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3 **STUBBS & LEONE**

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9 Attorneys for Defendants

10 OAKLEY UNION ELEMENTARY SCHOOL DISTRICT, RICHARD  
11 ROGERS, MARRYANN HUSSEY, SCOTT SCHARTZ, GREG HETRICK,  
12 BOARD OF TRUSTEES OF THE OAKLEY UNION ELEMENTARY  
13 SCHOOL DISTRICT, MARK JORDAN, KAREN BERGENHOLTZ,  
14 RON KRATINA, KIM SOLARSKI, and LAURI WINTERS

15 THE UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 K.D., by his guardian ad litem, J.B., on behalf  
18 of himself and all others similarly situated,

**CASE NO.: C 07-00920 MHP**

19 Plaintiff,

**STIPULATION OF DISMISSAL WITH  
PREJUDICE**

20 vs.

21 OAKLEY UNION ELEMENTARY SCHOOL  
22 DISTRICT; RICHARD ROGERS, in his official  
23 capacity as Superintendent; MARYANN  
24 HUSSEY, in her official capacity as Director of  
25 Student Support Services and in her individual  
26 capacity; SCOTT SCHARTZ, in his official  
27 capacity as School Psychologist; GREG  
28 HETRICK, in his official capacity as Principal  
of Delta Vista Middle School; and the BOARD  
OF TRUSTEES OF THE OAKLEY UNION  
ELEMENTARY SCHOOL DISTRICT, MARK  
JORDAN, KAREN BERGENHOLTZ, RON  
KRATINA, KIM SOLARSKI, and LAURI  
WINTERS in their official capacities,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

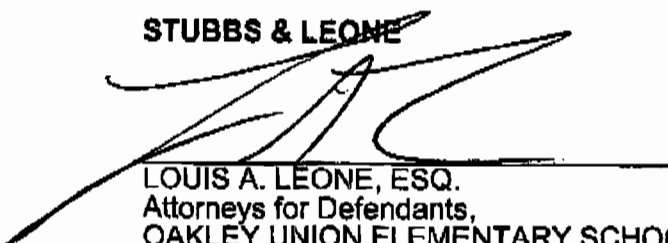
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It is hereby stipulated by the parties, by and through their respective attorneys, that the above-entitled action be dismissed with prejudice, each party to bear their costs and attorney's fees.

IT IS SO STIPULATED:

DATED: April 14, 2009

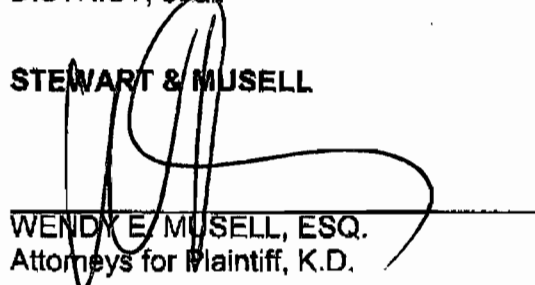
STUBBS & LEONE



LOUIS A. LEONE, ESQ.  
Attorneys for Defendants,  
OAKLEY UNION ELEMENTARY SCHOOL  
DISTRICT, et al.

DATED: April 22, 2009

STEWART & MUSELL



WENDY E. MUSELL, ESQ.  
Attorneys for Plaintiff, K.D.

IT IS SO ORDERED.

DATED: 4/28/2009



**Final Settlement Agreement and Release****K.D. V. OAKLEY UNION ELEMENTARY SCHOOL DISTRICT****U.S. DISTRICT COURT CASE C07-00920 MHP**

This Final Settlement Agreement and Release ("Agreement") is between Julia Benveniste ("Parent"), on her own behalf and on behalf of Keith Davies ("Student," hereinafter collectively referred to with Parent as "Plaintiff"), and the Oakley Union Elementary School District ("District"). The term "Parties" as used in this Agreement shall refer to the District and Plaintiff.

**1. NATURE AND STATUS OF DISPUTE**

Plaintiff has filed a complaint in the United States District Court, Northern District of California, Case No. C07-00920 MHP (herein "Action") relating to the educational program and services provided to the Plaintiff. Plaintiff also claims in the Action additional claims and causes of action against the District. Further, Plaintiff has filed several administrative complaints with the California Department of Education (CDE) and the Office of Administrative Hearings (OAH) with respect to the District. In order to avoid the time and expense of litigating the disputes, the Parties have agreed to resolve any and all disputes that exist between the Parties through this Agreement. This Agreement constitutes a full and final resolution of all claims and issues as against the District, its employees, board, agents and attorneys.

**2. MUTUAL COMPROMISE**

This Agreement is entered into by the Parties for the purpose of compromising and settling past, present and future claims, actions, causes of actions, disputes, disagreements and issues between the parties, whether known or unknown, related to, or arising from, Student's attendance as a student in the District, his educational program, the failure to provide any services, the violations of any

federal or state law or regulation, and all claims related thereto as they relate in whole or in any part.

This Agreement and resolution does not constitute, nor shall it be construed as, an admission of liability by the District or Plaintiff for any purpose.

The parties, in consideration of the promises made herein, agree as follows:

- A. **The Parties shall sign and file a stipulation dismissing the Action with prejudice, each party to bear their own costs and attorney fees.**

### 3. GENERAL RELEASE AND DISCHARGE

The Parties hereby fully and mutually release and discharge one another, their employees, all administrators, school board and its members, agents, predecessors, successors and attorneys from past, present or future claims, damages, liabilities, rights, claims for attorney fees and costs, and complaints of whatever kind or nature arising from or related to Student's educational program. This release and discharge precludes the Parties, and anyone acting on behalf of the Parties, from hereafter initiating or maintaining any actions, complaints, administrative process or any proceedings, other than proceedings to enforce this Agreement, as against the Parties.

This release and discharge applies to all claims upon or against each other for injuries, damages or any action or proceeding based on any state or federal statute, regulation, case decision, for claims under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 732), the Americans with Disabilities Act (42 U.S.C. § 12101), California Education Code § 56000, et seq. School Committee of the Town of Burlington v. Dept. of Ed., 471 U.S. 359, 105 S.Ct. 1996 (1985) or rights under Winkelman by Winkelman v. Parma City, 550 U.S. 516, 127 S. Ct. 1994 (2007), and all subsequent decisions based thereon.

This release and discharge applies to all claims for injuries, damages, attorney fees, costs, reimbursement rights or losses arising out of or related to Student's attendance in the District.

**Plaintiff and District agree and hereby waive the application of, the following provision of California Civil Code §1542 to all claims as against each other:**

**"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 to him or her must have materially affected his or her settlement with the debtor."**

Acknowledging Civil Code section 1542, the Parties agree to waive the protections of section 1542 in order to relinquish all claims described herein. Specifically, the Parties understand and acknowledge the significance and consequence of this waiver of section 1542, as follows: (1) they may have additional causes of action, rights, or claims and attorneys' fees or costs arising or occurring up to the effective date of this Agreement, of which they are not now aware; (2) they may not make a further demand for any such claims, fees, or costs upon each other or their predecessors, successors, board, employees, or agents.

#### 4. OTHER DOCUMENTS

All Parties agree to cooperate fully in the execution of any and all additional documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

#### 5. CURRENT AND FUTURE OBLIGATIONS

The Parties agree that the District shall have no current or future obligation to provide any special education services to the Plaintiff under any and all federal and state laws and regulations. Any such claims are expressly waived by the Plaintiff. This Agreement shall not be considered an Individualized Education Plan (IEP) by any Party.

#### 6. ENTIRE AGREEMENT

This Agreement is the entire agreement and understanding of the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms, or conditions, written, oral, express, or implied, are superseded by this Agreement. This Agreement cannot be changed or supplemented orally, and may be modified or superseded only by written instrument executed by both Parties.

#### 7. ATTORNEYS' FEES & COSTS

The Parties agree to be responsible for their own attorneys' fees and costs, if any, and waive any and all claims they or their attorneys may have related to any claim in any forum as against the Parties.

#### 8. EXECUTION BY FACSIMILE OR IN COUNTERPARTS

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement. A facsimile version of any party's signature shall be deemed an original signature.

#### 9. SEVERABILITY

If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

10. VOLUNTARY AGREEMENT AND ADVICE OF REPRESENTATIVE

The Parties represent that they have read this Agreement in full and understand and voluntarily agree to all the provisions herein, free from fraud, coercion or duress. The Parties further represent that they have, as of the date of execution of this Agreement, the legal capacity to understand, agree to, and sign this Agreement. The Parties warrant that they have had the opportunity to be represented by counsel or other representative of their own choosing, and have had the opportunity, should they choose, to consult with their legal counsel or other representative regarding this Agreement and each of its provisions. The District superintendent represents that he is authorized to execute this Agreement on behalf of the District and that the governing board of the District has approved this Agreement.

11. CONFIDENTIALITY

The Parties agree that this Agreement is strictly confidential and that the nature and terms of this Agreement shall not be disclosed to third parties except as required by law. However, for purposes of implementation and enforcement of the Agreement, the Parties mutually consent to disclosure and admissibility of this Agreement.

12. BINDING EFFECT

This Agreement is for the benefit of and shall be binding on all Parties and their respective successors, heirs, and assigns.

13. ENFORCEMENT

This Agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

14. EFFECTIVE DATE

This Agreement shall be fully executed and effective upon signature by the Parties.

AGREED:

Julia Benveniste, individually and on behalf of her child and student Keith Davies

By: Julia Benveniste Date \_\_\_\_\_  
Parent

OAKLEY UNION ELEMENTARY SCHOOL DISTRICT

By: Richard Rogers Date \_\_\_\_\_  
Superintendent

APPROVED AS TO FORM:

By: Rhoda Benedetti Date 4-10-09  
Rhoda Benedetti  
Benedetti and Associates  
Attorneys for Plaintiff

By: Wendy Musell Date 4/13/09  
Wendy Musell  
Stewart and Musell  
Attorneys for Plaintiff



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14. EFFECTIVE DATE

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AGREED:

Julia Benveniste, individually and on behalf of her child and student Keith Davies

By: Julia Benveniste 4/10/09  
 Julia Benveniste Date  
 Parent

OAKLEY UNION ELEMENTARY SCHOOL DISTRICT

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Richard Rogers  
 Superintendent

APPROVED AS TO FORM:

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Rhoda Benedetti  
 Benedetti and Associates  
 Attorneys for Plaintiff

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Wendy Musell  
 Stewart and Musell  
 Attorneys for Plaintiff

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Julia Benveniste, individually and on behalf of her child and student Keith Davies

By: Julia Benveniste Date \_\_\_\_\_  
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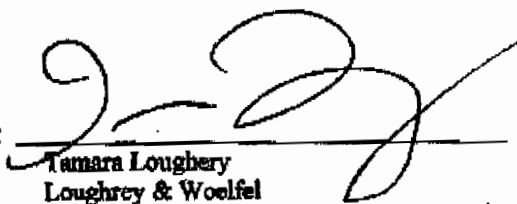
OAKLEY UNION ELEMENTARY SCHOOL DISTRICT

By:  Date 4/14/09  
Richard Rogers  
Superintendent

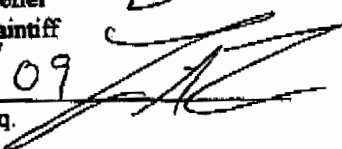
APPROVED AS TO FORM:

By: Rhoda Benedetti Date \_\_\_\_\_  
Benedetti and Associates  
Attorneys for Plaintiff

By: Wendy Musell Date \_\_\_\_\_  
Stewart and Musell  
Attorneys for Plaintiff

By:  \_\_\_\_\_ Date: 4/9/09

Tamara Loughery  
Loughrey & Woelfel  
Attorneys for Plaintiff

By: 4/14/09  \_\_\_\_\_ Date: 4/14/09

Louis A. Leone Esq.  
Stubbs & Leone  
Attorneys for District

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