

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between the California Department of Education (“CDE”), the State Board of Education (“SBE”), the State of California, Californians For Equal Rights Foundation (“CFER”), Eric Gonzales, Steve Houbeck and Jose Velazquez. CDE, SBE, CFER, Eric Gonzales, Steve Houbeck and Jose Velazquez are each hereinafter referred to as a “Party” to this Agreement, and are collectively referred to as “the Parties.”

WHEREAS, on March 18, 2021, pursuant to Education Code Section 51226.7, the SBE adopted that certain Ethnic Studies Model Curriculum (the “ESMC”), consisting of a preface and six chapters;

WHEREAS, the preface and each of the ESCM’s six chapters are currently posted on a page of CDE’s website, with a notice that a professionally edited and formatted version of the model curriculum will be available at a later time;

WHEREAS, on September 3, 2021, CFER, Eric Gonzales, Steve Houbeck and Jose Velazquez (collectively, “Plaintiffs”) commenced a lawsuit in the California Superior Court for the County of San Diego (the “Court”), captioned *Californians for Equal Rights Foundation, et al. v. State of California, et al.*, Case No. 37-2021-00037896 (the “Action”), against the State of California; the CDE; the SBE; Tony Thurmond, in his official capacity as State Superintendent of Public Instruction; and Linda-Darling Hammond, in her official capacity as President of the SBE (collectively, “Defendants”).

WHEREAS, the Plaintiffs’ Complaint in the Action alleges that the ESCM’s inclusion of two specific and discrete parts of Chapter 5 of the ESCM – specifically, the “In Lak Ech Affirmation” and the “Ashe Affirmation” (collectively, the “Affirmations”) – violates provisions of the California Constitution relating to religion, specifically Article I, Section 4, and Article XVI, Section 5, and seeks injunctive relief and costs of suit, including statutory attorneys’ fees.

WHEREAS, Defendants deny the allegations and dispute the claims in Plaintiffs’ Complaint in the Action;

WHEREAS, the Parties have discussed the claims in the Action and the potential deletion of the Affirmations from the ESCM through settlement as being consistent with the SBE’s and CDE’s continued and long-standing commitment to ensuring appropriate treatment of religion in a secular public education context;

NOW THEREFORE, in order to avoid the costs, expense and uncertainty of protracted litigation and in consideration of the promises set forth herein, the Parties hereby agree as follows:

1. Agreement Conditioned Upon and Subject to SBE Approval. The Parties acknowledge that the SBE must consider and approve this Agreement at a future meeting,

currently contemplated for January 12, 2022. This Agreement is expressly conditioned upon and subject to SBE approval. Within forty-eight (48) hours of any such SBE approval, a duly authorized representative of the SBE shall sign this Agreement on the SBE's behalf and cause the signed document to be transmitted to all Parties' counsel.

2. Excising of Affirmations from the ESMC and Notice to LEAs. Within five (5) business days of the date that the Agreement is SBE-approved and fully executed by the Parties, CDE shall cause the Affirmations to be deleted from the document that is accessible via hyperlink, as Chapter 5 of the ESMC, on CDE's website. Contemporaneously with the deletion of the Affirmations, CDE and/or SBE shall notify all school districts, charter schools and county offices of education (Local Educational Agencies) that the Affirmations have been deleted from the ESMC. It is contemplated that the notification will also convey the following concepts, with the final language subject to alteration or revision in the CDE/SBE's discretion: "No ESMC content should be used as prayer, or any other form of religious act, and any such use of the ESMC content would contravene the SBE's longstanding policy and guidance. We trust that, in reviewing all other ESMC resources, local educational agencies will keep in mind the importance of ensuring that all instruction is both constitutionally and academically appropriate. To the extent you have been using the ESMC to inform your local decision-making process, please refer to the current ESMC." SBE/CDE will provide a draft of the proposed notice to Plaintiffs' counsel prior to distribution. Plaintiffs' counsel may provide written feedback on the draft for consideration within ten (10) business days. SBE/CDE will consider in good faith any suggestions provided by Plaintiffs' counsel, but SBE/CDE shall retain final editorial control regarding the notice. In addition, CDE and SBE shall omit the Affirmations from any future publications that it makes of the ESMC, and will not distribute copies of the ESMC in any form that includes the two Affirmations unless otherwise specifically required by law (*e.g.*, in response to a Public Records Act request or a subpoena).

3. No Encouragement. CDE and SBE agree not to encourage the use of the deleted Affirmations in California's public schools.

4. Dismissal of the Action. Within two (2) business days of the date that Plaintiffs' counsel receives notice that the Affirmations have been deleted from the ESMC published on CDE's website, Plaintiffs shall dismiss the Action, in its entirety, with prejudice, with all parties bearing their own respective costs and fees (with the sole exception of the Payment described in Paragraph 5 below).

5. Attorneys' Fees Payment. After CDE's counsel receives notice that the Action has been dismissed, and after CDE's receipt of a completed Payee Data Record (Form STD 204) from Plaintiffs' counsel, CDE shall pay to Plaintiffs' counsel the sum of \$100,000 (the "Payment"), representing a payment toward Plaintiffs' attorneys' fees incurred in connection with the Action. CDE will endeavor to expedite the Payment through all state requirements which include approval of state control agencies, and will seek to deliver payment within forty-five (45) days of notice of dismissal and receipt of the Payee Data Record. With the exception of that Payment, each Party shall bear all of

its own past and future costs, expenses and fees incurred in connection with the Action, and no further payment shall be required among or between the Parties with respect to the Action.

6. No Admission of or Evidence of Liability. The Parties acknowledge that this Agreement resolves disputed claims in order to avoid the costs, expense and uncertainty of protracted litigation. The Parties further acknowledge that this Agreement does not constitute any of the Defendants' admission of liability, and shall not be evidence of any of the Defendants' liability for claims alleged in the Action.

7. Publicity and Public Characterizations of Agreement. Each Party agrees that any statement it makes, provides, directs or authorizes relating in any way to the ESMC, the Action or this Agreement, shall not be inconsistent in any way with the acknowledgements contained in Paragraph 6 above, and in any event, shall not claim that any of the Defendants have admitted liability in connection with the Action or that this Agreement is evidence or indicative of any of the Defendants' liability.

8. State's Non-Opposition. The State of California recognizes that the other Defendants have authority to enter into this settlement, and to carry out its terms. The state agrees not to oppose, dispute, or resist this settlement.

9. Releases. Except for the rights and obligations acknowledged or provided for in this Agreement and claims for breach of this Agreement, Eric Gonzales, Steve Houbeck, Jose Velazquez, and CFER and each of CFER's directors and officers (collectively, the "Plaintiff-affiliated Releasing Parties"), hereby fully release and forever discharge each of the Defendants and their respective past, present and future members, officers, officials and employees from any and all claims, demands, causes of action and suits at law or equity, known or unknown, fixed or contingent, that any of the Plaintiff-affiliated Release Parties may have or claim to have, now or in the future, arising out of, or related in any way to, the ESMC, as adopted in March 2021 or as revised pursuant to this Agreement. This Release does not, however, apply to claims concerning other future revisions to the ESMC made by Defendants after the date of this Agreement.

10. Waiver of Section 1542. The Plaintiff-affiliated Releasing Parties, and each of them, hereby expressly waive any statutory or common law provision that would otherwise prevent the releases specified in Paragraph 9 from extending to claims that are not currently known or suspected to exist in any Party's favor at the time of executing this Agreement and which if known by that Party, might have materially affected his or its settlement as provided hereunder. The Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

11. Merger and Modification. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, supersedes all prior agreements, negotiations, and oral understandings, if any, and may not be amended, modified, or supplemented except by an instrument in writing signed by the Parties. The Parties acknowledge and agree that there are no collateral agreements between them with respect to the subject matter of this Agreement.

12. Advice of Counsel and Acknowledgment. Each of the Parties hereto acknowledges that it or he has had an opportunity to seek legal advice or counsel with respect to this Agreement, has read the Agreement and understands its final and binding effect, and is voluntarily entering into this Agreement. The Parties further acknowledge that the execution and delivery of this Agreement is not the result of any fraud, duress, mistake or undue influence.

13. Interpretation. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning, and not in favor of nor against any of the Parties as drafter or otherwise.

14. Other Documents. The Parties hereby agree to execute all such other documents and to take all such other actions as may be reasonably necessary to effectuate the purpose of this Agreement.

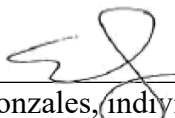
15. Binding Effect. This Agreement is for the benefit of and shall be binding on all Parties and any of their successors, heirs, executors, administrators, receivers and/or trustees.

16. Warranty and Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and by signing this Agreement, each of the Parties warrants and represents that such party is authorized and entitled to enter into this Agreement.

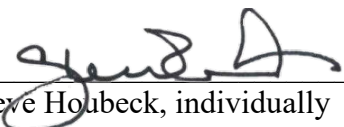
17. Execution in Counterparts, and E-mail and Facsimile Transmission. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one agreement with the same force and effect as if all signatures had been entered in one document. Signatures transmitted and received via facsimile or by e-mail shall be regarded as original signatures

I HAVE READ THE FOREGOING AND FULLY UNDERSTAND AND ACCEPT IT.

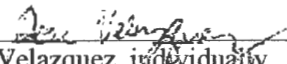
DATED: January 13, 2022

By: 
Eric Gonzales, individually

DATED: January 13, 2022


By: 
Steve Houbeck, individually

DATED: January 13, 2022

By: 
Jose Velazquez, individually

CALIFORNIANS FOR EQUAL
RIGHTS FOUNDATION

DATED: January 13, 2022

By: 
[printed name] Frank Xu
[printed title] President
Californians for Equal Rights
Foundation

CALIFORNIA DEPARTMENT OF
EDUCATION

DATED: January , 2022

By: _____
Mary Nicely
Chief Deputy Superintendent
California Department of Education


STATE BOARD OF EDUCATION

DATED: January , 2022

By: _____
Linda Darling Hammond
President, State Board of Education

STATE OF CALIFORNIA

DATED: January 13, 2022

By: 
David Sapp
Chief Deputy Legal Affairs Secretary,
Office of Governor Gavin Newsom

DATED: January ____, 2022

By: _____
Jose Velazquez, individually

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RIGHTS FOUNDATION

DATED: January ____, 2022

By: _____
[printed name]
[printed title]
Californians for Equal Rights
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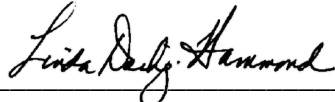
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EDUCATION

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Chief Deputy Superintendent
California Department of Education

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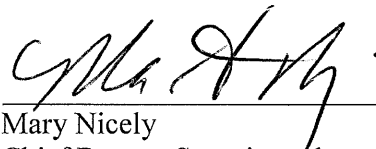
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DATED: January __, 2022

By: _____
[printed name]
[printed title]
Californians for Equal Rights
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By:  _____
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California Department of Education

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DATED: January __, 2022

By: _____
Linda Darling Hammond
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David Sapp
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