

SCOTT D. CHENEY (6193)
 KYLE K. KAISER (13924)
 Assistant Utah Attorneys General
 JOHN E. SWALLOW (5802)
 Utah Attorney General
 160 East 300 South, Sixth Floor
 PO BOX 140856
 Salt Lake City, Utah 84114-0856
 Telephone: (801) 366-0100
 E-mail: scheney@utah.gov
 E-mail: kkaiser@utah.gov

Attorney for Defendants

JOHN MEJIA (13965)
 ACLU of Utah Foundation, Inc.
 355 N. 300 W.
 Salt Lake City, Utah 84103
 Telephone: (801) 521-9862
 E-mail: jmejia@acluutah.org
 JOSHUA BLOCK
 ACLU Foundation, Inc.
 125 Broad Street, Floor 18
 New York, New York 10004
 Telephone: (212) 549-2600
 E-mail: jblock@aclu.org

Attorneys for Plaintiff
 *Admitted Pro Hac Vice

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH – NORTHERN DIVISION

A.W. and C.W., by and through their mother
 Tina Weber, individually and on behalf of
 others similarly situated,

Plaintiff,

v.

DAVIS SCHOOL DISTRICT,

Defendant.

**ORDER ON JOINT MOTION FOR
 DISMISSAL WITH PREJUDICE**

Case No. 1:12-cv-242-EJF

Magistrate Judge Evelyn Furse

NOW before the Court is the parties' Joint Motion for Dismissal with Prejudice (doc. 22.)

The parties advise that the matter has been settled through a Universal Settlement and Release of All Claims. They request that the case be dismissed, with prejudice, with each party to bear its own costs; for Defendant to pay Plaintiffs' reasonable attorney fees as reflected in the settlement; that Plaintiffs' Motion for class Certification (doc. 13) be denied as moot; and that the Court

incorporate the terms of the Universal Settlement and Release of All Claims into its order of dismissal, retaining jurisdiction for the purpose of enforcing the agreement. Based on the parties' agreement, it is hereby

ORDERED that the parties' Joint Motion for Dismissal with Prejudice (doc. 22) is **GRANTED**. It is further

ORDERED that Plaintiffs Proposed Class Action Complaint (doc. 2) is **DISMISSED WITH PREJUDICE**, with each party to bear its own costs, and with Defendants to pay Plaintiffs attorneys' fees as agreed to in the Universal Settlement and Release of All Claims. It is further

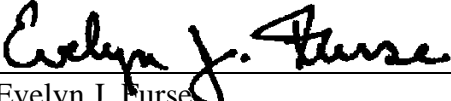
ORDERED that Plaintiffs' Motion for Class Action Certification (doc. 13) is **DENIED AS MOOT**. It is further

ORDERED that the Court hereby incorporates the terms of the Universal Settlement and Release of All Claims into this Order, and retains jurisdiction for purposes of enforcing the terms of settlement agreement, as agreed to by the parties. *See* Fed. R. Civ. P. 41(a)(2); *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 378–81 (1994); *Morris v. City of Hobart*, 39 F.3d 1105, 1110-11 (10th Cir. 1994); *Floyd v. Ortiz*, 300 F.3d 1223, 1226 & n.3 (10th Cir. 2002).

The Clerk will **CLOSE** the case.

IT IS SO ORDERED

DATED this 1st day of February, 2013.


Evelyn J. Furse
United States Magistrate Judge
District of Utah

AGREED AS TO FORM AND CONTENT BY:

Attorneys for Plaintiff:

/s/ John Mejia
JOHN MEJIA
ACLU of Utah Foundation, Inc.

Joshua Block
ACLU Foundation, Inc.

Attorneys for Defendant:

JOHN E. SWALLOW
UTAH ATTORNEY GENERAL

/s/ Scott D. Cheney
SCOTT D. CHENEY
KYLE J. KAISER
Assistant Utah Attorneys General
Attorney for Defendant

*Electronic Signature affixed with the permission of
Counsel for Defendant*

**UNIVERSAL SETTLEMENT AND RELEASE OF ALL CLAIMS
AGAINST DAVIS SCHOOL DISTRICT AND ITS AGENTS AND EMPLOYEES**

WHEREAS Plaintiffs A.W. and C.W., by and through their parent Tina Weber (“Plaintiffs”) filed a lawsuit, U.S. District Court No. 1:12-cv-00242-EJF (the “Lawsuit”) against the Davis School District¹ (“Defendant”), and sought to certify a class of plaintiffs comprising all current and future students in the elementary schools where Davis School District removed the book *In Our Mothers’ House* (the “Book”) from library shelves, placed the book behind a counter, and required students to have parental permission to access the book. Plaintiffs alleged, among other things, violations of 42 U.S.C. § 1983 and their First Amendment rights to access information, and sought injunctive relief as follows: require Defendant to return copies of the Book to the general circulation library shelves with access on the same terms and conditions as other books in the library; prohibit Defendant from removing or restricting access to additional books based on a concern that the books contain “homosexual themes” or “advocacy of homosexuality”; prohibit Defendant from relying on Utah Code § 53A-13-101 to remove or restrict access to certain library books; a declaratory judgment that Plaintiffs’ rights were violated; nominal damages; and attorneys’ fees.

WHEREAS Defendant denies each and every claim for relief;

WHEREAS Plaintiffs and Defendant wish to settle the Lawsuit without further litigation;

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Plaintiffs and Defendant agree to the following:

1. Defendant and Plaintiffs acknowledge that, on or about January 14, 2013, the Book was returned to the general circulation shelves of the school libraries at Windridge Elementary, South Weber Elementary, Snow Horse Elementary, and Parkside Elementary schools in the Davis School District (the “Libraries”), and is available for check out on the same terms and conditions that other books for the same aged students are available. Plaintiffs acknowledge that the Book may be restricted on a per-student basis by the parent or guardian of an individual student if the parent or guardian believes that the Book may be contrary to the student’s, or the parent’s, belief or right of conscience, in the same manner as any other library book. In those instances, the parent may notify Defendant, and Defendant will enter the parent’s requested individualized restriction on Defendant’s electronic library circulation software, or will make the parent’s election known by a similar method in the future.

2. Defendant agrees not to remove the Book from the Libraries for any reasons based on its content. Plaintiffs recognize that Defendant may remove the Book for reasons other than its content, including damage to the book, lack of space, remodeling, content-neutral changes in the collection, and similar reasons.

3. Defendant agrees that that it shall not rely upon Utah Code § 53A-13-101, as existing in the Utah Code on January 1, 2013, as a basis to remove or restrict access to any book placed on Library shelves for discretionary check-out by students. Should the

¹ The Parties hereby agree that the proper Defendant to the Lawsuit is the Board of Education of Davis School District. See Utah Code § 53A-3-401(1), (3).

Utah Legislature repeal, replace, amend or otherwise modify the substantive requirements of § 53A-13-101 in relevant part, this Paragraph shall no longer have any force or effect.

4. Defendant agrees to pay counsel for Plaintiffs the sum of FIFTEEN THOUSAND DOLLARS (\$15,000), in the form of a check made payable to the ACLU Foundation of Utah, Inc., the receipt of which Plaintiffs acknowledge, for the payment of Plaintiffs' attorneys' fees. This payment is in full satisfaction of any obligation pursuant to 42 U.S.C. § 1988, the reasonableness of which Plaintiffs and Defendant acknowledge.

5. Plaintiffs agree to release Defendant, the Davis School District, the State of Utah, and their respective agents, representatives, employees, administrators, departments, divisions, agencies, and facilities (in their individual and official capacities) from any and all claims arising out of the actions described in the Lawsuit, now and forever, explicit or implicit, whether known or unknown.

6. Plaintiffs and Defendant agree, as soon as practicable, to file with the Court a Joint Motion for Dismissal With Prejudice, asking the Court to dismiss the Lawsuit with prejudice, with each party to bear its own costs, to deny as moot Plaintiffs' Motion for Class Certification, and to retain jurisdiction as described in Paragraph 12, below

7. This Universal Settlement and Release is not an admission of liability but rather the compromise of disputed claims.

8. This Universal Settlement and Release, and each of its provisions, has been reached as the result of negotiations between the Plaintiffs and Defendant and their respective attorneys. Each of the parties expressly acknowledges and agrees that this Universal Settlement and Release shall not be deemed to have been prepared by, or drafted by, any particular party hereto, and that the normal rule of construction that any ambiguities are to be resolved against the drafting party or parties, shall not be employed in the interpretation of this Universal Settlement and Release.

9. This Universal Settlement and Release shall be binding on, and shall inure to the benefit of, Plaintiffs and Defendant and their respective past, present and future predecessors, successors, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives and assigns. In addition, Plaintiffs and Defendant contemplate, intend, and agree that this Universal Settlement and Release is made for the benefit of third parties, including, and only including, current and future students in all elementary schools in the Davis School District, and the successors and assigns of the Davis School District Board of Education as well as the employees of the Davis School District. Plaintiffs and Defendant agree that the terms of this Universal Settlement and Release may be enforced by any third-party beneficiary who believes any term of this Agreement has been breached and who has suffered a legal injury as a result of such breach, and that specific enforcement may be ordered by the Court should a breach be found, as the parties would otherwise lack any adequate remedy at law.

10. This Universal Settlement and Release may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, equally admissible in evidence against any party who has signed it, all of which together shall constitute one and the same agreement. Signatures delivered by facsimile or electronic, Portable Document Format through electronic mail shall be deemed original signatures.

11. This writing is an integrated agreement and represents the entire understanding of the Plaintiffs and Defendant relative to the subject matter described

herein. Each of the parties agrees that no representation or promise not expressly contained in this Universal Settlement and Release has been made and further promises that they are not entering into this Agreement on the basis of any promise, representation, express or implied, not otherwise contained herein.

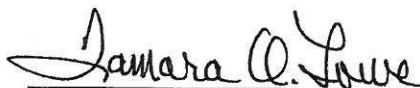
12. This Universal Settlement and Release shall be construed in accordance with, and governed by, the laws of the State of Utah, without regard to its conflict of law rules. Plaintiffs and Defendant agree that the United States District Court for the District of Utah may retain jurisdiction to enforce the terms of this Universal Settlement and Release only on motion of a party and not as part of any active supervision over the conduct described herein. Plaintiffs and Defendant will provide to the Court a proposed order including language that the Court will retain jurisdiction to enforce the terms of the Universal Settlement and Release.

FOR PLAINTIFFS A.W. and C.W.

Tina Weber
Mother of Plaintiffs A.W. & C.W.

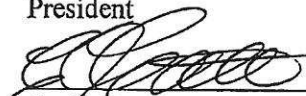
Dated: _____ day of _____ 2013

FOR DEFENDANT BOARD OF EDUCATION
OF DAVIS SCHOOL DISTRICT



Tamara Lowe
President

Dated: 30 day of January 2013



Craig Carter
Business Administrator

Dated: 30 day of January 2013

herein. Each of the parties agrees that no representation or promise not expressly contained in this Universal Settlement and Release has been made and further promises that they are not entering into this Agreement on the basis of any promise, representation, express or implied, not otherwise contained herein.

12. This Universal Settlement and Release shall be construed in accordance with, and governed by, the laws of the State of Utah, without regard to its conflict of law rules. Plaintiffs and Defendant agree that the United States District Court for the District of Utah may retain jurisdiction to enforce the terms of this Universal Settlement and Release only on motion of a party and not as part of any active supervision over the conduct described herein. Plaintiffs and Defendant will provide to the Court a proposed order including language that the Court will retain jurisdiction to enforce the terms of the Universal Settlement and Release.

FOR PLAINTIFFS A.W. and C.W.



Tina Weber
Mother of Plaintiffs A.W. & C.W.

Dated: 25 day of January 2013

FOR DEFENDANT BOARD OF EDUCATION
OF DAVIS SCHOOL DISTRICT

Tamara Lowe
President


Dated: _____ day of _____ 2013

Craig Carter
Business Administrator

Dated: _____ day of _____ 2013

Approved as to form and content:

COUNSEL FOR DEFENDANT



Scott Cheney

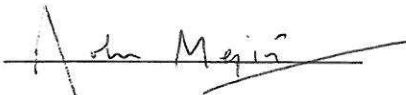
Kyle J. Kaiser

Assistant Utah Attorney General

Attorneys for Davis School District Board of Education,

Dated: 24th day of Jan 2013

COUNSEL FOR PLAINTIFFS



John Mejia

Leah Farrell

ACLU of Utah Foundation, Inc.

Dated: 31st day of Jan 2013

Joshua A. Block

Leslie Cooper

ACLU Foundation, Inc.

Attorneys for Plaintiffs