

## **SETTLEMENT AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO FURTHER SUE**

This Settlement Agreement and Release ("Agreement") is entered into by Olivia Funk ("Complainant") and North Bend School District ("District") collectively referred to as "the Parties."

### **I.**

#### **RECITALS**

A. Complainant filed a complaint with Oregon Department of Education 2017-001-KM ("ODE") (hereinafter referred to as the "Complaint" or "Threatened Claims").

B. Complainant and District have agreed to a mutually acceptable compromise to resolve the Complaint and which compromise is memorialized by this Agreement.

C. Complainant and District represent that they have discussed all aspects of the threatened claims, and this Agreement with their respective attorneys, and have been fully advised by them as to their respective rights, understand that they are waiving significant legal rights by signing this Agreement, and enter this Agreement voluntarily with a full understanding of, and agreement with, all of its terms.

D. Complainant and District acknowledge that the payment and acceptance of the Settlement Terms (as defined and set out below) provided herein, together with execution of this Agreement, are the result of compromise and negotiations between the parties and that this Agreement is entered into in good faith.

E. Complainant desires to settle fully and finally all outstanding differences between her and the District, including, but in no way limited to, those differences embodied in or in connection with the threatened claims.

### **II.**

#### **AGREEMENT**

##### **1. Dismissal of All Complaints**

Olivia Funk agrees that she will dismiss any pending administrative complaints, charges, and all pending litigation with prejudice, including, but not limited to, her Complaint filed with the ODE, Case number 2017-001-KM, and certifies that there will be no further investigation or processing of any administrative charge or lawsuit.

##### **2. No Other Claims**

Complainant represents and warrants that she has not filed or initiated any complaints, charges, lawsuits or proceedings of any kind against the District with any governmental agency

or any court, other than this ODE Complaint. Complainant further represents and warrants that she is not aware of any injury, grievance or other ground for any such claim, charge, lawsuit or proceeding. Complainant agrees that she will not file any other complaints, charges, lawsuits, appeals or proceedings of any kind against District or the Releasees (as defined in paragraph 7 below) with any court at any time hereafter based on any matter released by or arising prior to the execution of this Agreement.

### **3. Consideration**

In exchange for the promises and representations by Complainant in this Agreement, including but not limited to the voluntary dismissal with prejudice of the Complaint and the releases described in paragraph 7 below, District shall provide payment to Complaint's counsel Ms. Kate E. Dyer and the ACLU Foundation of Oregon ("ACLU") sums for attorney's fees and costs as detailed below (the "Settlement Sum").

The District shall provide Complainant's attorney a check payable in the amount of Three Thousand Dollars (\$3,000) for the payment of attorney fees. Payment shall be tendered to Complainant's attorney, Kate E. Dyer, within 30 days following Complainant providing an executed copy of this Agreement and a completed W-9 for her counsel to District.

The District shall also provide Complainant's attorney, the ACLU Foundation of Oregon, a check payable in the amount of \$5,500 for the payment of costs associated with this case. Payment shall be tendered to Complainant's attorney, ACLU Foundation of Oregon, within 30 days following Complainant providing an executed copy of this Agreement and a completed W-9 for her counsel to District.

The District will take the following actions:

- A. The District will issue a written apology to Complainant.
- B. The District will acknowledge its commitment to improving the climate for LGBTQ students at the first North Bend High School staff in-service and student assembly of the 2018-19 school year, which will include an announcement of the work to be performed by the Diversity and Inclusion committee and the hiring of an expert consultant with expertise in sex and sexual orientation<sup>1</sup> discrimination and Title IX complaints.
- C. The District will create a North Bend High School Diversity and Inclusion committee led by Jake Smith (so long as he is still employed by the District). The committee will be composed of an administrator, school staff members, and current and former students, which may include the Complainant at her discretion. The committee will take the following actions:

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<sup>1</sup> This agreement adopts the definition of "sexual orientation" provided in ORS Or. Rev. Stat. Ann. § 174.100 (defining sexual orientation as "actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth").

- a. Schedule trainings and events for staff and students (e.g. participation in National Coming Out Day and Ally Week);
  - b. Create measurable goals for its work, including conducting climate surveys every two years;
  - c. Review how to integrate curriculum related to positive social change; and
  - d. Will issue an annual "diversity award."
- D. The District will communicate to District employees that they may place "safe room" placards inside or outside of their classroom.
- E. The District will establish a safety team to support a student who reports substantiated harassment based on any protected class, including sex and sexual orientation.
- F. The District shall ensure that its sex education curriculum complies with Oregon State Standards.
- G. The District shall provide for opportunities for student involvement and input into the District's ongoing anti-harassment efforts in addition to participation in the Diversity and Inclusion committee, including the ability to select, at the beginning of each year, by majority vote of club members, the faculty advisor for the Gay Straight Alliance (GSA).
- H. The District shall take corrective action if school officials, while acting in their capacity as such, violate District harassment and/or discrimination policies by making negative statements about the sexual orientation of LGBTQ students.
- I. The District shall ensure that school officials, while acting in their capacity as such, do not promote their personal religious beliefs to students through proselytization, preaching, or other written or oral means. School officials shall not require, encourage, or solicit students to read the Bible or any other religious text absent a legitimate, non-religious educational objective and unless in conjunction with a curriculum that includes academic study of the religious text. Under no circumstances may school officials require or solicit students to read the Bible or any other religious text for purposes of discipline or to convey any religious or moral lesson.
- J. In lieu of money damages, the District shall make a donation in the amount of \$500 to the Q&A of Coos County.
- K. The District will take the following actions related to its Policies and Procedures:
  - a. The District shall retain an expert consultant ("Expert"), in consultation with the ACLU, in the area of sex and sexual orientation-based harassment to review the District's policies and procedures concerning harassment.

- b. In consultation with the Expert, the District shall develop and implement a comprehensive plan for preventing and addressing teacher-on-student and student-on-student sexual orientation-based harassment at the high school.
- c. The District shall work in consultation with the Expert and ODE to improve its system for maintaining records of investigations and responses to allegations of harassment. The District shall work with ODE to adopt best practices for record keeping and complaint resolution.
- d. The District will review and revise its policies and procedures ("Procedures"), in consultation with the Expert, with respect to responding to allegations of harassment on the basis of a protected class, including sex and sexual orientation. The Procedures will ensure that the District provides reasonable, timely, and effective action tailored to fully redress any specific problems identified by the District as a result of the harassment; and that the action is reasonably calculated to end the harassment, prevent recurrence and eliminate any hostile environment. At a minimum, the Procedures will include the following:
  - i. A statement setting forth the District's commitment to having a school environment free from all discrimination, including harassment on the bases of sex and sexual orientation. Such statement must explain that the District prohibits sex and sexual orientation harassment in the school environment, including all academic, extra-curricular and school-sponsored activities. The statement will encourage students to immediately report incidents of harassment. The statement will also specify that the District will investigate formal and informal complaints of harassment.
  - ii. An annual written and verbal explanation to all students of how to report harassment and/or file a complaint (formally and informally).
  - iii. The name and/or title, mailing address, email address, and telephone number for the District employee(s) responsible (hereinafter "Designated Staff Member") for handling reports of sex and sexual orientation harassment. The Designated Staff Member shall be selected by the District in consultation with students, including the GSA. If there are substantiated complaints that the Designated Staff Member has not effectively handled his/her responsibilities, the District will select a new Designated Staff Member.
  - iv. A requirement that the Designated Staff Member document all reports of harassment, and a protocol for school and District-level recordkeeping of each of the reports submitted by the designated staff members. The harassed students should be provided an opportunity to review the complaint intake documentation of the harassment for accuracy prior to submission. If the Student disagrees with the

complaint intake documentation, the Student may submit a request for review by the Expert or other staff member selected by the student. The Designated Staff Member and Expert or staff member shall work collaboratively to complete the complaint intake documentation.

- v. An assurance that, upon notice of an allegation of harassment, the District will conduct a prompt, adequate, reliable and impartial investigation and if harassment is found to have occurred, the District will take prompt steps to stop, remedy and prevent recurrence of the conduct, including appropriate discipline of the harassing students consistent with District discipline policies.
- e. Reporting Requirement: Within 60 days of retaining the Expert, the District will submit a draft of the procedures revised in accordance with Section 3.K.d to the ACLU and the Oregon Department of Education (ODE) for review and approval. If ODE requires revisions to the procedures, the District will re-submit the procedures to ODE for review and approval within 30 days of receiving notice of the revisions required by ODE. ODE and the District will follow the same process until ODE approves the District's procedures.
- f. Within 45 days of receiving ODE's written approval of the procedures, the District adopt and implement the procedures.
- g. The procedures shall be reviewed by the District and ODE every 12 months and revised as necessary to reflect developments in best practices, law or policy. The training shall be offered every twelve months. All District staff, administrators, and teachers hired after the date of the annual training shall be required to take the training at its next offering. All District staff, administrators, and teachers shall be required to take the training every two years.
- h. Reporting Requirement: Within 60 days of receiving ODE's written approval of the procedures and, if possible by the beginning of the 2018-19 school year, the District will submit to ODE documentation verifying it has adopted and implemented the procedures, including a working link to the procedures on the District's website, if available.
- i. The District shall submit annual compliance reports, the content of which shall be determined in consultation with ODE and the ACLU, to ODE. The District shall be under the jurisdiction of ODE and the requirements of this Agreement for five years. Failure to comply with a term of this Agreement may result in ODE's decision to withhold state school funds from the District of up to 100% of state funding pursuant to OAR 581-021-0049.

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L. The District will take the following actions related to Training of Administrators, Teachers, and Staff:

- a. The District shall retain an expert consultant ("Expert"), in consultation with the ACLU, in the area of training administrators, teachers, and staff on the topics of sex and sexual orientation-based harassment.
- b. In consultation with the Expert, the District will develop and implement a plan for a comprehensive on-going training program for all administrators, teachers, and staff at North Bend High School. The training must include, but need not be limited to, the following:
  - i. the District's policies and procedures regarding discrimination and harassment on the basis of sex and sexual orientation;
  - ii. what constitutes sex and sexual orientation harassment;
  - iii. what constitutes a hostile environment;
  - iv. how to respond to suspected or known sex and sexual orientation harassment, including when an employee is required to report harassment and to whom the harassment should be reported;
  - v. how to respond to student complaints of student-on-student sex and sexual orientation harassment, including complaints of sex and sexual orientation slurs or sex and sexual orientation name-calling;
  - vi. the contact information (name, title and telephone number) for the Designated Staff Member responsible for addressing questions and handling complaints about sex and sexual orientation harassment; and
  - vii. notice to all administrators, teachers, and staff that the District's disciplinary code regarding sex and sexual orientation harassment will be strictly enforced and could lead to termination.
- c. Reporting Requirements: By September 4, 2018, the District will submit to ACLU and ODE for review and approval the proposed trainer as required for Section 3.L.a and his or her qualifications.
- d. Within 30 days of written notification from ODE of its approval of the trainer, the District will submit to ACLU and ODE for review and approval a copy of the training materials and agenda to be used. ACLU and ODE will review the draft materials and agenda and notify the District if revisions are required. If ODE requires revisions, the District will re-submit the draft materials and agenda to ODE for review and approval within 30 days of receiving notice of the revisions required by ODE. ODE and the District will follow the same process until ODE approves the materials and agenda.

- e. Within 45 days of written notification from ODE of its approval of the training materials and agenda, the District will provide documentation to ODE demonstrating that it has provided the training referenced in Section 3.L.b, which will include a copy of all materials presented and distributed during the training, and a certification from the District that all administrators, teachers, and staff at North Bend High School attended the training.
  - f. The training shall be reviewed by the District and ODE every 12 months and revised as necessary to reflect developments in law or policy. The training shall be offered every twelve months. All District staff, administrators, and teachers hired after the date of the annual training shall be required to take the training at its next offering. All District staff, administrators, and teachers shall be required to take the training every two years.
- M. Mr. Lucero shall be transferred from his role as Principal at North Bend High School effective the 2018-19 school year. Mr. Lucero may be re-assigned to another role within the District for the remainder of his employment, except that he will not be transferred to a role at the North Bend High School or as principal of North Bend Middle School. The District will issue a Letter of Directive to Mr. Lucero regarding the District's policies prohibiting discrimination, harassment, and bullying.
- N. The District shall submit a written request to the North Bend Police Department asking that Mr. Jason Griggs be removed and/or replaced from his role as the school resource officer at the North Bend High School.

#### **4. No Prior Entitlement to Consideration**

Complainant acknowledges that the releases described in paragraph 7 below are in exchange for the Consideration outlined in paragraph 3, and that she would not otherwise be entitled to this consideration.

#### **5. Severability**

The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable. This Agreement shall survive the termination of any arrangements contained herein.

#### **6. Capacity to Enter Agreement**

Complainant represents that she has carefully read and fully understands the scope and effect of all of the provisions of this Agreement; that she has had all such time that she desires within which to consider this Agreement; that she fully understands that this Agreement releases all of her claims, both known and unknown, against District and each and all and other Releasees (as defined in paragraph 7 below); that she is voluntarily entering into this Agreement; and that she has the capacity to enter into this Agreement.

## **7. Release of All Claims**

As a material inducement for District to enter into this Agreement, Complainant does hereby, for herself and her heirs, successors, assigns, and relatives by blood or marriage, in her capacity as an individual and as a member of any current or future class, forever releases District and all persons acting by, through, under or in concert with them, including all agents and insurers (collectively, the "District Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, any claims set forth in the ODE Complaint, which Complainant now has or claims to have, or which Complainant at any time hereinafter may have or claim to have against each or any of the District Releasees, arising prior to the execution of this Agreement.

As a material inducement for Complainant to enter into this Agreement, District does hereby, for itself and its heirs, successors, assigns, and relatives by blood or marriage, in its capacity as an individual and as a member of any current or future class, forever releases Complainant and all persons acting by, through, under or in concert with them, including all agents and insurers (collectively, the "Complainant Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, any claims the District now has or claims to have, or which District at any time hereinafter may have or claim to have against each or any of the Complainant Releasees, arising prior to the execution of this Agreement.

## **8. No Representations**

Complainant represents and acknowledges that in executing this Agreement, she does not rely and has not relied upon any representation or statement not set forth herein made by any of the Releasees or by any of the Releasees' agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise

## **9. Governing Law**

This Agreement is made and entered into in the State of Oregon, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of Oregon.

## **10. Medicare Eligibility**

By signing this Agreement, Complainant represents that she is not Medicare eligible, is not a Medicare beneficiary, and that she does not reasonably expect to become Medicare eligible within three months of signing this Agreement. Complainant further represents that no Medicare or Medicaid payments have been made to her or on her behalf and that no liens, claims, demands, subrogated interests or other claims/causes of action exist arising from any claims released by this Agreement. Should any claims, demands, subrogated interests, liens, etc. be made against District arising out of claims covered by this Agreement, Complainant agrees to



indemnify and hold harmless District from any and all damages, fines, penalties, interest, fees, including attorney fees, and costs of any kind incurred in connection with such claims.

#### **11. Sole and Entire Agreement**

This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter of this Agreement. This Agreement may not be modified, waived, rescinded or amended in any manner, except by a writing executed by all parties to the Agreement which clearly and specifically modifies, waives, rescinds or amends this Agreement.

#### **12. Binding Effect**

This Agreement shall be binding upon Complainant and her respective heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of District and the other Releasees.

#### **13. No Assignment of Claims**

Complainant represents and warrants that she has not heretofore assigned or otherwise transferred or subrogated, or purported to assign, transfer or subrogate, to any person or entity, any claim or portion thereof, or interest therein they may have against the Releasees, and they agree to indemnify, defend and hold the Releasees harmless from and against any and all liability, loss, demands, claims, damages, costs, expenses or attorney fees incurred by the Releasees as the result of any person or entity truthfully asserting any such legitimate right, assignment, transfer or subrogation.

#### **14. Counterparts**

This Agreement may be executed in one or more counterparts, any one of which shall be deemed to be the original even if the others are not produced.

#### **15. Joint Participation in Preparation of Agreement**

Each party has had the opportunity to revise, comment upon and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

#### **16. Section Headings**

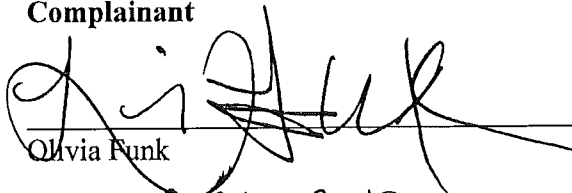
Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

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We, the undersigned, hereby execute the Settlement Agreement, General Release and Covenant Not to Further Sue as our free and voluntary act and deed.

**Complainant**

  
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Olivia Funk

DATED: 5-21-2018

**District**

  
\_\_\_\_\_  
Bill Yester

DATED: 5/21/18

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