

**POLICY CHANGE PROVISIONS OF SETTLEMENT  
AGREEMENT WITH NEW HAVEN UNIFIED SCHOOL DISTRICT**

Plaintiffs Brian Benitez, Victor Munoz by Angela Munoz, his guardian ad litem, and Jessica Prentice (collectively “Plaintiffs”) and Defendants Gwen Estes, Barbara Aro Valle, Jonas Dino, Linda Fernandes, Jim Navarro (collectively “the School Board Defendants”), Don Montoya, Susan Speakman, Cathie Kelly, Ruth Ann McKenna, Lorrie Barrera, Craig Lang, Jesus Varela, Jason Robarge, Dan Fowler, Sterling Bruner, Lisa Garcia, and Jennifer Daniels-Crowell (all, collectively, “the School Defendants”), and the New Haven Unified School District (“NHUSD”) enter into this SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “Settlement Agreement”) effective as of the Effective Date (as defined below).

Plaintiffs, the School Defendants, and NHUSD (collectively, “the Parties” and each a “Party”) enter into this Settlement Agreement with reference to the following facts:

- A. On February 19, 2004, Plaintiffs filed a Third Amended Complaint in the United States District Court for the Northern District of California (Case No. C 03-0392 JSW) asserting claims under the federal and state constitutions, including claims under 42 U.S.C. section 1983, and the California Civil Code and common law, *inter alia*, for unlawful search and seizure, violations of due process, equal protection, and privacy rights, false imprisonment, and emotional distress against the School Defendants and against the City of Union City, Randy Ulibarri, Donald Schuitemaker, Union City Police Officers Jeffrey Bilodeau, Todd Blackwell, Raoul Galindo, Gloria Lopez-Vaughn, Bob Martin, Ray Munoz, Dean Sato and Brian Simon, the City of Fremont, William Carratini, and Russell Schatzinger (the “Action”).
- B. The School Defendants deny the allegations in the Third Amended Complaint.
- C. The Parties to this Settlement Agreement wish to resolve all disputes between them without admission of liability or wrongdoing, as provided herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth in this Settlement Agreement, the Parties agree as follows:

1. Effective Date. The “Effective Date” of this Settlement Agreement shall be the date upon which the last signatory Party executes this Settlement Agreement.
2. Incorporation of Training Agreement. The School Defendants, on behalf of themselves and their successors-in-interest, and NHUSD agree to undertake the obligations set forth in Exhibit A hereto, which is entitled

“Agreement Re Training.” The Parties agree that Exhibit A is incorporated by reference into this Settlement Agreement as if fully set forth herein. The Parties further agree that the “Best Practices” described in the Agreement re Training are for training purposes only. Any failure by an NHUSD administrator to comply with the “Best Practices” will not give rise to a claim for breach of this Settlement Agreement.

3. Law Enforcement Access to Student Records. The School Defendants and NHUSD shall not permit representatives of law enforcement, including any school resource officer, to have access to student records unless such access is expressly permitted by California Education Code sections 49073, et seq. or by other applicable law or statute.
4. Board Policies re Searches of Students.
  - a. The first sentence of the second paragraph of Board Policy # S-5145.12 shall be amended to read: “School officials may not search a student, the student’s personal belongings, or the student’s car absent individualized reasonable suspicion, based upon specific objective and articulable facts, that the student has engaged or is engaging in the violation of a criminal statute or the rules of the district or the school.”
  - b. Board Policy # S-5145.12 regarding “Student Lockers” shall be amended by adding the words “based upon specific objective and articulable facts” after the words “reasonable suspicion.”
5. Board Policies re Questioning and Apprehension of Students. The following provisions of Board Policy # S-5145.11 shall remain in place for four (4) years from the Effective Date of this Settlement Agreement: “Except in cases of child abuse or neglect, the principal or designee shall notify the student’s parent/guardian when a law enforcement officer requests an interview on school premises” and “When a site administrator releases a student into the custody of a law enforcement officer, he/she shall immediately notify the parent/guardian or responsible relative of the student’s release and the place to which the student is reportedly taken, except in cases of suspected child abuse.”
6. Student and Parent Handbooks.
  - a. Any district or school rules relating to gang insignias, gang colors, gang paraphernalia, gang graffiti, or gang gestures or any other object or item of clothing or attribute considered to denote

membership or identification with a gang, shall identify the specific insignias, paraphernalia, graffiti, gestures, objects, items of clothing, or attributes that are considered to denote membership or identification with a gang, the wearing, carrying, or displaying of which will subject the student to adverse consequences. All students and parents must be given reasonable notice in writing of any and all changes to the aforementioned district or school rules prior to the enforcement of the amended rule(s). Any policies relating to discipline for failure to comply with the above-described rules shall follow the principle of progressive discipline, except where otherwise authorized by applicable law or statute.

- b. The New Haven Unified School District Parent Handbook shall continue to have a section that informs parents of its practice with respect to police questioning of students.
7. Suspension from School. The School Defendants and NHUSD shall comply with California Education Code section 48900, et seq., regarding suspension of students from school. Any parent or student handbook provided to parents or students that includes a chart outlining disciplinary actions that will result from violations of school or district rules shall incorporate the rules set forth in California Education Code section 48900, et seq.
8. Parent Conferences. The School Defendants and NHUSD will no longer use the phrase “gang intervention meeting” with respect to a conference with a student or students and/or with the parents or guardians of a student or students, where there is no individualized reasonable suspicion, based on specific objective and articulable facts, that each student whose behavior is the subject of the conference has engaged in gang-related conduct in violation of the law or school or district rules. Such meetings shall simply be referred to as a “student conference,” a “student-parent conference,” or a “parent conference,” as applicable. Such conferences shall not include the attendance of any law enforcement personnel, including the school resource officer, except at the specific request of a student or parent or guardian. If such a request is made for the school resource officer to be present, school officials shall record that request in writing. Such conferences will not be part of the progressive disciplinary process.
9. Student Records.
  - a. In the case of a conference with a student and/or a student’s parent(s) due to concerns about the student’s behavior, health and

safety, adherence to school rules, or educational progress, the student's records will reflect that a discussion was held relating to these particular categories as applicable, and will not reflect that the conference was held based on suspicion of gang activity. In no event shall the student's records reflect that such a discussion was based on suspicion of gang-related activity absent individualized reasonable suspicion, based on specific objective and articulable facts.

- b. Where the School Defendants or NHUSD take disciplinary action against a student in connection with gang-related conduct in violation of the law and school rules, the student's school records may reflect discipline for such conduct. If a student has been disciplined for conduct other than gang-related conduct in violation of the law and/or school or district rules, the student's school records must reflect the specific item of discipline, and must not reflect discipline for gang-related conduct. In no event shall a notation in a student's school records reflecting a conclusion about a student's behavior be based on the student's race, on the identity of the student's friends, on the student's clothing, on the areas of the school frequented by the student, or on the geographic area in which the student lives.
10. Photographing of Students. There shall be no photographing of students for inclusion in any gang database or any other compilation related to gang activity.
  11. Records Relating to the February 22, 2002 Incident. NHUSD shall expunge any writings, as that term is defined by California Evidence Code section 250, generated as a result of the events at James Logan High School on February 22, 2002 (the "Incident") that make specific notation of, reference to, or identify any student who was subject to the Incident. The Principal of James Logan High School, currently Don Montoya, shall submit a declaration to the Court under penalty of perjury stating that he was familiar with how the notations, if any, were entered for the relevant students, that he reviewed any records created, and that he has caused the records to be expunged. NHUSD shall likewise expunge any and all records reflecting that Jessica Prentice or any other student was suspended or otherwise disciplined as a result of violating the prohibition on wearing particular colors that was imposed on students who were subject to the Incident. Principal Montoya's declaration shall also state that he has caused any list of students who

were subject to the Incident to be preserved by providing any such list to the attorneys for the School Defendants.

12. No Gang Intervention Meetings. The School Defendants and NHUSD shall not detain students for the purpose of searching, photographing, and/or engaging in formal interrogation of those students based on a generalized suspicion that “gang” activity or conduct might take place, based on the wearing of “inappropriate” or “gang” apparel, or based on the student’s race, ancestry or national origin, the identity of the student’s friends, on the areas of the school frequented by the student, or on the geographic area in which the student lives. The School Defendants and NHUSD shall not identify students as gang members or as persons participating in gang activities by virtue of any of the foregoing factors. The School Defendants and NHUSD shall not forbid students to wear clothing of certain colors solely on account of their race, ancestry, or national origin or perceived membership in a gang, while other students are permitted to wear clothing of said colors.
13. Training on Students’ Rights.
  - a. Commencing no later than the 2005-2006 school year, NHUSD shall, for four (4) school years, provide school administrators with mandatory training on an annual basis on the matters set forth in Exhibit A hereto. The trainings shall proceed pursuant to the following schedule: Year 1 – training for all school administrators; Year 2 – training for all school administrators who did not receive training in Year 1; Year 3 – training for all new school administrators and for school administrators who received initial training in Year 1; Year 4 – training for all new school administrators and for all school administrators who received initial training in Year 2. If the mandatory trainings commence in the 2004-2005 school year, they will be completed by the end of the 2007-2008 school year. If the mandatory trainings commence in the 2005-2006 school year, they will be completed by the end of the 2008-2009 school year.
  - b. The Agreement Re Training attached hereto as Exhibit A is effective immediately on the date upon which this Agreement is executed by the last signatory party hereto, and shall remain in effect until the last day of the school year that ends four (4) years after the first mandatory training occurs. Plaintiffs, on the one hand, and NHUSD, on the other, agree that the time limits set forth in this paragraph 13 may be expanded upon mutual consent of the parties.

- c. On or before the last day of each school year for four (4) years following the school year in which the first mandatory training occurs, NHUSD shall deliver to counsel for Plaintiffs, at the addresses set forth in paragraph 21 of this Settlement Agreement, a report covering the preceding reporting period containing information about the efforts at compliance with the Agreement re Training, including copies of any training materials used and a certification providing the following information concerning the mandatory training conducted during the preceding year: (i) the number of NHUSD administrators who attended the mandatory training; (ii) the number of NHUSD administrators who were eligible to attend the mandatory training but did not attend; and (iii) confirmation that the following persons attended the mandatory training: the Principal, and House Principals where applicable, of each school in the NHUSD.
  
- d. NHUSD shall notify Plaintiffs at least thirty (30) calendar days in advance if they reasonably calculate that they will not be able to comply with submission of a report or implementation of any portion of the Agreement re Training, specifying the reasons for anticipated non-compliance and the date by which they reasonably calculate compliance will be achieved. Plaintiffs may respond to such notice within fifteen (15) calendar days if they believe that the proposed timetable is unreasonable and suggest an alternative date. NHUSD shall take steps to avoid non-compliance. The Parties shall endeavor in good faith to meet and confer in an effort to resolve informally any differences regarding interpretation of, and compliance with, the Agreement re Training before bringing such matters to the Court for resolution.

14. Changes in NHUSD or School Policies or Handbooks. The initial changes in NHUSD or school policies, administrative regulations or handbooks called for in this Settlement Agreement shall be submitted to counsel for plaintiffs for review for compliance with this Settlement Agreement within 60 days of the Effective Date of this Settlement Agreement.

## EXHIBIT A

### **AGREEMENT CONCERNING TRAINING PROGRAM TO BE IMPLEMENTED BY THE NEW HAVEN UNIFIED SCHOOL DISTRICT (“Agreement Re Training”)**

As part of, and in partial consideration for, the Settlement Agreement and Mutual Release (to which this Agreement Re Training is attached and within which this

Agreement re Training is incorporated) entered into by the Plaintiffs and the School Defendants in settlement of the lawsuit entitled *Benitez, et al. v. Montoya, et al.*, C 03-0392 (JSW), United States District Court for the Northern District of California, Defendants Gwen Estes, Barbara Aro Valle, Jonas Dino, Linda Fernandes, Jim Navarro (collectively “the School Board Defendants”), Don Montoya (“Montoya”), Susan Speakman (“Speakman”), on behalf of themselves and their successors-in-interest, and the New Haven Unified School District (“NHUSD”) agree as follows:

1. *Mandatory Training Program.* Pursuant to paragraphs 2 and 13 of the Settlement Agreement and Mutual Release, the School Board Defendants, Montoya, Speakman, and NHUSD agree that the NHUSD will implement the training on the “Best Practices” described below on a mandatory basis for all NHUSD administrators.
2. *Best Practices for School Administrators in Initiating Law Enforcement Involvement at School, Including Involvement of the School Resource Officer.*
  - (a) General Standards:
    - (i) School officials should make every effort to avoid unnecessary criminalization of students. Law enforcement involvement should not be requested in any situation that can be safely and appropriately handled by the school's or the district's own internal disciplinary procedures.
    - (ii) School officials should not ask law enforcement officers to undertake duties usually performed by administrators with regards to a disciplinary proceeding, i.e., conducting the investigation or collecting evidence for an expulsion hearing.
    - (iii) School officials should not ask law enforcement officers to be present at or to participate in the questioning of students in connection with a disciplinary matter if that questioning can be safely and appropriately done by school officials. Where an investigation involves both a violation of law and a disciplinary matter, however, the rules set forth in paragraphs 3 and 4 below shall apply.
  - (b) In sum, school officials should call on law enforcement only in three types of situations:
    - (i) Law enforcement involvement is reasonably necessary to protect the safety of persons on campus;
    - (ii) Law enforcement involvement is required by law; or
    - (iii) School officials have individualized reasonable suspicion, based upon specific objective and articulable facts, to believe that a student or students has/have engaged in, or is/are engaging in, the violation of a criminal statute.

- (c) If law enforcement assistance is requested, school officials should follow the same practices concerning reminding the officers to advise students of their right against self-incrimination, contacting parents, and providing students with an opportunity to have a trusted adult present that are outlined below in connection with situations in which questioning of a student is initiated by a law enforcement officer.

3. *Best Practices If the School Determines That Law Enforcement Involvement on Campus, Including Involvement of the School Resource Officer, Is Necessary.*

- (a) *Initiating law enforcement.* The school site administrator or designee should ordinarily be the one to initiate law enforcement involvement. Where safety of persons is an issue or in an emergency, any school staff may call “911” and/or contact the school resource officer if the situation reasonably precludes prior notification of the school administrator. The staff member should notify the administrator as soon as possible after calling law enforcement or contacting the school resource officer.
- (b) *Where law enforcement is already on campus.* The standard for initiating law enforcement should still be met. School staff should not involve law enforcement simply because the officer happens to be on campus. This includes the school resource officer.
- (c) *Except where safety of persons is an issue or in emergency situations,* the school should conduct its own investigation prior to making a decision to request law enforcement involvement, including interviewing the suspect and other witnesses in order to determine whether law enforcement involvement is warranted, pursuant to the standards set forth above.

4. *Best Practices for Situations in Which Police Ask to Question a Student.*

- (a) If a law enforcement officer wishes to question a student in connection with an event that occurred other than on school grounds or in connection with school-related activities, school officials should first ask the officer whether it is possible to conduct the questioning at a time when the student is not under the jurisdiction of the school. If that is not possible, school officials should allow the officer to discharge his/her duties on campus. In that situation, school officials should follow the same practices concerning reminding the officer to advise students of their right against self-incrimination, contacting parents, and providing students with an opportunity to have a trusted adult present that are outlined below in connection with law enforcement questioning of students in connection with an incident that occurred on school grounds or in connection with school-sponsored activities.
- (b) If a law enforcement officer wishes to question a student in connection with an incident that occurred on school grounds or in connection with school-sponsored



activities, school officials should observe the following guidelines:

- (i) *School administrators should remind the officer to advise the student of his or her right against self-incrimination.*
- (ii) *Questioning grades K-5 students:* Except in case of emergency or in a case of suspected abuse of the student by a parent, prior to the student being questioned school officials should:
  - (1) Make all reasonable efforts to contact the student's parent(s), using information on the student's emergency contact card and/or any telephone numbers that the student can supply.
  - (2) If able to reach the parent, obtain the parent's consent to have the student questioned.
  - (3) Inform the parent that he or she may be present during the questioning.
  - (4) If the parent states that he or she wishes to be present during the questioning, school officials should inform the law enforcement officer of the parent's request.
- (iii) *In cases of suspected abuse of an elementary school child by a parent,* school officials should inform the student that he or she may have an adult of his or her choice (other than a parent) present during the questioning.
- (iv) *In case of emergency or if the school is unable to contact the parent of an elementary school student after making reasonable efforts:*
  - (1) School officials should allow the student to select an available member of the school staff to be present during the questioning.
  - (2) As soon as practicable after the questioning, school officials should take steps to notify the parent that the questioning has occurred and make the staff member selected by the student available to inform the parent about the questioning.
  - (3) Ordinarily within one school day, but in any event within three school days, after the questioning has been completed, school officials should provide the parent with a written explanation of what occurred. When and if school officials receive an explanation provided by the law enforcement agency describing the circumstances that, in the officer's judgment, precluded contacting a parent or other designated responsible adult in order to obtain consent to the questioning and/or to allow the parent or designated responsible adult to be present, the school will also provide that explanation to the student's parent, and will do so

ordinarily within one school day, but in any event within three school days after receiving the explanation.

(v) *Questioning grades 6-12 students:* School officials should inform the student that the school is not compelling the student to answer the officer's questions, or words to that effect. Except in the case of an emergency, prior to the student being questioned:

- (1) School officials should inform the student that he or she may have a parent or, if the student prefers, some other adult, present during the questioning. In a case of suspected abuse of the student by a parent, school officials should inform the student that he or she may have an adult of his or her choice (other than a parent) present during the questioning.
- (2) If the student wishes to have a parent or other adult present during the questioning, school officials should inform the law enforcement officer of the student's request.
- (3) Students who initially agree to be questioned without the presence of a parent or other adult may request that the ongoing questioning not continue until a parent or other adult selected by the student can be present. Such a request should be honored from that time forward as if the request had been made at the outset of the questioning.

(vi) *In case of emergency when a 6-12 student is to be questioned:*

- (1) School officials should inform the student he or she may select an available member of the school staff to be present during the questioning.
- (2) At the conclusion of the questioning, school officials should ask the student whether he or she would like the school to notify the student's parent (except in the case of suspected abuse by a parent) or some other adult selected by the student that the questioning has taken place.
- (3) If the student asks that a parent or other adult be notified, school officials should notify that person that the questioning has occurred and make the staff member selected by the student available to inform the parent or other adult about the questioning as soon as practicable.
- (4) If the student has requested that the school notify a parent or other adult that the questioning occurred, school officials should, ordinarily within one school day, but in any event within three school days, provide the parent or other adult with a written

explanation of what occurred.

- (5) When and if school officials receive an explanation provided by the law enforcement agency describing the circumstances that, in the officer's judgment, precluded contacting a parent or other designated responsible adult as requested by the student in order to allow the parent or designated responsible adult to be present, school officials should inform the student that the explanation has been received, and if a copy is requested by the student, school officials shall provide the student with a copy of the explanation, ordinarily within one school day, but in any event within three school days after receiving the explanation.
- (c) *Removal from school grounds:* If a law enforcement officer decides to remove a child from school grounds, school officials shall comply with the provisions of Education Code section 48906.