

## **AGREEMENT RE UNION CITY POLICE DEPARTMENT POLICIES AND PRACTICES (“POLICY AGREEMENT”)**

This Policy Agreement sets forth the terms of an agreement between Plaintiffs and the City of Union City regarding certain policies and practices of the Union City Police Department in connection with Benitez, et al. v. Montoya, et al., United States District Court for the Northern District of California Case No. C 03-0392 JSW (the “Litigation”). The terms of this Policy Agreement are:

### **1. Scope of the Policy Agreement**

This Policy Agreement will govern the interactions between members of the Union City Police Department and students enrolled in the New Haven Unified School District, while on property owned and controlled by the School District during regular school hours and during other school sanctioned activity where members of the general public are not invited (hereafter “on school grounds”), except where otherwise stated. For purposes of this agreement, the term “students” includes all individuals currently enrolled at any New Haven Unified School District High School regardless of whether the student has reached the age of 18. All of the provisions of this Policy Agreement will apply to members of the Union City Police Department whether acting in their capacity as members of the Union City Police Department or acting in their capacity as members of the Southern Alameda County Gang Violence Prevention Task Force (“the Task Force”).

Union City contends that its police officers have been acting in conformity with the Fourth Amendment and all other applicable standards of the United States and California Constitutions, when interacting with students of the School District, while on School District property and during regular school hours.

### **2. Questioning Students on School Grounds**

(A) Union City agrees that its police officers when questioning a student while the student is on school grounds will do so in compliance with the Fourth Amendment standards applicable to detention and questioning off school grounds. The school resource officer must follow the standards of applicable Fourth Amendment and state law when detaining and questioning students on school grounds. If Fourth Amendment standards require consent the officer shall obtain informed consent through the express statement of the student. Informed consent means telling the student that he or she need not stay and answer questions. The officer shall inform the student of his or her Fifth Amendment right against self incrimination when the student is subject to a custodial interrogation. Police officers will not request that school officials conduct the questioning of the student in order to avoid these requirements.

(B) Whenever a police officer intends to question an elementary school (grades k-5) student or asks that school officials make an elementary school student available for questioning by or in the presence of the officer on the school campus, the

following procedures shall be followed:

(i) Except in case of an emergency or in a case of suspected child abuse, the officer shall not question the student until (1) school officials have contacted one of the student's parents or another responsible adult designated by the student and his or her guardian at the commencement of the school year and obtained a parent or other responsible adult's consent to have the student questioned and, (2) if the parent or responsible adult has informed the school that he or she wishes to be present during the questioning, the parent or responsible adult is present. In a case of suspected child abuse, or if the parent or responsible adult declines or is not available to be present within forty-five minutes of the request for questioning, the student must be allowed to select an immediately available member of the school's staff to be present during the questioning.

(ii) If the officer informs school officials that emergency conditions preclude contacting a parent or other designated responsible adult in order to obtain a parent or designated responsible adult's prior consent to the questioning, or waiting until a parent or designated responsible adult can be present, the student may be allowed to select an available member of the school's staff to be present during the questioning. Ordinarily within one school day, but in any event within three school days, after the questioning has been completed, the officer shall provide the school with a written statement describing the circumstances which, 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 a parent or designated responsible adult to be present.

(C) If a law enforcement officer decides to remove a student who is under the age of 18 from school grounds, the officer will comply with the provisions of Education Code section 48906.

### **3. Searches of Students on School Grounds**

(A) The same Fourth Amendment standards, and exceptions thereto, that apply when police conduct a search off school grounds shall apply to all searches conducted by police, including searches by the school resource officer, that take place on school grounds. Police will not ask school officials to conduct a search in order to avoid this requirement.

(B) Whenever police seize any item as a result of a search of a student or the student's belongings on school grounds during regular school hours, within two school days thereafter the officer will inform the student in writing that the student may obtain an inventory of and receipt for any and all property seized by contacting the Union City Police Department. The written notification will include the relevant case number and the telephone number to call, in order to enable the student and/or the student's parent or guardian to obtain the inventory and receipt. This written notification will be provided by the police to the student at the time of the contact or, if done later, the police department will deliver the inventory and receipt to the school administrator for delivery to the student.

#### **4. Taking Photographs**

Within the geographic boundaries of the City of Union City, in compliance with the Fourth Amendment, police will not take photographs of a minor to be included in any database or compilation, including any kind of “mug book,” absent grounds sufficient to support the arrest and booking of the individual unless (a) there is a lawful detention of the individual and the photograph serves a legitimate law enforcement purpose related to the detention; or (b) the individual gives express informed consent for the photograph to be taken. Informed consent includes telling the individual what use may be made of the photograph to the extent that such uses are known by the officer at the time, including whether the photograph may be included in a database or compilation, including a mug book. This prohibition applies, however, only in circumstances in which police have approached, detained, and/or are questioning an individual.

#### **5. Obtaining Information for Field Identification Cards**

Within the geographic boundaries of the City of Union City, police will not, as part of any encounter with a minor, complete a field identification card concerning gang activity or otherwise collect information concerning gang activity unless the encounter constitutes a detention or is for purposes of issuing a citation where (1) the detention or issuance of the citation comports with the applicable Fourth Amendment standards; (2) the basis for the detention or issuance of the citation is related to criminal gang activity, or, during the course of the detention or issuance of the citation, the officer learns information that gives rise to a reasonable suspicion that the individual is involved in criminal gang activity; and (3) the detention is brief and lasts no longer than necessary to issue the citation or to address the suspicion that provides the legal basis for the detention.

#### **6. Prohibition of Racial Profiling**

Within the City of Union City, police will not use race, ethnicity, or nationality to any extent or degree in conducting stops or detentions, or activities following stops or detentions in the absence of a specific suspect description that identifies a particular person or persons in part by race, ethnicity, or nationality. Department personnel seeking one or more specific persons who have been identified or described in part by race, ethnicity, or national origin may rely on them in part only in combination with other appropriate identifying factors. The listed characteristics should not be given undue weight.

#### **7. Records Relating to the February 22, 2002 Gang Intervention Meeting**

(A) Within 30 days of the effective date of the Settlement Agreement, Union City will destroy any records of any kind, whether paper or electronic or in some other form, that were created in connection with or as a result of the February 22, 2002 gang intervention meeting, whether created before, during, or after the gang intervention meeting, that contain any personally identifiable information about any student who was detained, searched, questioned, or photographed in connection with or as a result of the

gang intervention meeting. The records to be destroyed include but are not limited to all originals or copies of field identification cards, photographs, or notes of interrogation that were created either before, during, or after the gang intervention meeting. They specifically include any such records in the possession, custody, or control of the school resource officer(s) assigned to James Logan High School. Within that same time period, the Chief of Police of the Union City police department will submit to the Court a declaration under penalty of perjury attesting (1) he has directed that a comprehensive search of his department be made, including a specific inquiry of the school resource officer(s) assigned to James Logan High from January 1, 2002 through the present, and (2) that all records containing personally identifiable information about any student who was detained, searched, questioned, or photographed in connection with or as a result of the gang intervention meeting have been destroyed and that no other copies exist within the Department. This does not relate to any other contacts made before or after the gang intervention meeting, unless those contacts were made as a result of the gang intervention meeting. Union City will also provide a declaration that none of the information obtained in connection with or as a result of the gang intervention meeting was entered into the Cal-Gang database or into any other gang-related database maintained by any other law enforcement agency.

(B) Within 30 days of the effective date of the Settlement Agreement, the Chief of Police for the City of Union City will make a diligent inquiry of any and all persons who are likely to know whether any other person or entity has either originals or copies of the records referred to in paragraph 7(A), *supra*. Specific inquiry shall be made of the commanding officer of the Task Force. In the event that the Chief of Police of the Union City Police Department learns that originals or copies of these records exist outside his department, he will make a good faith effort to have the records returned and then destroyed. Within that same time period, the Chief of Police of the Union City police department will submit to the Court a declaration under penalty of perjury that

- (i) Describes the effort made to determine whether originals or copies of these records exist outside their respective departments;
- (ii) Informs the Court whether any such records were located;
- (iii) In the event such records were located, describes the effort made to have the records returned and destroyed, and informs the Court whether or not the records have been destroyed; and
- (iv) All information entered into the Union City Police Departments' Records Maintenance System ("RMS") as a result of the gang intervention meeting has been deleted permanently from the RMS.

#### **8. Creation of Written Department Policies and Procedures**

Within 90 days of the effective date of the Settlement Agreement, the Union City Police Department will create, update or revise written policies and procedures implementing the provisions of paragraphs 1 through 6, *supra*. Within that same time

period, these written policies and procedures will be submitted to plaintiffs' counsel. The policies and procedures that result from the Settlement Agreement shall have the same weight and shall be enforced in the same manner as other policies and procedures of the Union City Police Department that can lead to discipline if officers fail to follow them.

9. **Trainings on New Policies and Procedures**

All Union City police officers who can reasonably be expected to have contact with minors who are enrolled students of the New Haven Unified School District will receive training on the policies and procedures created in compliance with paragraph 8, supra, within 90 days of compliance with paragraph 8. Update training on the policies shall occur annually.