

## **SETTLEMENT AGREEMENT REGARDING FAIRFIELD POLICE DEPARTMENT POLICIES AND PRACTICES**

This Settlement Agreement is entered into this 5th day of June, 2007 by and between the Rodriguez High School Parents executing this Agreement on behalf of themselves and their high school children (the "Parents") and the City of Fairfield regarding certain policies and practices of the Fairfield Police Department in connection with the school campuses of the Fairfield-Suisun Unified School District ("District") that are described below. The terms of this Settlement Agreement are as follows:

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

This Settlement Agreement will govern the interactions between members of the Fairfield Police Department and students enrolled in the high schools of the Fairfield-Suisun Unified School District and all other schools with a full-time student resource officer ("SRO") on staff, while on school property owned and controlled by the 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 school described above regardless of whether the student has reached the age of 18. All of the provisions of this Settlement Agreement will apply to members of the Fairfield Police Department.

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

(A) Fairfield agrees that its police officers when questioning a student while a 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 have individualized reasonable suspicion that the student contacted has committed a crime or is otherwise engaged in criminal activity before detaining and questioning students on school grounds. The police officer will inform a student whether or not he or she is being detained. If Fourth Amendment standards require consent the officer shall obtain informed consent through the express statement of the student. If an officer conducts a custodial interrogation of a student, the officer shall inform the student of his or her Fifth Amendment rights against self-incrimination. Police officers will not request that school officials conduct the questioning of the student in order to avoid these requirements. The Department will consult with the District in the preparation and distribution of informational materials by the District that inform students of their rights regarding voluntary police contact, including their right to remain silent or walk away.

(B) 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 applicable 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 the probable cause 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 five (5) 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 Fairfield 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**

On District high school campuses or on other campuses with full-time SROs and while students are in the custody of the District, in compliance with the Fourth Amendment, police will not take photographs of a minor to be included in any file, database or compilation, 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. In all other circumstances, the police must have grounds sufficient to support the arrest and booking of an individual before photographing him or her. 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. Gang Profiling and Obtaining Information for Field Identification Cards**

On the high school campuses of the District or on other campuses with full-time SROs and while students are in the custody of the District, the police will not, as part of any encounter with a minor, complete a field identification card concerning gang activity or collect information to be placed in a gang database 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 and the basis for the detention is related to gang activity or (2) 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 gang activity; and (3) the detention lasts no longer than necessary to issue the citation or to address the suspicion that provides the legal basis for the detention.

The Fairfield police shall not subject students to a detention for gang investigations based solely on a generalized suspicion that gang activity might take place, or based on the student's race, ethnicity, ancestry or national origin, or the geographic area in which the student lives.

Factors such as the identity of the student's friends, the areas of campus the student frequents and the clothing the student wears do not individually constitute reasonable suspicion of gang involvement or criminal activity.

## **6. Prohibition on Racial Profiling**

On the high school campuses of the District or on other campuses with full-time SROs and while students are in the custody of the District, 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. Distinction Between Law Enforcement Duties and Enforcement of School Rules**

Fairfield agrees that its police officers, including the student resource officer, shall not act to enforce or monitor school rules, including enforcement of any school dress code, unless the school rule independently constitutes a crime. Police officers will not be involved in standard school disciplinary actions unless the student offense is of a criminal nature. Notwithstanding the foregoing, this section shall not prohibit or otherwise limit participation by a police officer assigned to a high school as a Student Resource Officer from participating in a Student Attendance Review Board (SARB).

## **8. Records Relating to the March 2, 2007 Incident**

Within 10 days of the effective date of the Settlement Agreement, Fairfield 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 March 2, 2007 incident at Rodriguez High School which resulted in this Settlement Agreement, whether created before, during, or after the incident, 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 incident. 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 incident. The Chief of Police of the Fairfield Police Department will make a thorough inquiry as to whether any other person or entity has originals or copies of any records referenced in this section. If the Chief 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 period, the Chief of Police of the Fairfield Police Department will submit a declaration under penalty of perjury to Juniper Lesnik of the ACLU of Northern California stating that (1) he has directed that a comprehensive search of his department be made, 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 March 2 incident have been destroyed and that no other copies exist within the Department. This declaration also will state that none of the information obtained in connection with or as a result of the March 2 incident was entered into the Cal-Gang database or into any other gang-related database maintained by

any other law enforcement agency. Copies of this declaration will also be mailed to each of the parents executing this agreement, at the addresses provided by ACLU counsel.

#### **9. Distribution of Letter to Rodriguez High School**

As part of this Settlement Agreement, a copy of the letter contained in Appendix (A) of this agreement will be distributed to all students at Rodriguez High School on or prior to Thursday, June 7. This letter will be signed by Police Chief Rainey and Rodriguez High School Principal Toni Taylor, printed on Police Department letterhead and distributed by the District through homeroom.

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

Within 90 days of the effective date of the Settlement Agreement, the Fairfield Police Department will create, update or revise written policies and procedures implementing the provisions of paragraphs 1 through 7, *supra*. Within that same time period, these written policies and procedures will be submitted to the families' legal counsel at the ACLU of Northern California. 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 Fairfield Police Department that can lead to discipline if officers fail to follow them.

#### **11. Monitoring Process**

If a student or parent believes that any of the terms of this agreement have been violated, they can submit a description of the alleged violation to the Chief of Police and to the Principal of the high school where the events took place. The complainant shall receive a written response from the City of Fairfield within two weeks of the Chief's receipt of the complaint, detailing the action taken, if any, and the City's evaluation of the events. If a formal complaint process is deemed necessary, the letter shall explain this fact and the City will then have 90 days from the receipt of the original complaint to provide the complainant with a response summarizing the action taken, if any, and the City's evaluation of the events, subject to any applicable legal requirements, including but not limited to the California Police Officers Bill of Rights.

#### **12. Trainings on New Policies and Procedures**

All Fairfield police officers will receive training on the policies and procedures created in compliance with section 8, *supra*, within 90 days of compliance with section 8. These trainings shall include sessions twice a year before the start of the Fall and Spring School semesters at roll call and more detailed yearly trainings of all members of the Youth Services Bureau. In addition to the policies contained in this Settlement Agreement, all SROs shall receive specific training on these policies and working and interacting with students in the school setting.

#### **13. Material Breach**

A material breach of this Settlement Agreement shall exist if, (a) the Fairfield Police Department fails to adopt policies and procedures pursuant to paragraph 10; or (b) the Fairfield Police Department fails to conduct trainings on new policies and procedures pursuant to paragraph 12.

#### **14. Release**

In consideration of the mutually dependent promises in this Settlement Agreement, the Parents on behalf of themselves and their respective children fully release and forever discharge the City of Fairfield and its officers, employees, representatives and agents from and against any and all claims, demands, actions, causes of action, proceedings, obligations, liabilities, damages, losses, costs and expenses of any nature whatsoever, known or unknown, foreseen or unforeseen, other than those obligations expressed in this Settlement Agreement, that the Parents now have or have ever had, based upon, arising out of, or in any way related to the March 2, 2007 incident at Rodriquez High School that is the subject of this Settlement Agreement.

The Parents represent and warrant to the City of Fairfield that they have read, understand, and do expressly waive all rights that they have or may have under Section 1542 of the California Civil Code, except for rights that arise under the obligations of this Settlement Agreement and the enforcement of this Agreement. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

#### **15. No Admission of Liability**

By entering into this Agreement, the City is not admitting to any liability or wrongdoing in the City's law enforcement activities on the campuses of the District. The City contends that its police officers have been acting in conformity with the Fourth Amendment and other applicable standards of the United States and California Constitutions, when interacting with students of the District on District property.

#### **16. Term**

The term of this Settlement Agreement shall be for four years from the date of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.