

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "Agreement") is made by and between the Freedom From Religion Foundation, Inc., John Coe and Mary Coe individually and as parents and next friends of CoeChild-1 and CoeChild-2, minors (herein collectively "Claimants")<sup>1</sup> and Mary Chesley in her official capacity as superintendent of schools of the Cherry Creek School District No. 5 and the Cherry Creek School District No. 5 (herein respectively referred to as "Superintendent" and "District") and their assigns, employees, former employees, servants, agents, elected officials, appointed officials, former officials, successors, predecessors, and attorneys (herein collectively referred to as "Releasees").

WHEREAS the Claimants and the Releasees are desirous of reaching a full complete and final settlement of any and all claims Claimants may have against the Releasees; and

WHEREAS the parties hereto have reached a full, complete and final settlement of said claims and desire to memorialize the terms and conditions thereof.

NOW, THEREFORE, the Claimants for the consideration set forth herein below, the sufficiency and receipt of which is hereby acknowledged, do hereby agree as follows:

### REMISE, RELEASE AND FOREVER DISCHARGE

The Claimants hereby release and forever discharge the Releasees of and from any and all actions, claims and demands, whatsoever, which Claimants now have or may hereafter have, of any kind, based on any matter occurring prior to the date hereof, including but not limited to all actions, claims and demands arising out of Releasees' use of the 40 Developmental Asset frame work and specifically Asset 19 thereof. This Release and Settlement Agreement shall also include, but shall not be limited to, all claims or causes of

---

<sup>1</sup> The parties hereto have entered into a Stipulation Regarding Anonymity and an amendment thereto filed in Civil Action No. 07-CV-2126 in the United States District Court for the District of Colorado concerning the use and release of the names of the Claimants. This Release and Settlement Agreement is and shall remain subject to said Stipulation Regarding Anonymity as well as the confidentiality provisions set forth herein. Any disclosure of this Agreement required by law shall utilize the pseudonym names of the Claimants unless there is a court order requiring disclosure of the Claimants' true names. The notary for the individual Claimants shall certify that he or she has verified the true identity of the individual Claimants when this document is signed by them and Claimants' Counsel shall retain in his files a copy of this Agreement bearing the true names of the individual Claimants to be produced upon court order.

action which were pleaded or which could have been pleaded in a civil action now on file in the United States District Court for the District of Colorado entitled Freedom From Religion Foundation, Inc., John Coe, Mary Coe, CoeChild-1, a minor child and CoeChild-2, a minor child v. Cherry Creek School District No. 5 and Mary Chesley, in her official capacity as Superintendent of Schools of Cherry Creek School District No. 5, Civil Action No. 07-cv-2126, (herein the Civil Action).

### **CONSIDERATION TO CLAIMANTS**

In consideration of the release by the Claimants, the Releasees agree to modify the wording of Asset 19 when used by Releasees to read:

“19. Intergenerational Activities – Young person spends one or more hours per week in activities with civic, social, governmental, scientific, educational, charitable, faith based or secular (non-religious) organizations.” (Modified Wording)<sup>2</sup>

Releasees agree to utilize the Modified Wording at any time the Releasees use, reference, or print Asset 19, including on the District’s web site. The use of the Modified Wording will commence as soon as reasonably possible considering that certain documents for use during the 2009-2010 school year have been printed prior to the date hereof and cannot reasonably be revised to include the Modified Wording. In the event the wording of any of the other 39 Assets is modified to contain wording dissimilar to the religious neutrality demonstrated by the wording of Asset 19, the Releasees shall not utilize said wording without providing Claimants’ counsel prior written notice. Releasees will not utilize any pictures, photographs or artwork depicting a child appearing to pray or involved in any other overtly religious activity in connection with any of the Assets.

### **WARRANTY OF CLAIMANT CONCERNING CONSIDERATION RECEIVED**

Claimants warrant that no promise or agreement not herein expressed has been made to the Claimants; that in executing this Release and Settlement Agreement, Claimants are not relying upon any statement or representation made by the parties hereby released or said parties’ agents and servants concerning any matter or thing, but are relying solely upon their own judgment and knowledge and the judgment and knowledge of their attorney; that the above mentioned consideration is received by the Claimants in full settlement and satisfaction of all the aforesaid claims and demands, whatsoever, whether said claims be in tort, contract, by statute, constitution or otherwise; that it is Claimants’ dear intention to fully and forever

---

<sup>2</sup> The use of the Modified Wording will include an \* with the following reference: “This wording of Asset 19 was created by the Cherry Creek School District with permission of the Search Institute.”

release Releasees from any and all claims, even if there may presently exist a mistaken belief on the part of the Claimants as to the present nature and extent of their claims through the date of execution of this agreement; that a portion of the consideration provided to Claimants hereunder is being provided for Claimants' voluntary assumption of the risk that Claimants' injuries or damages, if any, may worsen or increase or give rise to new legal claims for relief or claims for further damages in the future; that this Release and Settlement Agreement was arrived at in good faith, at arms length and after negotiation; that the above mentioned consideration is received by Claimants in full settlement and satisfaction of any claims which Claimant may have for attorney's fees or costs pursuant to 42 U.S.C. §1988 or pursuant to any other statutory or common law authority; that the Claimants are over the age of 18 years and legally competent to execute, appreciate and fully understand the Release and Settlement Agreement or have the full, complete and legal authority to execute this Agreement on behalf of the minor Claimants AND THAT BEFORE SIGNING AND SEALING THIS RELEASE AND SETTLEMENT AGREEMENT, CLAIMANT HAVE FULLY INFORMED THEMSELVES OF ITS CONTENT AND MEANING, HAVE HAD THEIR LEGAL COUNSEL EXPLAIN THE MEANING AND LEGAL SIGNIFICANCE OF EACH AND EVERY PROVISION HEREOF, AND HAVE EXECUTED THIS RELEASE AND SETTLEMENT AGREEMENT WITH FULL KNOWLEDGE AND UNDERSTANDING THEREOF.

The Claimants further warrant that there are no assignees, subrogees or other third parties who have a right to participate in this settlement or receive any of the consideration provided hereunder. Claimants agree to indemnify, defend and hold forever harmless the Releasees of and from any and all further claims which may be made against the Releasees by any person, firm or corporation acting for the Claimants or asserting a derivative claim deriving from the Claimants.

The Claimants further warrant that there are no administrative proceedings or administrative complaints, including complaints with the Equal Employment Opportunity Commission, the Colorado Civil Rights Commission, the Colorado or United States Department of Education, or the Department of Justice which are currently pending and which relate in any way to their complaints against the Releasees. To the extent that Claimants are mistaken and there currently is pending any such administrative proceeding, Claimants will immediately, upon learning of the existence of that proceeding, move to dismiss it and/or will not pursue it.

#### **NO ADMISSION OF LIABILITY OR WRONGDOING**

Claimants acknowledge and Releasees specifically deny any liability or wrongdoing on their part and that this Release and Settlement Agreement is not to be construed, in any way, as an admission of liability or wrongdoing. It is only a settlement of a disputed claim done to buy peace, to avoid the complications and expense of litigation, and to resolve a disputed issue.

## **DISMISSAL OF CIVIL ACTION**

Upon the complete execution hereof by all of the Parties hereto, the Parties further stipulate and agree that a Stipulated Motion To Dismiss the Civil Action With Prejudice, all parties paying their own costs and legal fees incurred in connection therewith, shall be filed in the United States District Court for the District of Colorado.

## **MISCELLANEOUS PROVISIONS**

This Release and Settlement Agreement contains the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties.

This Release and Settlement Agreement shall be binding upon the Claimants, their attorneys, heirs, administrators, personal representatives, assigns, subrogees, officers, and directors as well as all other persons, firms, or corporations acting on Claimants' behalf or asserting a derivative claim.

In the event either party brings any action to enforce the terms and conditions hereof, in addition to any other relief, the prevailing party shall be entitled to an award of attorney fees and costs.

This Release and Settlement Agreement may be executed in counter-parts, the combination of which shall constitute and be enforceable as one document.

This Agreement becomes effective upon the signatures of all parties hereto.

SIGNATURES ON FOLLOWING PAGES