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LOS ANGELES

 **COPY**

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION - LOS ANGELES**

14 B.H., a minor, by and through his
15 next friend, Adriana Hickman,

16 Plaintiff,

17 v.

18 MONICA GARCIA, MARGUERITE
19 LAMOTTE, TAMAR GALATZAN,
20 STEVE ZIMMER, YOLIE FLORES,
21 NURY MARTINEZ, and RICHARD
22 VLADOVIC, all individually and in
23 their official capacities as members of
24 the Los Angeles Unified School
25 District Board of Education;
26 RAMON CORTINES, individually
27 and in his official capacity as
28 Superintendent of the Los Angeles
Unified School District; and
JERILYN SCHUBERT, individually
and in her official capacity as
Principal of Superior Street
Elementary School,

Defendants.

CASE NO. **CV11-00875** JDD(FPMX)

VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

1 restriction, but have censored Plaintiff from performing his talent to a song that
2 contains a religious message.

3 9. Defendants have approved dozens of other students to perform to a
4 song of their choosing, including, on information and belief, "Freak the Freak Out"
5 by Victoria Justice, "Shake It Up" by Selena Gomez, songs by Miley
6 Cyrus/Hannah Montana, songs by the teenage stars of shows on Nickelodeon and
7 the Disney Channel, and even "Eye of the Tiger" by Survivor. The lyrics of these
8 songs discuss topics such as love, passion, having fun, celebrating, dancing,
9 singing, and pursuing your dreams.

10 10. The lyrics to "Freak the Freak Out," which discuss whether a
11 significant other is ignoring the singer and the difficulties of a relationship, are:

12 Are you listenin'?

13 Hear me talk, hear me sing

14 Open up the door

15 Easy less, easy more

16 When you tell me to beware

17 Are you here? Are you there?

18 Is there something I should know?

19 Easy come, easy go

20 Noddin' your head

21 Don't hear a word I said.

22 I can't communicate. When you wait.

23 Don't relate.

24 I try to talk to you

25 But you never even knew

26 So what's it gonna be?

1 Tell me can you hear me? (hear me? can you hear me?)
2 I'm so sick of it.
3 Your attention deficit.
4 Never listen
5 You never listen
6 I'm so sick of it.
7 So I'll throw another fit.
8 Never listen
9 You never listen
10 I scream your name!
11 It always stays the same.
12 I scream and shout!
13 So what I'm gonna do now is
14 Freak the freak out.
15 Hey!
16 Woah-woah-woah-woah.
17 Patience runnin' thin, runnin' thin
18 Come again
19 Tell me what I get
20 Opposite, opposite
21 Show me what is real
22 If it breaks, does it heal?
23 Open up your ear
24 Why do you think I am here?
25 Keep me in the dark
26 Are you even thinking of me?

1 Is someone else above me?
2 Gotta know, Gotta know
3 What am I gonna do?
4 'Cause I can't get through to you
5 So what's it gonna be?
6 Tell me, can you hear me? (hear me, can you hear me?)
7 I'm so sick of it
8 Your attention deficit
9 Never listen
10 You never listen
11 I'm so sick of it
12 So I'll throw another fit
13 Never listen
14 You never listen
15 I scream your name!
16 It always stays the same.
17 I scream and shout!
18 So what I'm gonna do now is
19 Freak the freak out!
20 Hey!
21 Woah-woah-woah-woah-woah (x2)
22 Easy come, easy go (x2)
23 Can you hear me?
24 I scream your name!
25 It always stays the same.
26 I scream and shout!

1 So what I'm gonna do
2 Now is freak the freak out.
3 Hey!
4 Woah-woah-woah-woah-woah (x2)
5 Now is freak the freak out.(x15)
6 Ohhhhhhhh...
7 I scream your name!
8 But you never listen!
9 Ohhhhhhhh...
10 But you never listen!

11 11. The lyrics to "Shake It Up" by Selena Gomez discuss singing,
12 dancing, relationships, and brushing off the difficulties of life. They state:

13 Don't like waiting (x2)
14 Lets go right now!
15 Gotta' hit the ground
16 Dancing before the music
17 Slows down
18 What I'm sayin' (x2)
19 If there's something to fix
20 take it to another level,
21 This is the remix
22 Everybody, everybody
23 Get out on the floor
24 It can get a little crazy
25 When the kick hits the floor
26 Make a scene (x2).

1 Nobody can ignore
2 Don't knock it, til you rock it
3 We can't take it not more!
4 Bring the lights up!
5 Bust the doors down!
6 Dust yourself off,
7 Shake it up!
8 Shake it up!
9 DJ set it off!
10 Take it up a notch
11 All together now!
12 Shake it up!
13 Shake it up!
14 Shake it up!
15 Break it down (x2)
16 I've got something to say
17 When you're dancin' whit me,
18 It's like we go MIA
19 Make a scene (x2)
20 Nobody can ignore
21 Don't knock it, til you rock it
22 We can't take it no more!
23 Bring the lights up!
24 Bust the doors down!
25 Dust yourself off,
26 Shake it up!

1 Shake it up!
2 DJ set it off!
3 Take it up a notch
4 All together now!
5 Shake it up!
6 Shake it up!
7 Sh-sh-sh-Shake it up,
8 You gotta change it up!
9 And if the days not right?
10 Just brush it off tonight!
11 Put on the attitude!
12 Your in my pocket mood
13 And when you've had enough,
14 Sh-sh-sh-shake it up!
15 Bring the lights up!
16 Bust the doors down!
17 Dust yourself off,
18 Shake it up!
19 Shake it up!
20 DJ set it off!
21 Take it up a notch
22 All together now!
23 Shake it up!
24 Shake it up!

25 12. The lyrics to "Eye of the Tiger" discuss topics such as stalking and
26 killing. The lyrics state:

1 Risin' up, back on the street
2 Did my time, took my chances
3 Went the distance, now I'm back on my feet
4 Just a man and his will to survive
5 So many times, it happens too fast
6 You change your passion for glory
7 Don't lose your grip on the dreams of the past
8 You must fight just to keep them alive
9 Chorus:
10 It's the eye of the tiger, it's the cream of the fight
11 Risin' up to the challenge of our rival
12 And the last known survivor stalks his prey in the night
13 And he's watchin' us all in the eye of the tiger
14 Face to face, out in the heat
15 Hangin' tough, stayin' hungry
16 They stack the odds 'til we take to the street
17 For we kill with the skill to survive
18 [Chorus]
19 Risin' up, straight to the top
20 Have the guts, got the glory
21 Went the distance, now I'm not gonna stop
22 Just a man and his will to survive
23 [Chorus]
24 The eye of the tiger (repeats out)...

25 13. Plaintiff B.H. was denied the right to perform interpretative movement
26 to the religious song "We Shine," which has the following lyrics:

1 Yeah, yeah, we shine, we shine, with the light of God
2 And when we speak, we speak with words of love
3 And when we dance, we may get a little wild
4 Cause we're the people of God, yeah, the people of God
5 When we sing, we sing, the angel's song
6 The ones they're singing around the throne
7 Yeah, yeah, we worship the King with everything that we are
8 Cause we're the people of God, yeah, the people of God
9 And now is the time for the people to rise
10 Lift up a shout, everybody cry out
11 Raise your voice, shout out a noise
12 And dance a dance of joy
13 [Chorus]
14 We are the redeemed
15 We are the ones who are free
16 And we belong to Jesus
17 We are now alive
18 And in this world we will shine
19 Cause we belong to Jesus
20 The spirit of God is freedom rings
21 So come on, come on throw off your prison chains
22 We're liberated by the King only freedom remains
23 For the people of God, yeah, the people of God
24 We're livin' in kingdom that will never end
25 We're livin' in the power that defeated sin
26 So come on everybody let your praise begin

1 Cause Jesus is alive and he's comin' again

2 And now is the time for the people to rise

3 Lift up a shout, everybody cry out

4 Raise your voice, shout out a noise

5 And dance a dance of joy

6 [Chorus]

7 We're goin' into all the world

8 Carrying the light of Jesus

9 And we shine, yeah we shine

10 In the darkest place we shine (x2)

11 And now is the time for the people to rise

12 Lift up a shout, everybody cry out

13 Raise your voice, shout out a noise

14 And dance a dance of joy

15 [Chorus x2]

16 Come on, come on, your kingdom is comin'

17 Come on, come on, your kingdom is comin'

18 Come on, come on, come on, let your kingdom come down (x2)

19 14. Defendants have final authority and control over all school functions,
20 contests, and activities, including the Talent Show.

21 15. Defendants likewise have final authority and control over which
22 performances, songs, and lyrics to allow at the Talent Show.

23 16. Defendants have created a Policy regarding the Talent Show, which
24 is challenged herein by the Plaintiff, whereby students are permitted to sing a song,
25 dance to a song, or perform another talent, the content of which is selected solely
26 by the student.

1 25. Defendant Board Members and Cortines were aware of Defendant
2 Schubert's denial of Plaintiff B.H.'s selected talent.

3 26. Pursuant to their Policy and practice, Defendant Board Members and
4 Cortines failed to prevent Defendant Schubert from prohibiting Plaintiff B.H. from
5 performing his selected talent in the Talent Show even though the Defendants had
6 the authority and an affirmative obligation to do so.

7 27. Pursuant to their Policy and practice, Defendants likewise failed to
8 perform an act that they are legally required to do by failing to reverse the decision
9 to prohibit Plaintiff B.H. from performing his selected talent in the Talent Show,
10 resulting in a violation of Plaintiff's constitutional rights.

11 **IDENTIFICATION OF PARTIES**

12 **Plaintiff**

13 28. Plaintiff B.H., a minor, is a student at Superior Street Elementary
14 School, and at all times relevant to this Complaint, a resident of Winnetka,
15 California.

16 29. Plaintiff Adriana Hickman, as next friend, is B.H.'s parent and
17 guardian, and at all time relevant to this Complaint, is and was a resident of
18 Winnetka, California.

19 30. Plaintiff B.H., pursuant to his sincerely held religious beliefs, desires
20 to perform interpretative movement to the religious song "We Shine" at the Talent
21 Show scheduled for February 4, 2011.

22 31. Plaintiff B.H. is an adherent of the Christian faith and desires to share
23 his religious views with students, parents, family, friends, and other attendees at
24 the Talent Show by performing interpretative moment to the religious song "We
25 Shine."
26
27

1 38. Defendant Board Members have enacted and enforced the Policy and
2 practice related to the Talent Show.

3 39. Defendant Board Members prohibited Plaintiff B.H. from performing
4 interpretative movement to the religious song "We Shine" at the Talent Show
5 pursuant to their unconstitutional Policy and practice.

6 40. Defendant Board Members likewise prohibited Plaintiff B.H. from
7 performing interpretative movement to the religious song "We Shine" at the Talent
8 Show pursuant to their unconstitutional Policy and practice, through
9 implementation by Principal Schubert, the Parent Teacher Association, and
10 otherwise.

11 41. Defendant Board Members are responsible for the implementation and
12 application by Defendant Cortines and Defendant Schubert of its Policy and
13 practice pertaining to school functions, contests, and activities conducted at
14 District elementary schools.

15 42. Defendant Board Members, upon learning of the denial of Plaintiff's
16 selected talent based upon its religious message, are responsible for failing to
17 correct this violation of the Plaintiff's constitutional rights after receiving notice
18 of said violation.

19 43. Defendant Ramon Cortines is the Superintendent of the Los Angeles
20 Unified School District.

21 44. Defendant Cortines possesses responsibility, final authority, and
22 discretion, as delegated by the Board Members, as to the administration of
23 Defendants' Policy as it relates to school functions, contests, and activities at
24 District elementary schools, including the Talent Show and denial of the Plaintiff's
25 selected talent challenged in this action

1 45. Defendant Cortines possesses responsibility, final policy-making
2 authority, and discretion, as delegated by the Board Members, as to the
3 administration of the Talent Show. The administration of the Talent Show is not
4 governed by any policies of the Defendant Board Members, and therefore, the
5 delegation of final policymaking authority to Defendant Cortines as it relates to the
6 administration of the Talent Show is not subject to review or constraints by the
7 Defendant Board Members.

8 46. Defendant Cortines denied Plaintiff B.H.'s selected talent in violation
9 of Plaintiff's constitutional rights.

10 47. Defendant Cortines denied Plaintiff B.H. from performing
11 interpretative movement to the religious song "We Shine" pursuant to the
12 Defendants' unconstitutional Policy and practices challenged herein.

13 48. Defendant Cortines is responsible for the actions of Defendant
14 Schubert and for, upon learning of the denial of Plaintiff's selected talent based
15 upon its religious message, failing to correct this violation of the Plaintiff's
16 constitutional rights after receiving notice of said violation.

17 49. Defendant Jerilyn Schubert is the Principal of Superior Street
18 Elementary School and is given final policy-making authority and responsibility
19 for decisions and the educational program at Superior Street Elementary School.

20 50. Defendant Schubert is also responsible for overseeing and furthering
21 the work of the Parent Teacher Association.

22 51. Defendant Schubert is also responsible for approving the content of
23 each performance at the Talent Show.

24 52. Defendant Schubert possesses responsibility, final policy-making
25 authority, and discretion, as delegated by the Board Members, as to the
26 administration of Defendants' Policy and practice to the Talent Show. The
27

1 operation of the Talent Show, including the choice of music performed by the
2 participants, is not governed by any policies of the Defendant Board Members, and
3 therefore, the delegation of final policymaking authority to Principal Schubert as
4 it relates to the Talent Show is not subject to review or constraints by the
5 Defendant Board Members.

6 53. Defendant Schubert also possesses responsibility, final policy-making
7 authority, and discretion, as delegated by the Board Members, as they relate to
8 school functions, contests, and activities at Superior Street Elementary School,
9 including the Talent Show. The operation of the Talent Show, including the choice
10 of music performed by the participants, is not governed by any policies of the
11 Defendant Board Members, and therefore, the delegation of final policymaking
12 authority to Principal Schubert as it relates to the Talent Show is not subject to
13 review or constraints by the Defendant Board Members.

14 54. Defendant Schubert denied Plaintiff B.H.'s selected talent in violation
15 of the Plaintiff's constitutional rights based on the religious speech of the song.

16 55. Defendant Schubert denied Plaintiff B.H. from performing his
17 selected talent pursuant to the Defendants' unconstitutional Policy and practices
18 challenged herein.

19 56. All Defendants are sued both in their individual capacities and in their
20 respective official capacities.

21 57. Upon information and belief, Defendant Board Members, Cortines,
22 and Schubert reside in the Central District; all Defendants reside within the State
23 of California.

24 58. All of the activities that are the subject of this action, specifically the
25 denial of Plaintiff's speech, occurred within the Central District.

1 59. The Los Angeles Unified School District and Superior Street
2 Elementary School are located within the Central District.

3 **STATEMENT OF FACTS**

4 60. Each year, Superior Street Elementary School holds a Talent Show
5 (“Talent Show”).

6 61. The Talent Show is co-sponsored by the Parent Teacher Association.

7 62. Students are not required to attend the Talent Show.

8 63. No grade is given for participation/performance in the Talent Show.

9 64. The Talent Show is not related to the curriculum of the school.

10 65. The Talent Show is held after school hours and is open to the public.

11 66. The Talent Show will be held this year on February 4, 2011 from 6:00
12 p.m. to 9:00 p.m.

13 67. The Talent Show is open to acts by students in grades kindergarten
14 through fifth grade.

15 68. The purpose of the Talent Show is to showcase the talents and skills
16 of individual students at Superior Street Elementary School.

17 69. The students who desired to participate in the Talent Show were
18 required to audition for the Talent Show on January 14, 2011.

19 70. Students were also required to fill out an audition form that described
20 the talent the student would be performing.

21 71. The audition form did not contain any content restrictions on the
22 songs, dances, or other talents that the students were permitted to perform.

23 72. However, Principal Schubert retained final authority to approve the
24 content of each selected talent that would be performed at the Talent Show.

25 **Defendants’ Discriminate Against B.H.’s Religious Speech**

26 73. B.H. is in the fifth grade at Superior Street Elementary School.

1 74. B.H. desires to perform an act in the Talent Show.

2 75. Pursuant to his sincerely-held religious beliefs, and in accordance with
3 Defendants' Policy, B.H. auditioned to perform interpretative movement to the
4 religious song "We Shine."

5 76. B.H. had been practicing his selected talent for many weeks.

6 77. B.H.'s decision to perform to "We Shine" was a product of his own
7 will and was motivated by his personal religious beliefs. His parents did not
8 influence B.H. in his song and talent selection.

9 78. On January 14, 2011, B.H. and his mother Adriana Hickman attended
10 the audition for the Talent Show.

11 79. B.H. turned in his audition form and performed his talent in front of
12 the review committee, which consisted of volunteers from the Parent Teacher
13 Association.

14 80. A few days later, Mrs. Hickman received a voicemail from a
15 representative of the Parent Teacher Association.

16 81. In the message, the representative informed Mrs. Hickman that B.H.
17 could not perform interpretative movement to "We Shine" because of the religious
18 content of the song.

19 82. Mrs. Hickman attempted to contact the PTA representative to inquire
20 further into the denial of her son's selected talent, but was unable to reach her.

21 83. On January 18, 2011, Mrs. Hickman contacted Principal Schubert.

22 84. Principal Schubert stated that B.H. was not permitted to perform
23 interpretative movement to the song "We Shine" because of the song's religious
24 message.

1 85. Principal Schubert stated that she believed the song chosen by B.H.
2 was "offensive" and that she stood behind the separation of church and state that
3 supposedly prohibited B.H. from performing to "We Shine."

4 86. Mrs. Hickman explained that B.H.'s selected talent was permissible
5 because B.H. had selected the song himself, not the school. Thus, B.H.'s
6 performance was his alone and did not represent the speech of the school.

7 87. When Mrs. Hickman reminded Principal Schubert that there were no
8 restrictions on what students could perform at the Talent Show, Principal Schubert
9 informed Mrs. Hickman that other students who were singing or performing to
10 songs that had profanity in the lyrics were told to select different songs.

11 88. Principal Schubert thus equated the religious lyrics of B.H.'s chosen
12 song with the profanity and vulgarity contained in the lyrics of other students'
13 selections.

14 89. Principal Schubert also asked Mrs. Hickman why B.H. could not "pick
15 a song that does not say 'Jesus' so many times?"

16 90. Despite Principal Schubert's denial of his chosen song, B.H. continues
17 to desire to participate in the Talent Show by performing interpretative movement
18 to the song "We Shine."

19 91. B.H.'s act fully complies in all respects with the Defendants' Policy
20 regarding student performances at the Talent Show, except for the prohibition on
21 religious songs.

22 92. B.H. has a younger brother who will be starting Superior Street
23 Elementary School next year and will likely participate in the Talent Show in
24 future years. Mrs. Hickman is also pregnant with a daughter, who is likely to attend
25 Superior Street Elementary School and is likely to participate in the Talent Show
26 in the future.

1 93. B.H.'s younger siblings will face the same censorship of any talents
2 they wish to perform that include religious lyrics or a religious message.

3 **Other Acts Approved for the Talent Show**

4 94. Other students were approved to perform to a variety of songs
5 discussing topics such as love, passion, celebration, singing, dancing, and standing
6 up for what you believe in.

7 95. On information and belief, students were approved to perform "Freak
8 the Freak Out" by Victoria Justice, "Shake It Up" by Selena Gomez, songs by
9 Miley Cyrus/Hannah Montana, songs from the teenage stars of shows on
10 Nickelodeon and the Disney Channel, and even the song "Eye of the Tiger" by
11 Survivor, which contains lyrics such as "And the last known survivor stalks his
12 prey in the night" and "They stack the odds, still we take to the street, For the kill
13 with the skill to survive."

14 96. In sum, Defendants have in effect a certain Policy and practice
15 governing the performances at the Talent Show that allows students to perform to
16 any song they choose, including songs about love and passion, but that prohibits
17 any songs with religious content.

18 97. Plaintiff B.H. has a continuing desire to perform "We Shine" at the
19 Talent Show scheduled for February 4, 2011.

20 98. Defendants have enacted and enforced their Policy and practice that
21 exclude religious speech and performances from the Talent Show.

22 99. All Defendants have denied Plaintiff's religious message pursuant to
23 this unconstitutional Policy and practice.

24 100. Defendant Board Members and Defendant Cortines approved the
25 Talent Show at Superior Street Elementary School, including the Policy and
26 practice of excluding talents with a religious message.

1 108. Unless and until Defendants' Policy and practice are struck down and
2 Defendants are enjoined from enforcing their unlawful Policy and practice,
3 Plaintiff B.H. will continue to suffer irreparable injury to his rights.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE FREE SPEECH CLAUSE**
6 **OF THE FIRST AMENDMENT**

7 109. Plaintiff re-alleges and incorporates herein, as though fully set forth
8 herein, all previous paragraphs of this Complaint.

9 110. The First Amendment's Freedom of Speech Clause prohibits
10 censorship of religious expression.

11 111. Pursuant to their Policy and practice, Defendants have permitted
12 students at Superior Street Elementary School to select and prepare a talent of the
13 students' own choosing to perform at the Talent Show, but prohibit students from
14 performing any talent containing a religious message.

15 112. However, the government may not discriminate on the basis of the
16 content of the speaker's speech absent a compelling interest.

17 113. Discrimination against B.H.'s religious speech is content-based
18 discrimination in an otherwise open forum.

19 114. By allowing students to perform any talent and use any song of the
20 students' choosing, but specifically rejecting Plaintiff's selected talent containing
21 a religious messages, Defendants have engaged in unconstitutional content-based
22 discrimination in violation of the First Amendment.

23 115. Defendants cannot present a compelling pedagogical interest to justify
24 this content-based discrimination.

25 116. Defendants' Policy and practice, which deny Plaintiff B.H.'s religious
26 speech while permitting other secular speech, also constitutes viewpoint
27 discrimination.

1 117. The government may not discriminate on the basis of the viewpoint
2 of the speaker's speech.

3 118. Discrimination against a religious viewpoint is unconstitutional.

4 119. Pursuant to their Policy and practice, Defendants' approved students
5 to perform their talents to songs discussing love and emotions to boyfriends,
6 girlfriends, etc.

7 120. However, Defendants denied Plaintiff's selected talent containing a
8 religious message discussing love and emotion for God.

9 121. Pursuant to their Policy and practice, Defendants' approved students
10 to perform their talents to songs discussing celebrating, having fun, dancing, and
11 other celebratory activities.

12 122. Yet Defendants denied Plaintiff's selected talent containing a religious
13 message discussing celebrating, shouting, and dancing for God.

14 123. By denying Plaintiff's selected talent containing a religious message,
15 Defendants have engaged in unconstitutional viewpoint-based discrimination in
16 violation of the First Amendment.

17 124. Defendants cannot present a compelling state interest to justify this
18 viewpoint-based discrimination.

19 125. B.H.'s religious expression on campus does not materially and
20 substantially interfere with the orderly conduct of educational activity within the
21 school.

22 126. A ban on speech before it is delivered constitutes an unconstitutional
23 prior restraint on otherwise protected speech.

24 127. A prior restraint without narrow, objective, and definite standards to
25 guide government officials can result, and has resulted, in discriminatory
26 enforcement and unbridled discretion.

1 128. Defendants' Policy and practice impose an unconstitutional prior
2 restraint because they vest the Defendants with unbridled discretion to permit or
3 refuse protected religious speech, and do not contain any guidelines or procedures
4 to restrict the discretion of the Defendants.

5 129. Defendants' Policy and practice allow the Defendants to act with
6 unbridled discretion when deciding if a student's selected talent is too religious or
7 says "Jesus" too many times.

8 130. Defendants' Policy possesses no narrow, objective, and definite
9 standards with which to approve the content of students' talents to be performed
10 at the Talent Show.

11 131. Consequently, Defendants' denial of Plaintiff's selected talent cannot
12 survive the constitutional requirements of strict scrutiny.

13 132. Defendants' Policy and practice are additionally overbroad because
14 they sweep within their ambit protected First Amendment expression.

15 133. The overbreadth of Defendants' Policy and practice chills the speech
16 of students at Superior Street Elementary School who might seek to engage in
17 religious expression through their selected talent for the Talent Show.

18 134. Defendants' Policy and practice chill, deter, and restrict Plaintiff from
19 freely expressing his religious beliefs.

20 135. Defendants' Policy, as interpreted and applied by them to prohibit
21 religious speech, is not the least restrictive means necessary to serve any
22 compelling interest which Defendants seek thereby to secure.

23 136. Defendants' Policies and practice are not reasonably related to any
24 legitimate pedagogical concerns.

25 137. Censoring students' religious speech per se is not and cannot be a
26 legitimate pedagogical concern.

1 138. Defendants' Policy and practice, both facially and as-applied, therefore
2 constitute a violation of Plaintiff's rights under the Free Speech Clause of the First
3 Amendment to the United States Constitution as incorporated and applied to the
4 States through the Fourteenth Amendment.

5 139. Plaintiff further alleges that the foregoing allegations demonstrate that
6 his constitutional rights have been violated by the Defendants' actions and that no
7 adequate remedy at law exists. Accordingly, unless his request for injunctive relief
8 is granted, Plaintiff will suffer irreparable harm.

9 WHEREFORE, Plaintiff respectfully prays for relief as set forth more
10 particularly in the Prayer for Relief.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF THE EQUAL PROTECTION CLAUSE**
13 **OF THE FOURTEENTH AMENDMENT**

14 140. Plaintiff re-alleges and incorporates herein, as though fully set forth
15 herein, all previous paragraphs of this Complaint.

16 141. The Equal Protection Clause requires that the government treat
17 equally all persons similarly situated.

18 142. The Equal Protection Clause forbids discrimination based on the
19 exercise of a fundamental right such as free speech.

20 143. Pursuant to their Policy and practice, Defendants have allowed other
21 similarly situated students to engage in secular expression at the Talent Show.

22 144. Defendants have treated B.H. disparately when compared to similarly
23 situated students by banning only B.H.'s selected talent containing religious
24 expression.

25 145. By discriminating against the content and viewpoint of B.H.'s speech,
26 Defendants are treating B.H. differently than other similar situated public school
27 students on the basis of the content and viewpoint of his speech.

1 146. Defendants' Policy and practice violate various fundamental rights of
2 B.H., such as rights of free speech and free exercise of religion.

3 147. When government regulations, like Defendants' Policy and practice
4 challenged herein, infringe on fundamental rights, discriminatory intent is
5 presumed.

6 148. Defendants' Policy and practice have also in fact, and in practice, been
7 applied to intentionally discriminate against B.H.'s rights of free speech and free
8 exercise of religion.

9 149. Defendants lack a rational or compelling state interest for such
10 disparate treatment of B.H.

11 150. Defendants' denial of access to B.H. is not narrowly tailored in that
12 it restricts student's private religious expression unrelated to any asserted interest
13 Defendants may have.

14 151. Defendants' Policy and practice are not narrowly tailored as applied
15 to B.H. because his speech does not implicate any of the interests Defendants
16 might have.

17 152. Defendants' Policy and practice are overinclusive because they
18 prohibit B.H.'s religious expression even though it is not disruptive.

19 153. Defendants' Policies and practice burden more of B.H.'s speech than
20 necessary because he is foreclosed from using religious content and viewpoints in
21 his talent show performance even though it is not disruptive.

22 154. The Policy and practice, both facially and as-applied, thus constitute
23 a violation of Plaintiff's rights under the Equal Protection Clause of the Fourteenth
24 Amendment to the United States Constitution.

25 155. Plaintiff further alleges that the foregoing allegations demonstrate that
26 his constitutional rights have been violated by the Defendants' actions and that no
27

1 adequate remedy at law exists. Accordingly, unless his request for injunctive relief
2 is granted, Plaintiff will suffer irreparable harm.

3 WHEREFORE Plaintiff respectfully prays for relief as set forth more
4 particularly in the Prayer for Relief.

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF THE FREE EXERCISE CLAUSE**
7 **OF THE FIRST AMENDMENT**

8 156. Plaintiff re-alleges and incorporates herein, as though fully set forth
9 herein, all previous paragraphs of this Complaint.

10 157. Defendants' denial of Plaintiff's selected talent containing a religious
11 message, and the Policy upon which the denial is based, violate Plaintiff's right to
12 free exercise of religion.

13 158. The Free Exercise Clause prohibits discrimination against religious
14 beliefs or conduct undertaken for religious reasons.

15 159. Government may not discriminate against a person based on that
16 person's religious speech.

17 160. Plaintiff's selected talent containing a religious message represents the
18 exercise of his sincerely-held religious beliefs.

19 161. Pursuant to Defendants' Policy, Defendants have prevented Plaintiff
20 from exercising his sincerely-held religious beliefs solely for the reason that
21 Plaintiff's proposed speech is religious.

22 162. Pursuant to Defendants' Policy, Defendants have discriminated
23 against Plaintiff based on his religious speech.

24 163. Defendants' prohibitions on speech are not neutral, nor generally
25 applicable and therefore Defendants' denial of Plaintiff's speech places a
26 substantial burden on Plaintiff.

1 164. The choice of exercising his religious speech and being denied from
2 performing at the Talent Show or censoring his religious speech by selecting a
3 different song to perform in order to participate in the Talent Show places a
4 substantial and excessive burden on Plaintiff B.H.

5 165. Defendants' Policy and practice, in addition to infringing Plaintiff's
6 free exercise rights, violate several other rights of Plaintiff, including free speech,
7 and equal protection, and therefore gives rise to a hybrid claim.

8 166. No compelling pedagogical interest exists to justify Defendants'
9 discriminatory Policy and practice.

10 167. The Policy and practice, singling out religion for discrimination, are
11 not the least restrictive means necessary to serve any legitimate interest Defendants
12 might claim to possess.

13 168. Defendants cannot justify this infringement upon Plaintiff's religious
14 beliefs and conduct undertaken for religious reasons.

15 169. The Policy and practice, both facially and as-applied, thus constitute
16 a violation of Plaintiff's rights under the Free Exercise Clause of the First
17 Amendment to the United States Constitution as incorporated and applied to the
18 States through the Fourteenth Amendment.

19 170. Plaintiff further alleges that the foregoing allegations demonstrate that
20 his constitutional rights have been violated by the Defendants' actions and that no
21 adequate remedy at law exists. Accordingly, unless his request for injunctive relief
22 is granted, Plaintiff will suffer irreparable harm.

23 WHEREFORE Plaintiff respectfully prays for relief as set forth more
24 particularly in the Prayer for Relief.

1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF THE DUE PROCESS CLAUSE**
3 **OF THE FOURTEENTH AMENDMENT**

4 171. Plaintiff re-alleges and incorporates herein, as though fully set forth
5 herein, all previous paragraphs of this Complaint.

6 172. The Due Process Clause of the Fourteenth Amendment prohibits the
7 government from censoring speech pursuant to vague or overbroad standards that
8 grant unbridled discretion.

9 173. Defendants' Policy and practice allegedly prohibit only talents that are
10 "religious" or that say "Jesus" too many times.

11 174. The Policy does not define what constitutes "religious," which words
12 or phrases can be deemed "religious," or how many times referencing the name of
13 Jesus is too many.

14 175. In practice, students have been approved to perform talents to songs
15 discussing love, passion, emotions, celebration, dancing, and singing, among other
16 topics.

17 176. On information and belief, Defendants approved students to perform
18 "Freak the Freak Out" by Victoria Justice, "Shake It Up" by Selena Gomez, "Eye
19 of the Tiger" by Survivor and a variety of Miley Cyrus/Hannah
20 Montana/Nickelodeon/Disney Channel songs.

21 177. Plaintiff does not, and cannot, reasonably know when student speech
22 will be deemed "religious" or when a song says "Jesus" too many times in
23 violation of Defendants' Policy and practice.

24 178. There are no objective standards or guidelines in the Policy to
25 determine when student speech violates the Policy's prohibition against religious
26 messages.

1 179. Defendants' Policy and practice also permit Defendants to exercise
2 unbridled discretion in determining whether student speech is "religious."

3 180. These vague terms utilized in Defendants' Policy leave censorship of
4 student speech to the whim of Defendants.

5 181. The Policy's language holds no discernible meaning and can be
6 applied to prohibit any disfavored speech, which is exactly how it has been applied
7 to Plaintiff.

8 182. The Policy, both facially and as-applied, is therefore impermissibly
9 vague and constitutes a violation of Plaintiff's rights under the Due Process Clause
10 of the Fourteenth Amendment to the United States Constitution.

11 183. Plaintiff further alleges that the foregoing allegations demonstrate that
12 his constitutional rights have been violated by the Defendants' actions and that no
13 adequate remedy at law exists. Accordingly, unless his request for injunctive relief
14 is granted, Plaintiff will suffer irreparable harm.

15 WHEREFORE, Plaintiff respectfully requests that the Court grant the relief
16 set forth in the Prayer for Relief below.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE ESTABLISHMENT CLAUSE**
19 **OF THE FIRST AMENDMENT**

20 184. Plaintiff re-alleges and incorporates herein, as though fully set forth
21 herein, all previous paragraphs of this Complaint.

22 185. The Establishment Clause of the First Amendment requires the
23 government to act with a secular purpose, to neither promote nor inhibit religion,
24 and forbids excessive entanglement with religion.

25 186. Defendants' Policy and practice lack any secular purpose in singling
26 out religious speech for censorship.

1 187. Defendants' Policy and practice and denial of Plaintiff's selected
2 talent containing a religious message pursuant thereto violates the Establishment
3 Clause because they single out religious speech for hostility.

4 188. Defendants' Policy and practice entangle government in the
5 determination of what is religious speech by private persons.

6 189. Defendants, pursuant to their Policy and practice of suppressing any
7 private Christian religious expression at the Talent Show – and by approving
8 students to perform talents with other points of view – send the message that
9 religious students such as B.H. are second-class citizens, outsiders, and not full
10 members of the academic community.

11 190. In addition, Defendants' Policy and practice require the Defendants,
12 as censors, to make judgments about which student religious expression is and is
13 not “religious” and how many times a song may reference “Jesus,” thereby creating
14 constitutional problems of entanglement.

15 191. Defendants' Policies and practice compel the Defendants to classify
16 private student speech according to its perceived religious-versus-nonreligious
17 nature.

18 192. Drawing this distinction necessarily requires the Defendants to inquire
19 into the significance of words and practices to different religious faiths, and in
20 varying circumstances by the same faith.

21 193. Such inquiries by the Defendants entangle them with religion in a
22 manner forbidden by the First Amendment.

23 194. Defendants' Policy and practice deny B.H. the right to engage in
24 speech because it was “religious,” actions that represent the antithesis of neutrality.

25 195. No compelling state interest exists to justify the censorship of B.H.'s
26 religious expression.

1 196. Defendants' denial of Plaintiff's selected talent containing a religious
2 message is not justified by any compelling governmental interest, nor is it the least
3 restrictive means available to secure any compelling interests.

4 197. Plaintiff's selected talent would not violate the Establishment Clause;
5 Plaintiff is a private student speaker auditioning to perform at the Talent Show that
6 is open to every other student at Superior Street Elementary School.

7 198. The Policy and practice, both facially and as-applied, thus constitute
8 a violation of Plaintiff's rights under the Establishment Clause of the First
9 Amendment to the United States Constitution as incorporated and applied to the
10 States through the Fourteenth Amendment.

11 199. Plaintiff further alleges that the foregoing allegations demonstrate that
12 his constitutional rights have been violated by the Defendants' actions and that no
13 adequate remedy at law exists. Accordingly, unless his request for injunctive relief
14 is granted, Plaintiff will suffer irreparable harm.

15 WHEREFORE, Plaintiff respectfully prays for relief as set forth more
16 particularly in the Prayer for Relief.

17 **PRAYER FOR RELIEF**

18 Based on the foregoing, Plaintiff B.H. respectfully prays that this Court grant
19 relief pursuant to the applicable provisions of law, including 42 U.S.C. §1983, as
20 follows:

21 1. That the Court render a Declaratory Judgment declaring that
22 Defendants' Policy and practice of denying religious speech are invalid under the
23 United States Constitution and striking down the Policy both facially and as-
24 applied.

1 2. That the Court make a finding that Plaintiff has no adequate remedy
2 at law and that Plaintiff will suffer irreparable harm if a temporary restraining
3 order, preliminary injunction, and/or permanent injunction are not issued;

4 3. That the Court issues a temporary restraining order, preliminary
5 injunction, and/or permanent injunction, without a condition of bond or other
6 security being required of Plaintiff, restraining and enjoining Defendants from
7 enforcing the Policy and practice in all respects challenged herein and instruct
8 Defendants to permit Plaintiff to perform his selected talent at the Talent Show
9 scheduled for February 4, 2011.

10 4. That the Court award Plaintiff nominal damages.

11 5. That the Court award Plaintiff his costs and expenses in this action,
12 including an award of reasonable attorneys' fees in accordance with 42 U.S.C. §
13 1988 and other law.

14 6. That this Court adjudge, decree, and declare the rights and other legal
15 relations of the parties as to the subject matter contested herein, in order that such
16 declarations have the force and effect of final judgment.

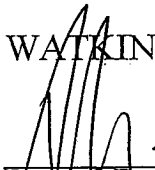
17 7. That the Court grant such other relief as the Court deems equitable,
18 just, and proper.

1 Respectfully submitted this th 27 day of January, 2011.

2
3 ALLIANCE DEFENSE FUND

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10 * Applications for admission pro hac vice submitted herewith.

11 *Attorneys of Record for Plaintiff B.H.*

