

## RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. The undersigned are parties in the action entitled *OCEC Organization v. California Department of Education, et al.*, Orange County Superior Court, Case No. 30-2014-00749083-CU-JR-CJC ("the lawsuit"). OCEC Organization is the named petitioner/plaintiff ("OCEC") and California Department of Education ("CDE") is the named respondent/defendant. The Effective Date of this agreement is November 4, 2015.
2. The lawsuit makes allegations regarding the CDE's procedures for processing of appeals from decisions under the Uniform Complaint Procedures (Cal. Code Regs., tit. 5, § 4600 et seq.) on complaints of discrimination, harassment, intimidation and bullying, both generally and with reference to two specific appeals filed by OCEC; and regarding CDE's statutory monitoring, review and assessment (Ed. Code § 234.1) of California school districts' compliance with certain requirements regarding implementation of laws and regulations prohibiting discrimination, harassment, intimidation and bullying.
3. The parties voluntarily attended a meeting to discuss settlement of this matter on June 26, 2015, and reached the agreement set forth herein. This agreement applies only to appeals relating to complaints of discrimination, harassment, intimidation and bullying filed pursuant to the Uniform Complaint Procedures and to the CDE's statutory monitoring, review, and assessment of California school districts' compliance with certain requirements regarding implementation of laws and regulations prohibiting discrimination, harassment, intimidation and bullying.
4. In consideration of the covenants in this agreement referenced in the next paragraph, petitioner/plaintiff OCEC and respondent/defendant CDE, for themselves and their respective agents, employees, officers, directors, successors, and assigns, hereby release each other and the other's agents, employees, officers, directors, successors, and assigns from all claims and demands each now has against the other arising from any act or omission from the beginning of time through and including the Effective Date that arise out of or are related to the allegations contained in the lawsuit, or which could have been asserted in the lawsuit. The parties further agree that, aside from an action to enforce the terms of this settlement agreement, they shall never commence, aid (except as required by process of law), or prosecute against the other any action or proceeding based directly or indirectly on released claims, and that they will defend, indemnify, and hold the other harmless against all claims and demands, including costs and attorney's fees, arising from any action or proceeding brought contrary to this agreement.
5. The CDE agrees to implement the following practices and actions with immediate effect:
  - A. Within 14 days of receipt of an appeal, the CDE shall acknowledge receipt of the appeal by a letter addressed to the complainant. In that letter, the CDE shall notify the complainant that the complainant's school district is obligated to ensure that the complainant is protected from retaliation at all

times for making the claims and allegations that are the basis for the appeal, and any retaliation may be the subject of a new complaint under the Uniform Complaint Procedures. The letter shall also provide the complainant with contact information, including telephone and facsimile numbers and a general email address, for the CDE office having responsibility for processing UCP appeals. In addition, the letter shall notify the complainant that each school district has a responsible district officer for ensuring compliance with nondiscrimination laws whose contact information is available from the district, and each school district has the responsibility to investigate complaints of discrimination.

- B. In its initial correspondence with the school district, the CDE shall remind the district of its continuing obligation to ensure the complainant is protected from retaliation at all times for making the claims and allegations that are the basis for the appeal; that any retaliation by the school district may be the basis for a new complaint under the Uniform Complaint Procedures and subject the school to corrective action by the CDE if retaliation is found (regardless of the merits of the underlying complaint); and that the complainant's identity remains strictly confidential at all times. A copy of this correspondence shall also be sent to the complainant.
- C. The parties agree and acknowledge that the California Code of Regulations does not prescribe a time limit within which the CDE must render a decision on an appeal (except where the CDE exercises its discretion to carry out a further investigation of the allegations which are the basis of the appeal). Nonetheless, the CDE agrees to use its best, good faith and objectively reasonable endeavors to render a decision on an appeal within 60 days of receipt of an appeal which satisfies the requirements of California Code of Regulations, title 5, section 4632, subdivisions (b) and (c). In the event that it appears the appeal will take longer than 60 days to decide, the CDE shall notify the complainant in writing on or before the expiration of the 60 days of the need for further time. Such notification will also include an estimate of the additional time needed and will again provide the complainant with contact information, including telephone and facsimile numbers and a general email address, for the office processing the appeal so that the complainant may inquire as to the status of the appeal.
- D. Each appeal will be reviewed and principally handled by a member of the CDE office having responsibility for processing UCP appeals, currently the Education Equity UCP Appeals Office ("Appeals Office"). The CDE shall, when reviewing an appeal, if appropriate, give due and careful consideration to its discretionary powers to call for further information from the complainant or district, to return the matter to the district for further investigation (including interviewing the complainant or witnesses) or to carry out its own investigation of the allegations that form the basis for the appeal.

- E. Each member of the CDE Appeals Office shall undergo at least one hour of training annually in issues relating to discrimination and bias, including but not limited to, lesbian, gay, bi-sexual, gender nonconforming, and transgender youth. OCEC, the Transgender Law Center, Welcoming Schools, and other similar interest or advocacy groups may submit written training materials for potential use in this training.
  - F. Each member of the Appeals Office shall undergo at least one hour of training annually that explains the current standards used to evaluate appeals of UCP complaints.
  - G. The CDE shall review, revise and update, as appropriate, within six months of the execution of this agreement, the brochure entitled "Prohibition of Discrimination, Harassment, Intimidation and Bullying in California Public Schools" dated July 2012. The CDE shall include information in the brochure regarding AB 1266, the School Success and Opportunity Act, and instructions for filing a complaint of discrimination pursuant to the Uniform Complaint Procedures. The CDE shall post the revised brochure on the CDE website and send the brochure, via email, to every public K-12 school in California, with a memorandum requesting that each school post the brochure to its website and include it in beginning-of-year parent information packets.
  - H. The CDE shall review, revise and update, within six months of the execution of this agreement, the Legal Advisory dated April 30, 2004, regarding Gender Equity and Discrimination Laws in California Public Schools. This update may be in the form of guidance rather than a legal advisory.
  - I. The CDE shall, by January 31 in each of the years 2016, 2017 and 2018, post an annual statistical summary on the CDE web site of the number of appeals received in the preceding year (for 2015, appeals received on or after July 1, 2015), including the underlying basis of the complaint, the school district involved, the resolution, including whether corrective action was required, and the time elapsed between the CDE's receipt of the complete appeal and resolution of the appeal. The CDE also shall publish the telephone and facsimile numbers and general email address of the CDE Appeals Office (and any successor).
6. Within 5 days following execution of this agreement, plaintiff shall file all papers necessary to dismiss the lawsuit with prejudice and provide defendant's counsel proof of same.
7. The parties further agree as follows:
- A. This settlement is a compromise of disputed claims and defenses, and nothing herein may be construed as an admission of liability. The parties deny all claims/defenses asserted against them, and enter this agreement for the sake of convenience, and to avoid the burdens and uncertainties of litigation.

B. In addition to the releases and waivers set forth in paragraph 4, above, the parties agree to waive all rights under California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which 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.

C. This agreement documents the parties' entire understanding and may be amended only by a writing signed by all parties. All parties have carefully read and understand this agreement, signing of their own free will and having been fully advised by their counsel as to its content. The parties warrant they are legally competent to contract and have actual authority to bind those on whose behalf they sign.

D. To facilitate prompt disposition of settlement papers, this agreement may be signed in counterparts with the same effect as if all parties signed one document. All such counterparts will constitute one agreement. Signatures obtained via facsimile or transmitted electronically shall be deemed valid as if they were inked originals.

E. Each party agrees to execute such other documents and take such other actions as may be reasonably necessary to further the purposes of this agreement. Time is of the essence in this agreement.

F. Each party shall bear their own attorneys' fees and costs, including those associated with the involvement of experts and consultants, including fees and costs incurred in any monitoring, oversight or enforcement of the provisions of this agreement.

G. Except as otherwise stated, no party has relied on any promise or representation by any other party in executing this agreement.

H. This agreement has been jointly negotiated and drafted. Its language shall be construed as a whole according to its fair meaning and not strictly for or against anyone.

I. Should any court or tribunal of competent jurisdiction find any provision of this agreement to be invalid or unenforceable, the remainder shall continue in full force to the extent it can be given effect without the invalid provision(s).

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J. The signatories below represent and warrant that they are duly authorized to execute this agreement on behalf of the party their signature represents, and legally bind said party to this agreement.

**PLAINTIFF**

DATED: November 2, 2015 Lamar Smith  
OCEC Organization  
By: Lamar Smith  
Its: Co-chair

**DEFENDANT**

DATED: November 4, 2015 Michelle Zumot  
California Department of Education  
By: Michelle Zumot  
Its: Chief Deputy Superintendent of Public Instruction

**APPROVED AS TO FORM:**

**CALIFORNIA DEPARTMENT OF EDUCATION**

DATED: November 4, 2015 Peter J. Stubbs  
By: Peter J. Stubbs, Esq.  
Deputy General Counsel  
Attorney for Defendants

**IRELL & MANELLA LLP**

DATED: November 4, 2015 Melissa Rabbani  
By: Melissa Rabbani, Esq.  
Attorneys for Plaintiff