



DOWNINGTOWN AREA SCHOOL DISTRICT

540 Trestle Place, Downingtown, PA 19335, phone 610.269.8460, fax 855.329.3273, www.dasd.org

EMILIE M. LONARDI, Ph.D. SUPERINTENDENT

July 14, 2017

Michael I. Levin, Esquire
Levin Legal Group, P.C.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006

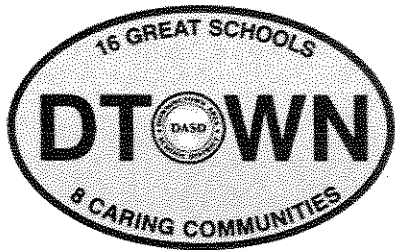
RE: Haines, Conner and Lauren – Signed Release and Settlement Agreement with letter

Attached please find one original fully executed Release and Settlement Agreement with letter for your transmittal to the appropriate attorney and one copy for your records.

Respectfully,

Sharon Standish
Director of Human Resources

Attachments – 2



DOWNTOWN AREA SCHOOL DISTRICT

540 Trestle Place, Downingtown, PA 19335, phone 610.269.8460, fax 855.329.3273, www.dasd.org

EMILIE M. LONARDI, Ph.D. SUPERINTENDENT

July 7, 2017

Dear Lauren & Conner,

I write on behalf of the Downingtown Area School District to acknowledge the illegality of Dr. Zach Ruff's behavior on April 21 when you were speaking on the public sidewalk outside the Downingtown STEM Academy. You had every right under our constitution's First Amendment to speak and display signs like you did, and that right was violated by Dr. Ruff. Rest assured that Dr. Ruff's actions do not represent the policy of the School District. Instead, we will be providing information to our employees on the First Amendment rights of individuals. We are committed to preventing incidents like this from happening in the future and will instruct school employees not to violate anyone's Free Speech rights on public sidewalks outside our schools again.

Having stated the foregoing, nothing in this letter is to be interpreted as limiting the School District's rights, consistent with the First Amendment and applicable law, to manage the School District and its property.

Sincerely yours,

Emilie M. Lonardi, Ph.D.
Superintendent of Schools

RELEASE AND SETTLEMENT AGREEMENT

This AGREEMENT is entered into by and among the DOWNINGTOWN AREA SCHOOL DISTRICT (hereinafter referred to as the "SCHOOL DISTRICT") and CONNER HAINES and LAUREN HAINES (herein after referred to individually as "CONNER HAINES and LAUREN HAINES") and William Haines and Dawn Haines, in their individual capacities and as natural parents and legal guardians of CONNER HAINES (hereinafter referred to individually or together with CONNER HAINES and LAUREN HAINES as the "HAINES'S").

Recitals

WHEREAS, on Friday, April 21, 2017, CONNER HAINES and LAUREN HAINES were engaged in speech protected by the Free Speech Clause of the First Amendment; and

WHEREAS, without power or authority from the SCHOOL DISTRICT and in violation of the policies of the SCHOOL DISTRICT, a SCHOOL DISTRICT employee, Dr. Zachary Ruff, engaged in the conduct reflected in a video for eighteen (18) minutes, more or less; and

WHEREAS, the HAINES'S have made certain demands on the SCHOOL DISTRICT; and

WHEREAS, having engaged in conversations through their respective attorneys, the SCHOOL DISTRICT and the HAINES'S have a better appreciation of the position of the other, and

WHEREAS, the SCHOOL DISTRICT and the HAINES'S wish to resolve all disputes among them;

NOW, THEREFORE, intending to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto that this matter shall be settled and compromised on the following terms and conditions:

Definitions

1.0 **Definitions.** The following terms, when set forth in this AGREEMENT in capital letters, shall have the meaning set forth in the following definitions unless the context clearly indicates otherwise:

1.1 "AGREEMENT" shall mean this AGREEMENT by and among the SCHOOL DISTRICT and the HAINES'S.

1.2 "DATE OF THIS AGREEMENT" shall mean the last date that this AGREEMENT is signed by any party to this AGREEMENT. This AGREEMENT shall be presented to the Board of Directors of the SCHOOL DISTRICT at the first meeting following the HAINES'S execution of the AGREEMENT.

1.3 "INCLUDING" shall mean inclusive of but not limited to and/or by way of example and not limitation.

1.4 "SCHOOL DISTRICT" shall mean the DOWNINGTOWN AREA SCHOOL DISTRICT.

1.5 "HAINES'S" shall mean William Haines, Dawn Haines, and/or CONNER HAINES and LAUREN HAINES, either singly or in groups of two or more as the context may suggest and in order to give the broadest possible interpretation to the releases affected by this AGREEMENT.

1.6 "RELEASED CLAIMS" shall mean all claims, demands, damages, actions, causes of actions, suits at law or in equity, charges, debts, dues, costs, sums of money, attorneys' fees, accounts, bills, judgments, rights, demands, or otherwise, of whatever kind or nature, both civil or criminal or mixed, known or unknown, accrued or unaccrued, contingent or non-contingent, whether arising from the beginning of time up until the DATE OF THIS AGREEMENT, whether or not capable of proof as of the DATE OF THIS AGREEMENT, whether common law or statutory, whether or not now recognized, that the HAINES'S, or anyone claiming by, through or under the HAINES'S, in any way might have, or could have, against any of the RELEASED PARTIES, INCLUDING:

- 1.6.1 all claims for or because of any matter or thing, act, or omission, done or admitted or suffered to be done by the RELEASED PARTIES relating to CONNER and LAUREN, as well as the consequences or effects of any such matter, thing, act or omission whether occurring before or after the date hereof;
- 1.6.2 all claims arising out of the incident involving Dr. Ruff on April 21, 2017, or any of the consequences of that incident, including anything stated by any person to the HAINES'S or through social media;
- 1.6.3 all claims for discrimination based on age, religion, sex, race, disability, national origin, or any other protected characteristics, INCLUDING (without limitation) claims under the Americans with Disabilities Act, the Civil Rights Act of 1866, the Rehabilitation Act, Title IX of the Education Amendments of 1972, and all state and local analogues of such statutes, INCLUDING the Pennsylvania Human Relations Act;
- 1.6.4 all claims of violations of any statute, regulation, ordinance, motion, policy, or guideline, INCLUDING, (a) Section 1981; (b) Section 1983; (c) Section 1985; (d) Section 1988; (e) the anti-retaliation provisions of any statute or regulation, INCLUDING, Titles IX, the Americans with Disabilities Act, the Pennsylvania Human Relations Act, or any other anti-retaliation law, provision or regulation; (f) claims under any legal theories under any of the above-stated statutes INCLUDING legal theories for state-created danger, deliberate indifference, violation of substantive or procedural due process, theories for policy, practice or custom, failure to train or failure to supervise; (g) the Sunshine Act; (h) the State Ethics Act; (i) the Public School Code; (j) the Public Employee Relations Act; (k) the Child Protective Services Law; (l) the Health Insurance Privacy and Accountability Act ("HIPAA"); (m) the Occupational Safety and Health Act ("OSHA"); and (n) all other state and federal laws;

- 1.6.5 all claims for violations of any provision of the constitutions of the United States or of the Commonwealth of Pennsylvania, INCLUDING the First Amendment, the Second Amendment, the Fourth Amendment, the Fifth Amendment and/or the Fourteenth Amendment of the United States Constitution and Article I of the Pennsylvania Constitution;
- 1.6.6 all claims for breach of contract, defamation, negligence, loss of consortium, breach of the covenant of good faith and fair dealing, misrepresentation, emotional distress, equitable and promissory estoppel, breach of fiduciary duty, fraud, and any other common law claims, whether contractual, tort or equitable in nature, under the laws of any jurisdiction;
- 1.6.7 all claims under any education-related statute, regulation, ordinance or policy, whether federal, state or local, INCLUDING the Public School Code, the Family Education Rights and Privacy Act, the Individuals with Disabilities Education Act, the Individuals with Disabilities Education Improvement Act, the Regulations and/or Standards of the State Board of Education or of the Secretary of Education;
- 1.6.8 all claims under any applicable SCHOOL DISTRICT policy, administrative regulation or Code of Student Conduct;
- 1.6.9 all claims for compensatory, punitive, liquidated, exemplary, common law or statutory damages, fines or assessments, INCLUDING pain and suffering, emotional distress, humiliation, economic loss, loss of employment opportunities, and medical expenses; and
- 1.6.10 all claims for attorneys' fees and costs and expenses of any nature or type.

1.7 "RELEASED PARTIES" shall mean (1) the SCHOOL DISTRICT; (2) all entities affiliated with the SCHOOL DISTRICT, INCLUDING (without limitation) any of its schools, and any Intermediate Unit or area vocational-technical schools with which it is associated (hereinafter "AFFILIATED ENTITIES"); (4) the SCHOOL DISTRICT'S and AFFILIATED ENTITIES' past, current, and future employees, officers, directors, agents, owners, attorneys and legal representatives, in their individual and official capacities, as well as all of their heirs, assigns, parents, subsidiaries, partners, and affiliates, as well as all of their employees, agents, owners, officers, directors, partners, legal representatives and assigns; and, (5) the SCHOOL DISTRICT'S and AFFILIATED ENTITIES' insurers.

1.8 "RELEASED PARTY" shall mean any of the RELEASED PARTIES as defined herein.

Terms

- 2.0 **Consideration.** In full consideration of the execution of this AGREEMENT by the HAINES'S and their agreement to be legally bound by all of its terms, the parties agree to the following terms:

- 2.1 The SCHOOL DISTRICT administration shall adopt the Administrative Regulation attached hereto as Exhibit "A" and implement its requirements. Nothing herein shall be construed as prohibiting the Administrative Regulation from being amended or rescinded in the future. Any subsequent amendment or rescission shall not affect this AGREEMENT.
- 2.2 The SCHOOL DISTRICT superintendent shall send the letter attached hereto as Exhibit "B" on SCHOOL DISTRICT letterhead to the HAINES'S within twenty (20) calendar days of this AGREEMENT becoming fully effective.
- 2.3 The HAINES'S have the right to use SCHOOL DISTRICT facilities in accordance with Policy 707. Nothing herein shall be construed as prohibiting the Policy from being amended or rescinded in the future. Any subsequent amendment or rescission shall not affect this AGREEMENT.
- 2.4 The HAINES'S understand that if they do not enter into this AGREEMENT, this AGREEMENT shall not be used by them for any purpose and shall not be distributed or published by them.

3.0 Release.

3.1 **Unconditional and Irrevocable General Release by the PARTIES.** In exchange for the covenants and conditions contained herein, by this AGREEMENT, the HAINES'S, for themselves and their dependents, heirs, executors, administrators, legal representatives and assigns, INCLUDING CONNER HAINES and LAUREN HAINES, unconditionally and irrevocably remises, releases and forever discharges the RELEASED PARTIES, jointly and severally, of and from all RELEASED CLAIMS; and the SCHOOL DISTRICT, for itself and its assigns, unconditionally and irrevocably remises, releases and forever discharges the HAINES'S, jointly and severally, of and from all claims accrued as of the date of this agreement, including those set forth in the RELEASED CLAIMS. **Notwithstanding anything herein to the contrary, the SCHOOL DISTRICT does not release any claims for property assessment, taxes, arising out of tax liability, or involving or relating to taxes in any way, if any.**

3.2 **Acknowledgment of Broad Scope of Release.** The parties acknowledge that the claims, demands, damages, actions, causes of actions, and suits at law or in equity that they are releasing and discharging herein INCLUDE but are not limited to any claims, rights and causes of action arising under any and all state and federal statutes relating to education, safety, freedom from molestation or abuse, claims for attorneys' fees, any claim of violation of federal or state constitutional or statutory rights, substantive or procedural, and any claim under common law, tort and/or contract theories, whether such claims are known or unknown, foreseen or unforeseen. It is the parties' intention that the description of the RELEASED CLAIMS shall be accorded the broadest possible interpretation.

4.0 **Effective Date of this AGREEMENT.** This AGREEMENT shall become fully effective and enforceable only when it has been fully executed by all parties.

5.0 **Acknowledgments and Representations.** The HAINES'S expressly acknowledge and confirm that: (1) the only consideration for their signing this AGREEMENT are the terms and

provisions stated herein; and (2) no other promise or AGREEMENT of any kind, save those set forth in this AGREEMENT, has been made by any person or entity whatsoever to cause them to sign this document.

- 6.0 **Satisfaction and Covenant Not to Sue.** The HAINES'S understand, acknowledge and agree that this AGREEMENT is in full satisfaction for all damages, real or claimed, arising as a result of any act or inaction of any RELEASED PARTY and that they agree not to assert or prosecute any further claims, lawsuits, actions, grievances or complaints before any court or administrative body against any RELEASED PARTY hereunder with respect to any of their RELEASED CLAIMS. If the HAINES'S do, they shall pay to the applicable RELEASED PARTIES all attorneys' fees, costs and expenses incurred by the RELEASED PARTIES in defending themselves against such RELEASED CLAIMS.
- 7.0 **Actions by Others.** The HAINES'S agree and covenant that neither they nor any person, organization or other entity on their behalf, will file, charge, claim, sue or cause or permit to be filed, any individual action or class action for damages, INCLUDING injunctive, declaratory, monetary relief or other, against any RELEASED PARTY hereunder, solely as to their RELEASED CLAIMS. It is understood that if a class action is filed, that the mere filing of said action does not place the HAINES'S in breach of this AGREEMENT provided that they take reasonable steps with all due speed to remove themselves from the class.
- 8.0 **Claims and Interests of Others.** The HAINES'S represent and warrant that no other person or entity has or has had any interest in the claims, demands, allegations, or causes of action referred to in this AGREEMENT and that they have the sole right and exclusive authority to execute this AGREEMENT and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to herein.
- 9.0 **Finality.** This AGREEMENT shall be final and binding between the parties hereto, and shall fully and completely resolve any disputes between the HAINES'S and the SCHOOL DISTRICT. This AGREEMENT may be pleaded as a full bar to any claim which the HAINES'S may assert against the RELEASED PARTIES or any of them for any matter, cause or thing which may have occurred before the date of execution of this AGREEMENT.
- 10.0 **Construction.** All parties hereto acknowledge that this AGREEMENT constitutes a compromise settlement of the subject dispute and that the terms hereof shall not be construed as an admission on the part of either party or as a validation or invalidation of any allegations.
- 11.0 **Lack of Precedent.** The RELEASED PARTIES' agreements in this matter and to the terms hereof shall not set a precedent, be construed as a practice or course of dealing of the SCHOOL DISTRICT or be used in any manner in an attempt to expand the rights of any SCHOOL DISTRICT employee, official or student, it being understood that the decision of the SCHOOL DISTRICT in this matter is based upon the unique and particular facts of this matter.
- 12.0 **Consultation with Counsel.** The HAINES'S acknowledge that they were advised to consult with and were given an opportunity to be represented by legal counsel skilled in this area of the law, and that they were so represented by Kevin Theriot. The parties further acknowledge that no promise or inducement other than those expressed in this AGREEMENT have been made to them, and in executing this AGREEMENT, they are not relying upon any statement

or representation made by the RELEASED PARTIES or any of their employees, board members, officials, agents, attorneys or representatives.

13.0 **Warranty of Capacity to Execute Agreement.** The HAINES'S represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this AGREEMENT, that the HAINES'S have the sole right and exclusive authority to execute this AGREEMENT; and that the HAINES'S have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this AGREEMENT.

14.0 **Further Acknowledgments.** The HAINES'S have been advised of and hereby acknowledge and represent that they are aware:

14.1 that various state and federal laws prohibit discrimination based on age, sex, race, color, national origin, disability, and veteran's status; and

14.2 that these laws are enforced by or through applicable administrative agencies, such as the Pennsylvania Human Relations Commission and the Office of Dispute Resolution; and

14.3 that further redress can be obtained through state and/or federal court; and

14.4 that the HAINES'S have a right to a School Board hearing with respect to any action of the SCHOOL DISTRICT that constitutes an "adjudication" under the Local Agency Law with a further appeal(s) to the courts; and

14.5 that this AGREEMENT relates to and effectuates a release and/or waiver of all rights and claims, as set forth above, INCLUDING: (i) the RELEASED CLAIMS; and (ii) other rights that the HAINES'S may have against the RELEASED PARTIES which may have been violated prior to the DATE OF THIS AGREEMENT; and

14.6 that the HAINES'S do not waive or release rights or claims that may arise after the DATE OF THIS AGREEMENT with respect to future matters not expressly addressed in this AGREEMENT; and

14.7 that the HAINES'S have received consideration for executing this AGREEMENT, waiving all rights they have for any claims that arose prior to the DATE OF THIS AGREEMENT and releasing the RELEASED PARTIES from same, said consideration being the releases called for in this AGREEMENT;

14.8 that the HAINES'S believe, represent and assert that this settlement is in the best interest of CONNER HAINES'S; and,

14.9 that the HAINES'S have been advised to consult with their attorney prior to agreeing to and executing this AGREEMENT and were so represented.

15.0 **Voluntary and Knowing Execution of AGREEMENT.** The HAINES'S acknowledge that they executed this AGREEMENT and agreed to all of its terms freely, voluntarily, knowingly and in accordance with the advice and recommendations of their attorneys. The HAINES'S

further acknowledge and represent that they are under no disability or impairment that would prevent or impair (a) their ability to understand this AGREEMENT or its effects; or (b) their ability to enter into this AGREEMENT knowingly and voluntarily.

- 16.0 **Rules of Construction.** This AGREEMENT shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania and, to the extent applicable, the United States government. The HAINES'S acknowledge and agree that in consideration of the fact that they have carefully read, reviewed and considered the terms of this AGREEMENT and that they have had the full opportunity to obtain legal advice from counsel of their choice in connection with this AGREEMENT, the normal principle of contract construction whereby all ambiguities are to be construed against the drafter shall not be employed in the interpretation and construction of this AGREEMENT.
- 17.0 **Modification and Waiver.** No modification or waiver of any of the terms of this AGREEMENT shall be valid unless in writing and executed with the same formality of this AGREEMENT.
- 18.0 **Counterparts.** In the event that two or more counterparts of this AGREEMENT are executed, all such counterparts shall collectively constitute the same instrument.
- 19.0 **Headings.** The headings of an Article or Section hereof are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.
- 20.0 **Severability.** All agreements and covenants herein contained are severable. In the event that any provision of this AGREEMENT should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court (or

arbitrator) construing this AGREEMENT is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render the same enforceable.

21. **Estoppel Statement.** The HAINES'S hereby represent, warrant and certify to the RELEASED PARTIES that:

- 21.1. All of the facts, warranties, representations and acknowledgements set forth in this AGREEMENT are true and correct;
- 21.2. This AGREEMENT was entered into freely and voluntarily and was not the result of any coercion or hostile environment or pressure of any sort;
- 21.3. The RELEASED PARTIES are justified in relying on the representation made herein by the HAINES'S that the facts set forth in this AGREEMENT are true and correct;
- 21.4. The HAINES'S agree and understand that the RELEASED PARTIES and others intend to rely upon the statements contained herein in agreeing to the terms and conditions of this AGREEMENT; and
- 21.5. The HAINES'S agree that the RELEASED PARTIES and others may justifiably rely on the statements contained herein.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, set their hands and seals on the dates indicated.

DOWNTOWN AREA SCHOOL DISTRICT

By: Cherie Crummy Date: 7/12/17
Board President

By: Theresa Blumley Date: 7/12/17
Board Secretary

William Haines Date: 6/12/17
William Haines, for himself and as parent and legal guardian of CONNER Haines

Dawn Haines Date: 6/12/17
Dawn Haines, For Herself and As Parent and Legal Guardian of CONNER Haines

Conner Haines Date: 6/12/17
CONNER HAINES

LAUREN HAINES Date: _____

arbitrator) construing this AGREEMENT is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render the same enforceable.

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- 21.1 All of the facts, warranties, representations and acknowledgements set forth in this AGREEMENT are true and correct;
- 21.2 This AGREEMENT was entered into freely and voluntarily and was not the result of any coercion or hostile environment or pressure of any sort;
- 21.3 The RELEASED PARTIES are justified in relying on the representation made herein by the HAINES'S that the facts set forth in this AGREEMENT are true and correct;
- 21.4 The HAINES'S agree and understand that the RELEASED PARTIES and others intend to rely upon the statements contained herein in agreeing to the terms and conditions of this AGREEMENT; and
- 21.5 The HAINES'S agree that the RELEASED PARTIES and others may justifiably rely on the statements contained herein.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, set their hands and seals on the dates indicated.

DOWNTOWN AREA SCHOOL DISTRICT

By: Colleen Cranny Date: 7/12/17
Board President

By: Viviana Blumley Date: 7/12/17
Board Secretary

Date: _____
William Haines, for himself and as parent and legal guardian of CONNER Haines

Date: _____
Dawn Haines, For Herself and As Parent and Legal Guardian of CONNER Haines

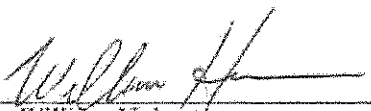
Date: _____
CONNER HAINES

Lauren Haines Date: 6/21/17
LAUREN HAINES

VERIFICATIONS

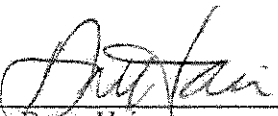
I, William Haines, have read the attached document, and hereby state and acknowledge that the recitals and facts set forth therein are true and correct and that I understand the nature, fact and consequences of the release and waiver contained in the AGREEMENT.

I declare under penalty of perjury and under the laws of the United States of America and of the Commonwealth of Pennsylvania, particularly 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities), that the foregoing is true and correct.

Dated: 6/12/17 Signature: 
William Haines

I, Dawn Haines have read the attached document, and hereby state and acknowledge that the recitals and facts set forth therein are true and correct and that I understand the nature, fact and consequences of the release and waiver contained in the AGREEMENT.

I declare under penalty of perjury and under the laws of the United States of America and of the Commonwealth of Pennsylvania, particularly 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities), that the foregoing is true and correct.

Dated: 6/12/17 Signature: 
Dawn Haines

I, LAUREN HAINES, have read the attached document, and hereby state and acknowledge that the recitals and facts set forth therein are true and correct and that I understand the nature, fact and consequences of the release and waiver contained in the AGREEMENT.

I declare under penalty of perjury and under the laws of the United States of America and of the Commonwealth of Pennsylvania, particularly 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities), that the foregoing is true and correct.

Dated: _____

Signature: LAUREN HAINES

I, CONNER HAINES, have read the attached document, and hereby state and acknowledge that the recitals and facts set forth therein are true and correct and that I understand the nature, fact and consequences of the release and waiver contained in the AGREEMENT.

I declare under penalty of perjury and under the laws of the United States of America and of the Commonwealth of Pennsylvania, particularly 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities), that the foregoing is true and correct.

Dated: 5/12/17

Signature: Conner Haines
CONNER HAINES

Dated: 6/21/17

Signature: Lauren Haines
LAUREN HAINES

I, CONNER HAINES, have read the attached document, and hereby state and acknowledge that the recitals and facts set forth therein are true and correct and that I understand the nature, fact and consequences of the release and waiver contained in the AGREEMENT.

I declare under penalty of perjury and under the laws of the United States of America and of the Commonwealth of Pennsylvania, particularly 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities), that the foregoing is true and correct.

Dated: _____

Signature: _____
CONNER HAINES

APPROVED:

REVISED:

 -AG- . FIRST AMENDMENT RIGHTS

1. **Generally.** Students and non-students have Free Speech rights, with certain limitations or exceptions, in school and on school property. No employee of the school district has the power or authority to violate the Free Speech rights of any individual. It is, therefore, important that all employees are aware of the basic and fundamental rules pertaining to the Free Speech clause of the First Amendment.

The First Amendment states, in relevant part, that:
“Congress shall make no law...abridging freedom of speech.”

This Amendment is applicable to the State and political subdivisions like school districts by the Fourteen Amendment.

The totality of the circumstances is critically important to determine whether there is a Free Speech right in any case. Administrators must understand that they cannot ignore their duties just because they do not know whether a situation is covered by the Free Speech clause.

2. **Responding to Expressive Conduct.** Many factors must be considered when determining whether expressive conduct is protected by the Free Speech clause. Although we do not expect our administrators to have the knowledge of an attorney or law school professor regarding these issues, we do expect, at a minimum, that each administrator shall:

- i. Be able to recognize conduct that is “expressive”;
- ii. Know and understand that “expressive” conduct may be protected; and
- iii. Have an understanding that it is against the policy of the School District to violate anyone’s Free Speech rights.

3. **Examples of Protected Speech.** Subject to exceptions more fully addressed below, freedom of speech includes the right:

- a) Not to speak (specifically, the right not to salute the flag); *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943);
- b) Of students to wear black armbands to school to protest a war (“Students do not shed their constitutional rights at the schoolhouse gate.”); *Tinker v. Des Moines*, 393 U.S. 503 (1969). This does not mean, that the students can disrupt the operation of the School District;
- c) To use certain offensive words and phrases to convey political messages; *Cohen v. California*, 403 U.S. 15 (1971). This does not mean that students can disrupt classes or the operations of the District. Speaking for or against abortion is equally protected, even if some find words or images to be personally offensive, as long as there is no disruption;

- d) To contribute money (under certain circumstances) to political campaigns; *Buckley v. Valeo*, 424 U.S. 1 (1976);
- e) To advertise commercial products and professional services (with some restrictions); *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977);
- f) To engage in symbolic speech, (e.g., burning the flag in protest); *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990);
- g) Of students or others to distribute religious literature at school, *Slotterback By & Through Slotterback v. Interboro Sch. Dist.*, 766 F.Supp. 280 (E.D. Pa. 1991);
- h) To wear “I love boobie” bracelets in school. *B.H. v. Easton Area School District*, 725 F.3d 293 (3rd Cir. 2012); and
- i) Of students or others to engage in protected speech on the public sidewalks outside of school buildings. *Grayned v. City of Rockford*, 408 U.S. 104, 117-19 (1972).

It must be stressed, however, that there are exceptions to these examples. A fundamental exception is that no one may disrupt the operations of the School District or its activities.

4. **Example of When Speech is Not Protected.** Freedom of speech does *not* include the right:

- a) To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”); *Schenck v. United States*, 249 U.S. 47 (1919).
- b) To make or distribute obscene materials; *Roth v. United States*, 354 U.S. 476 (1957).
- c) To burn draft cards as an anti-war protest; *United States v. O’Brien*, 391 U.S. 367 (1968).
- d) To permit students to print articles in a school newspaper over the objections of the school administration; *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988);
- e) Of students to make an obscene, lewd or vulgar speech at a school-sponsored event; *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986)(but if speech is ambiguously lewd, it can be restricted only if it cannot be plausibly interpreted as commenting on a social or political matter, *B.H. v. Easton Area School District*, 725 F.3d 293 (3rd Cir. 2012));
- f) Of students to advocate illegal drug use at a school-sponsored event; *Morse v. Frederick*, 551 U.S. 393 (2007).
- g) Of students to control or edit what is in a school sponsored newspaper. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988);

5. **The State Board Regulations.** The regulations of the State Board of Education provide, in part, the following respecting free speech:

(b) Students shall have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens serious harm to the school or community, encourages unlawful activity or interferes with another individual's rights.

(c) Students may use publications, handbills, announcements, assemblies, group meetings, buttons, armbands and any other means of common communication, provided that the use of public school communications facilities shall be in accordance with the regulations of the authority in charge of those facilities.

(1) Students have the responsibility to obey laws governing libel and obscenity and to be aware of the full meaning of their expression.

(2) Students have the responsibility to be aware of the feelings and opinions of others and to give others a fair opportunity to express their views.

(d) Identification of the individual student or at least one responsible person in a student group may be required on posted or distributed materials.

(e) School officials may require students to submit for prior approval a copy of materials to be displayed, posted or distributed on school property.

(f) Bulletin boards must conform to the following:

(1) School authorities may restrict the use of certain bulletin boards.

(2) Bulletin board space should be provided for the use of students and student organizations.

(3) School officials may require that notices or other communications be officially dated before posting, and that the materials be removed after a prescribed reasonable time to assure full access to the bulletin boards.

(g) School newspapers and publications must conform to the following:

(1) Students have a right and are as free as editors of other newspapers to report the news and to editorialize within the provisions in paragraphs (4) and (5).

(2) School officials shall supervise student newspapers published with school equipment, remove obscene or libelous material and edit other material that would cause a substantial disruption or interference with school activities.

(3) School officials may not censor or restrict material simply because it is critical of the school or its administration.

(4) Prior approval procedures regarding copy for school newspapers must identify the individual to whom the material is to be submitted and establish a limitation on the time required to make a decision. If the prescribed time

for approval elapses without a decision, the material shall be considered authorized for distribution.

(5) Students who are not members of the newspaper staff shall have access to its pages. Written criteria for submission of material by nonstaff members shall be developed and distributed to all students.

(h) The wearing of buttons, badges or armbands shall be permitted as another form of expression within the restrictions listed in subsection (c).

(i) School officials may set forth the time and place of distribution of materials so that distribution would not materially or substantially interfere with the requirements of appropriate discipline in the operation of the school.

(1) A proper time and place set for distribution is one that would give the students the opportunity to reach fellow students.

(2) The place of the activity may be restricted to permit the normal flow of traffic within the school and at exterior doors.

22 Pa.Code §12.9.

6. Required Reading.

a) All administrators of the School District are directed to read Chapter 12 of the State Board regulations annually before the start of school each year. They are available on line at the following link:

<http://www.pacode.com/secure/data/022/chapter12/chap12toc.html>

b) All administrators of the School District are directed to read the Wikipedia articles found at the following links:

https://en.wikipedia.org/wiki/Freedom_of_speech_in_the_United_States

[https://en.wikipedia.org/wiki/School_speech_\(First_Amendment\)](https://en.wikipedia.org/wiki/School_speech_(First_Amendment))

7. Annual Notice. This Administrative Regulation shall be distributed to all administrators prior to the start of school each year.

8. WARNING: An employee's violation of the Free Speech rights of a student may lead to discipline, including discharge.

Exhibit "B"

[To Be Printed on School District letterhead]

Dear Lauren & Conner,

I write on behalf of the Downingtown Area School District to acknowledge the illegality of Dr. Zach Ruff's behavior on April 21 when you were speaking on the public sidewalk outside the Downingtown STEM Academy. You had every right under our constitution's First Amendment to speak and display signs like you did, and that right was violated by Dr. Ruff. Rest assured that Dr. Ruff's actions do not represent the policy of the School District. Instead, we will be providing information to our employees on the First Amendment rights of individuals. We are committed to preventing incidents like this from happening in the future and will instruct school employees not to violate anyone's Free Speech rights on public sidewalks outside our schools again.

Having stated the foregoing, nothing in this letter is to be interpreted as limiting the School District's rights, consistent with the First Amendment and applicable law, to manage the School District and its property.

Sincerely yours,

Dr. Lawrence Mussoline
Superintendent