Diversity Trainer" 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 how to properly implement the District's anti-discrimination and harassment 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 Trainer will prepare and implement all aspects of the professional development

program for the District's administrators, teachers and other staff who are responsible for monitoring student behavior ("Qualified Staff"). The District agrees to conduct the initial professional development program ("Initial Professional Development Program") for Qualified Staff at all BUESD schools (including continuation schools) by the end of January 2008. Newly-hired Qualified Staff who did not attend the January 2008 Initial Professional Development Program shall do so in the fall semester of the subsequent academic year. Each Initial Professional Development Program will:

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

(ii) Enhance staff's understanding of issues related to cultural diversity through: (1) Discussions with staff about why it is important not to discriminate against students, particularly in the context of discipline; (2) Discussions about the historical context of discrimination and harassment; (3) Providing concrete ways to incorporate what staff have learned into their everyday work with students, including culturally sensitive and educational modifications to their curricula; and (4) Discussions about 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 the regular meetings of staff with the assistance of the District's Diversity Trainer and/or the compliance officers identified in the District's Uniform Complaint Procedures (the "Compliance Officers"), as appropriate.

The BUESD will cooperate with the Diversity Trainer in conducting reasonably limited preparatory activities in advance of the professional development programs. The District recognizes that the goal of the professional development program is to empower its staff to address issues of discrimination and harassment in its schools. Because the Parties acknowledge that issues of discrimination and harassment are complex, it is expected that the professional development program will require continuing education and discussion.

Beginning with the Fall 2008 semester, as one element of continuing education, the BUESD, through the Diversity Trainer, 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 in the Fall semester of each year ("Annual Staff Professional Development Updates") for each Qualified Staff member, including those who have already participated in the Initial Professional Development Program.

(b) **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.

4. **Student Development.** Beginning in the Spring 2008 semester and repeating each year thereafter, BUESD will provide instruction for students designed to address issues related to cultural sensitivity with all students, including those in continuation schools. This instruction should:

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

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

The BUESD agrees to ensure that students are taught that harassment and discrimination are prohibited.

**5. Revisions of Policies and Handbooks.** No later than the end of the Fall 2007 semester, BUESD policies and student handbooks shall be revised if necessary so that they expressly state in a conspicuous and easily accessible manner that harassment and discrimination based on race, including discriminatory discipline, are expressly prohibited under BUESD policies as well as federal and state law.

(a) **Description of Complaint Resolution Procedures.** No later than the end of the Fall 2007 semester, BUESD policies and student handbooks shall be revised if necessary so that they clearly explain the complaint procedures for reporting harassment and discrimination based on race, including: discriminatory discipline; how investigations involving allegations of harassment and discrimination are to be conducted by BUESD; and what BUESD resources are available for victims of harassment and discrimination, including the existence and role of the Diversity Trainer, what remedies or responses BUESD makes available for victims of harassment and discrimination, a reasonable timeline for BUESD's response to victims of harassment and discrimination, a clear statement that the District prohibits retaliation for filing complaints, and an assurance that the District will promptly address any alleged retaliation.

(b) **Identification of Complaint Resolution Facilitators.** BUESD shall ensure that every teacher and each school principal has reviewed, and is knowledgeable about, the District's policies described in Paragraph 5(a) above. Such persons shall be available to act as a primary resource to individuals seeking to file or otherwise pursue complaints of discrimination and/or harassment. In addition, the Diversity Trainer and/or Compliance Officers shall be available to take, and facilitate response(s) to, complaints made under the policies of Section 5(a), above.

**6. Statistical Reporting and Evaluation.**

(a) **Statistical Reporting.** The District agrees to maintain data regarding school discipline in a form disaggregated by race and grade. The District agrees to make that information available to counsel for the Community Members as requested. In addition, BUESD agrees to maintain a written record ("Incident Report") of the following verbal or written complaints made to BUESD: (1) complaints of physical harassment; (2) complaints of verbal harassment or discrimination; (3) 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. Each Incident Report will include (i) the name of the person making the

allegation, and, if different, the name of the alleged victim; (ii) the nature of the allegation and the date of alleged incident; (iii) the race and grade of all persons alleged to have committed violations; (iv) the race and grade of all persons who may have relevant information about the incident; (v) the written statements of the complainant, the victim (if different from the complainant), and the alleged perpetrator; and (vi) the outcome of the investigation, including any action taken by BUESD. BUESD agrees to attach copies of any documents supplied to BUESD or created during the investigation or complaint process to the Incident Report. BUESD will provide copies of these incident reports to counsel for the Community Members as requested. If necessary, names of individual students will be redacted to protect students' privacy rights. BUESD may use its District-wide computer system for tracking some or all of the information in the Incident Reports relating to incidents of harassment or discrimination and BUESD's response to them at any or all school sites. BUESD 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 under Section 6(a) and provide feedback to the District based on the results of that review.

7. **Expungement of Records.** The Parties agree that the District shall expunge the disciplinary records of the Community Members, including the suspensions that resulted from the October Incident.

8. **Consideration.** In consideration for the District's agreement to comply with Sections 1 through 7 of this Agreement, the Community Members agree to waive any and all rights to damages as a result of the October Incident. Based on the Parties' entering into this Agreement, the Community Members also agree to refrain from filing litigation relating to the October Incident or their concerns of discriminatory discipline and harassment. However, the Parties agree that the Community Members' right to assert a cause of action based on any act, incident, factual claim, law or legal theory which has led to the consideration and entry of this Agreement by the Parties, including the factual and legal contentions set forth in the "RECITALS" section of this Agreement, are hereby tolled during the Effective Period of this Agreement. Should the District fail to implement any of the contractual provisions set forth in this Agreement, including Staff Development, Student Development, Revisions of Policies and Handbook, Statistical Reporting, or Expungement of Records, the Community Members shall have the right to bring an appropriate action for relief stemming from the events of the October Incident to the present. In the case of such a breach by the District, the Community Members may also file a cause of action to enforce the terms of this Agreement. The Community Members further agree that on the scheduled termination of this Agreement, the right to assert a cause of action based on any act, incident, factual claim, law or legal theory which has led to the consideration and entry of this Agreement by the Parties, including the factual and legal contentions set forth in the "RECITALS" section of this Agreement shall be time barred by the applicable statute of limitations or the doctrine of laches, as the case may be.

9. **Breach or Default.** 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 (the "Customized Professional Development Program"). 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 Board of Trustees of the District. Counsel for the Community Members shall be notified of the date, time and location of the review by the Board of Trustees of the District, 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 Board of Trustees of the District, 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 Professional Development Program or proceeding to a review before the Board of Trustees of the District, exceed ninety (90) days from the date the initial notice is sent.

**10. Miscellaneous.**

(a) **No Admission of Liability.** The Parties agree that this 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 September 1, 2007 through August 1, 2012.

(c) **Attorneys Fees.** The Parties each agree to bear their own attorneys' fees and costs in connection with this Agreement.

(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.

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

DATED: 9-11-07

Guardian for Thomas Stone

By: Carolyn Stone

DATED: 9-11-07

Guardian for Erika Stone

By: Christine M. Wilson

DATED: 9-11-07

Guardian for Kayla Stone

By: Christine M. Wilson

DATED: 9/12/07

BISHOP UNION ELEMENTARY SCHOOL  
DISTRICT

By: Brandon Smy

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