

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MONA DOBRICH, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 05-120-JJF
	:	
INDIAN RIVER SCHOOL DISTRICT,	:	
et al.,	:	
	:	
Defendants.	:	

SETTLEMENT AGREEMENT

WHEREAS, on February 28, 2005, Plaintiffs (as defined below) filed the complaint (the "Complaint"), deemed amended on June 2, 2006, in this action seeking damages and declaratory and injunctive relief for an alleged pattern and practice of unconstitutional behavior on the part of the School Board (as defined below), the District (as defined below) and District employees (the "Litigation"); and

WHEREAS, on the same date, the Does (as defined below) filed a Motion to Proceed Under Pseudonyms; and

WHEREAS, on April 4, 2005, Defendant Reginald Helms answered the Complaint in his official capacity, denying Plaintiffs' claims, and filed a motion to dismiss the claims against him in his individual capacity; and

WHEREAS, on April 27, 2005, the remaining defendants answered the Complaint, denying Plaintiffs' claims, and moved to dismiss the Complaint based on Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6); and

WHEREAS, on June 16, 2005, the Court referred the case to mediation with Magistrate Judge Mary Pat Thyng, and stayed discovery indefinitely in deference to the mediation process; and

WHEREAS, Plaintiffs and Defendants (as defined below) exchanged initial disclosures on July 8, 2005; and

WHEREAS, on August 2, 2005, the Court issued an opinion and an order granting in part and denying in part Defendants' motions to dismiss, including an order dismissing Plaintiffs' claims against Harvey L. Walls, Mark A. Isaacs, John M. Evans, Richard H. Cohee, Gregory A. Hastings, Nina Lou Bunting, Charles M. Bireley, Donald G. Hattier, M. Elaine McCabe, Reginald L. Helms, and District administrators Lois M. Hobbs and Earl J. Savage in their individual capacities; and

WHEREAS, on September 22, 2005, the Court granted the Does' Motion to Proceed Under Pseudonyms; and

WHEREAS, on March 24, 2006, the Court divided the issues in this matter into two categories: (1) the constitutionality of the Indian River School Board's Prayer Policy as written and as applied ("School Board Prayer issue"), and (2) all remaining issues (the "Remaining Issues"); and

WHEREAS, the Parties undertook and completed discovery on the School Board Prayer Issue but have not begun or completed discovery on the Remaining Issues; and

WHEREAS, on August 4, September 14, November 10, 2005 and August 21, 2007, the Parties (as defined below) attended mediation conferences with Magistrate Judge Thyng; and

NOW, THEREFORE, in order to resolve this dispute, Mona Dobrich and Marco Dobrich, in their own right and as legal guardians of Alexander Dobrich, and Samantha Dobrich in her own right (collectively, the "Dobriches"), and John Doe and Jane Doe, in their own right and as legal guardians of Jordan Doe and Jamie Doe (collectively, the "Does," and together with the Dobriches, "Plaintiffs"), the Indian River School District (the "District") and the Indian River School Board (the "School Board," and, together with the District, "Defendants"), Harvey L. Walls, Mark A. Isaacs, John M. Evans, Richard H. Cohee, Gregory A. Hastings, Nina Lou Bunting, Charles M. Bireley, Donald G. Hattier, M. Elaine McCabe, Reginald L. Helms, Donna M. Mitchell, Dustin D. Davis, Robert D. Wilson, Randall Hughes II, Patricia S. Oliphant, Kelly R. Willing and administrators Susan S. Bunting, Lois M. Hobbs, and Earl J. Savage, in either their individual or official capacities, as appropriate, and Graphic Arts Mutual Insurance Company ("Graphic Arts") (collectively with Plaintiffs and Defendants, the "Parties"), jointly have reached an agreement providing for the settlement of a portion of this action on the terms and subject to the conditions set forth below:

1. The Parties will present an order (the "Order"), in substantially the form attached as Exhibit A, to the Court for hearing and approval of the Settlement as soon as practicable. As used herein, "Final Court Approval" of the Settlement means that the Court has entered an order approving the Settlement and partially dismissing the Complaint. The partial dismissal will dismiss with prejudice all claims relating to the Remaining Issues. Claims in the Complaint that relate to the School Board Prayer Issue will not be dismissed. Unless otherwise directed by the Court, the Plaintiffs and Defendants will file their cross-motions for summary judgment on the School Board Prayer Issue within thirty (30) days of submitting this Settlement to the Court, or by December 12, 2007, whichever is earlier.

2.

REDACTED

3. Within thirty (30) days of Final Court Approval, Defendants will amend the District's policy on "Religion" (the "Religion Policy") to be identical to the policy attached as Exhibit B. Defendants will add the "Real World Problems and Examples," a copy of which is attached as Exhibit C, as an exhibit to the District's policy manual.

4. Within thirty (30) days of Final Court Approval, Defendants will amend the District's policy on "School Prayer at Commencement/Graduation and Baccalaureate Ceremonies" (the "Graduation Policy") to be identical with the policy attached as Exhibit D.

5. Within thirty (30) days of Final Court Approval, Defendants will adopt for the District complaint procedures (the "Complaint Procedures," and, together with the Religion Policy and Graduation Policy, the "Policies") to be identical with the procedures attached as Exhibit E.

6. Contemporaneous with the adoption of the Complaint Procedures, Defendants will adopt for the District the complaint form (the "Complaint Form") attached as Exhibit F. The District will maintain copies of the Complaint Form in every District school's main office and the District's main office. Within thirty (30) days of adopting the Complaint Form, the District will create a permanent link on its webpage at <http://www.irsd.net> to a copy of the Complaint Form.

7. Within thirty (30) days of adopting the Policies, Defendants will mail the Policies and the Real World Problems and Examples to every parent of a student in the District and to every District teacher, administrator, coach and any other director or supervisor of student

activities, instruction or education, together with a cover letter on District letterhead with text identical to Exhibit G. Plaintiffs will bear the cost of mailing, up to a maximum of \$2,000.00.

8. In connection with the distribution of the Policies, parents will also be informed that District policies are available on the District's website (<http://www.irsd.net>). The Defendants will also advise parents of other locations from which they may obtain copies of District policies.

9. Within thirty (30) days of Final Court Approval, Defendants will continue a training program that complies with the guidelines set forth in the document titled "Training," attached as Exhibit H.

10. The Plaintiffs and Defendants will issue a joint press release, attached as Exhibit I, within five (5) days of Final Court Approval.

11. Within thirty (30) days of adopting the Policies, the District will also create a link on its web page at <http://www.irsd.net> to a copy of the Policies. Following the enactment of the Policies, the District will publish the Policies in any materials that contain a compilation of District policies (e.g., student handbooks and District academic year calendars).

12. In consideration of the mutual promises and payments set forth above, Plaintiffs do hereby release, acquit and forever discharge Defendants and their board members, agents and employees, past and present, and Graphic Arts ("Released Parties"), from all past and present claims, demands, damages, actions and suits at law or in equity arising from alleged unconstitutional or otherwise unlawful or injurious conduct, practices and/or policies by Defendants and/or Released Parties related to religious practices or conduct in the District, including but not limited to the claims alleged in the Complaint. This release includes claims for damages as a result of injuries that may be permanent or progressive or that at this point are

unknown, insofar as said injuries or damages were caused by conduct that occurred before Final Court Approval. This release also includes any future claim by Plaintiffs that the Policies, as written and adopted through the Settlement, are (i) unconstitutional or (ii) otherwise unlawful or injurious. Notwithstanding the foregoing, this release expressly does not include any presently pending or future claim by Plaintiffs that the School Board Prayer policy regarding prayer at regular Board meetings as currently written and/or as applied is unconstitutional, or is otherwise unlawful or injurious; provided, however, that Plaintiffs do hereby release any claim for damages and any claim for attorneys' fees, costs, and expenses resulting from any such claim.

13. In further consideration of the mutual promises and payments set forth above, Defendants do hereby release, acquit and forever discharge Graphic Arts from all past and present claims, demands, damages, actions and suits at law or in equity arising from claims by the Plaintiffs at issue in this litigation. This release includes claims for damages as a result of injuries that may be permanent or progressive or that at this point are unknown, insofar as said injuries or damages were caused by conduct that occurred before Final Court Approval. This release also includes any future claim by Plaintiffs that the Policies, as written and adopted through the Settlement, are (i) unconstitutional or (ii) otherwise unlawful or injurious and any claim for attorneys' fees, costs, and expenses resulting from any such claims. It is intended that this release applies *only* to Plaintiff's released claims as specified in Paragraph 12 above. The release in this paragraph expressly does not apply to claims in *Graphic Arts Mutual Insurance Company v. Indian River School District*, C.A. No. 06-246-JJF (D.Del.) (the "Coverage Action"), which claims shall be expressly preserved. Nor is the release in this paragraph intended to limit in any way the terms of Paragraph 25 below, or to preclude Defendants from seeking coverage for non-released claims asserted by Plaintiffs.

14. Plaintiffs further agree not to cooperate with, aid or assist in any way any other party in any claim, cause of action or suit arising from past or present alleged unconstitutional conduct, practices and/or policies by Defendants related to religious practices or conduct in the District; provided, however, that nothing in this paragraph shall prohibit Plaintiffs from complying with any decision, opinion, order, regulation or subpoena of any agency or court.

15. In consideration of Plaintiffs' release set forth in Paragraph 12, Defendants and their board members do hereby release, acquit and forever discharge Plaintiffs from all past and present claims, demands, damages, actions and suits at law or in equity related to the Litigation and/or the claims asserted therein.

16. Plaintiffs' attorneys, which, for purposes of this paragraph include other members of their law firm(s) or affiliated legal organizations, warrant that they are not currently representing any other party in connection with any claim, cause of action or potential suit arising from past or present alleged unconstitutional conduct, practices and/or policies by Defendants. Plaintiffs' attorneys further agree that they will not represent or otherwise cooperate with, aid or assist in any way any other party in any claim, cause of action or suit arising from past or present alleged unconstitutional conduct, practices and/or policies by Defendants related to religious practices or conduct in the District. Nothing in this paragraph, however, shall restrict Plaintiffs' attorneys from providing representation in connection with a claim, cause of action or suit that is not extant as of the execution of this Settlement.

17. Neither Plaintiffs nor their attorneys will seek an award of attorneys' fees, costs or expenses, except as provided for in Paragraph 2 hereof; provided, however, that, in the event that a party to this Settlement brings a successful action for violation of this Settlement, the

prevailing party may seek an award of attorneys' fees, costs and expenses arising out of such action.

18. Each Defendant has denied and continues to deny having committed or having attempted to commit any violation of law.

19. Defendants are entering into the Settlement of disputed claims because the Settlement will eliminate the burden and expense of further litigation.

20. The Parties will attempt in good faith to obtain Final Court Approval, and the Settlement will not be effective unless such Final Court Approval is obtained.

21. The Settlement may be executed in counterparts by any of the signatories hereto and as so executed will constitute one agreement.

22. The Settlement will be binding upon and inure to the benefit of the Parties, Released Parties and their respective members, agents, employees, executors, heirs, successors and assigns, past or present, subject to the conditions set forth herein and may be modified or amended only by a writing signed by the signatories hereto.

23. Plaintiffs and their counsel represent and warrant that none of the claims or causes of action asserted in the Litigation have been assigned, encumbered or in any manner transferred in whole or in part.

24. Except as otherwise provided by this Settlement, no Party will bear any expenses, costs, damages or fees alleged or incurred by any other Party or their respective attorneys, experts, advisors, agents or representatives.

25. Neither the existence of the Settlement nor the provisions contained herein will be deemed a presumption, concession or admission by any Party of any breach of duty, liability, default or wrongdoing as to any facts, claims or defenses alleged or asserted in the

Litigation. In particular, the fact that Graphic Arts has agreed to make the payment outlined in Paragraph 2 above is not an admission of coverage and may not be deemed by a fact finder to be a concession of coverage in favor of the District in the Coverage Action. Any and all actions taken by Graphic Arts and/or the District in furtherance of this Settlement are without prejudice to the rights of Graphic Arts or the District in the Coverage Action.

26. The undersigned represent that each has authority to agree to the terms contained herein.

27. In the Order, the Parties will seek an order from the Court (the "Confidentiality Order") that will state:

Plaintiffs and Defendants will not produce or disclose to any third party any information which could reasonably lead to the identification of the Does ("Identifying Information"). The term "any third party" includes, but is not limited to, family members, district employees and previously-associated counsel. If any Plaintiff or Defendant is subpoenaed, receives a Freedom of Information Act request, or is otherwise subject to a proceeding to produce or disclose Identifying Information (collectively, a "Request"), such Plaintiff or Defendant will (a) give prompt written notice by hand or facsimile transmission within three (3) business days of the Request to the Does' counsel and (b) refrain from communicating Identifying Information to such a Request until the earlier of (i) receipt of written notice from counsel for the Does that the Does do not object to the disclosure of Identifying Information or (ii) resolution of any objection asserted by the parties either by agreement or by final order of the court with jurisdiction over the production or disclosure of the Identifying Information. The burden of opposing the enforcement of the Request will fall solely upon the Does. Compliance by any Plaintiff or Defendant with an order directing the disclosure of Identifying Information pursuant to the Request will not constitute a violation of this paragraph of the Order. Nothing in this paragraph will be construed as requiring anyone covered by this Order to challenge or appeal any order directing the production or disclosure of Identifying Information, or to subject himself, herself or itself to any penalties for non-compliance with a legal process or order, or to seek relief from this Court. COMPLIANCE WITH THIS PARAGRAPH IS SUBJECT TO THE CONTEMPT POWERS OF THE COURT. THE PARTIES AGREE THAT ANY VIOLATION OF THIS ORDER WILL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE COURT.

The Parties agree to be bound by the terms of the Confidentiality Order pending Final Court Approval. Any breach of the Confidentiality Order is a breach of the Settlement Agreement and can be enforced accordingly. The Parties waive any claim over disclosures of Identifying Information occurring prior to the date of execution of this Settlement Agreement.

28. The Parties will maintain the confidentiality of Paragraph 2 above (the "Confidential Term") and, except as required by applicable law, will not disclose, or permit to be disclosed, the Confidential Term; provided, however, that, only for the purpose of presenting evidence of damages, Graphic Arts may disclose the Confidential Term in the Coverage Action to the presiding judge, but only if the presiding judge (i) clears the courtroom of any non-parties, (ii) orders that the Confidential Term be kept confidential, and not be publicly disclosed, and (iii) orders that all persons present in the courtroom to keep the Confidential Term confidential. The Parties will file the Settlement under seal in this matter, and to the extent that any settlement of the Coverage Action makes reference to the Confidential Term, all such references will also be filed under seal.

29. Notwithstanding the restrictions in Paragraph 28, above, Plaintiffs may disclose, as needed, the Confidential Term to any professional for tax planning or advice; provided, however, that such professional shall first agree, in writing, not to redisclose such Confidential Term to anyone other than for tax planning or advice.

30. Notwithstanding the restrictions in Paragraph 28, above, Graphic Arts may disclose the Confidential Term, as may become necessary in the ordinary course of its business, to any reinsurers, auditors, attorneys, regulators or any other entity to whom disclosure is required so that Graphic Arts may conduct its business in the ordinary course.

31. The Settlement will be construed without regard to any presumption or other rule requiring construction against the party causing the document to be drafted. Plaintiffs, Defendants and Graphic Arts each warrant that they have been represented and advised by counsel with respect to the Settlement.

32. The Settlement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of each of the Parties hereto.

33. The terms of the Settlement will be governed under the laws of the state of Delaware. Furthermore, the Parties irrevocably submit and consent to the jurisdiction of the United States District Court for the District of Delaware in any action, suit or proceeding arising in connection with the Settlement.

Dated: November __, 2007

Mona B. Dobrich, for herself and on
behalf of Alexander T. Dobrich

Harvey L. Walls

Marco A. Dobrich, for himself and on
behalf of Alexander T. Dobrich

Mark A. Isaacs

Samantha Dobrich

John M. Evans

Thomas J. Allingham II, as authorized
agent for Jane Doe, John Doe, Jordan Doe
and Jamie Doe, and on behalf of Plaintiffs'
Attorneys

Richard H. Cohee

Gregory A. Hastings

Nina Lou Bunting

Charles M. Bireley

Donald G. Hattier

Reginald L. Helms

M. Elaine McCabe

Lois M. Hobbs

Earl J. Savage

Dustin D. Davis

Robert D. Wilson

Kelly R. Willing

Patricia S. Oliphant

Randall Hughes II

Donna M. Mitchell

Susan Bunting, on behalf of the District

Charles M. Bireley, on behalf of the School Board

_____ of Graphic Arts
Mutual Insurance Company, on behalf of
Graphic Arts Mutual Insurance Company

Exhibit A

**REVISED ORDER
TO BE SUBMITTED
TO THE COURT**

Exhibit B

RELIGION

Purpose
Holidays
Curriculum
Equal Access
Sponsorship
Accommodation
Moments of Silence
Instructional Time
Released Time
Class Assignments
District Employees

Purpose

To articulate issues of religion within the school and classroom setting.

Recognition of Religious Beliefs and Customs

(The District will adhere to Federal and State regulations pertaining to religious observances in public schools.)

No religious belief or non-belief shall be promoted, or disparaged, by the District. Instead, the District encourages all students and staff members to appreciate and be tolerant of the religious views of others. The District shall foster understanding and mutual respect regarding culture, economic backgrounds, and religious beliefs. In this spirit of tolerance, students and staff shall be excused from participating in practices that will impose a significant burden on the exercise of their religious beliefs.

The District recognizes the educational goals of advancing student knowledge and appreciation of the role our religious heritage has played in the social, cultural, and historical development of civilization.

Religious Holidays

The District will:

Explain the origin, and the historical and contemporary significance, of religious holidays in an unbiased and objective manner without sectarian indoctrination. The District may permit teaching about religious and cultural holidays (Christmas, for example) in the context of teaching about other religious and cultural holidays (such as Hanukkah, Kwanzaa and Ramadan), so as to provide instruction on religious heritage and particular holidays where it is clear the District is not endorsing or encouraging a religious belief.

Permit music, art, literature, and drama having religious themes or bases as part of the curriculum for school-sponsored activities and programs if presented in a prudent and objective manner, as a traditional part of the cultural and religious heritage of the particular holiday, and in a manner where it is clear the District is not endorsing or encouraging a religious belief. The District or any school within the District shall use non-restrictive terms to designate school-sponsored activities or programs involving student participation.

Permit the use of religious symbols such as a cross, menorah, star and crescent, Star of David, crèche, symbols of Native American religions, or other symbols that are a part of a religious holiday (including, but not limited to Christmas, Easter, Passover, Hanukkah, St. Valentine's Day, St. Patrick's Day, Thanksgiving, and Halloween) as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious heritage of the holiday and are temporary in nature.

Prepare the District's official calendar so as to minimize conflicts with religious holidays, which result in the absences of so many students that the educational process is disrupted.

Religion in the Curriculum

Religious institutions and orientations are central to human experience. An education excluding such a significant aspect of human experience is incomplete. It is essential that the teaching about – and not of – religion be conducted in a factual, objective, and respectful manner.

The District will:

Refer to the religious influence of literature, music and drama in the arts curriculum and in school activities only to the extent such references are essential to a complete understanding of the learning experience in such fields of study.

Refer to religious themes in the arts, literature, and history only to the extent necessary for a balanced and comprehensive study of these areas. Such references should never foster or advance any particular religious tenets, or demean any religious beliefs.

Accommodate student-initiated expressions to questions or assignments, which reflect student beliefs or non-beliefs about a religious theme. For example, students are free to express religious belief, including belief in the tenets of Christianity, Judaism, Islam or other religious faith, or non-belief, in compositions, art forms, music, speech, and debate.

Equal Access Act

The Equal Access Act ("the Act") provides that a public secondary school which permits one or more non-curriculum related student groups (any student group whose activities are not directly related to a course offered by the school) to meet on school premises during non-instructional times is prohibited from discriminating against students who wish to conduct a meeting on the basis of the "religious, political, philosophical, or other content of the speech at such

meetings.” Although the Equal Access Act applies specifically to public secondary schools, the District will apply the Equal Access Act provisions to all district schools.

The District permits non-curriculum related student groups to meet on school premises during non-instructional times.

Non-instructional time includes time during the school day when students are required to be in school, but not in a particular class.

The following limitations apply to meetings:

The District retains authority to prohibit meetings that would materially and substantially interfere with the orderly conduct of educational activities within the school.

In order to protect the well-being of all persons present, the District retains authority to maintain order and discipline on the school premises.

Staff monitors may not participate in any religious meetings and the Act prohibits school sponsorship of any religious meetings. This means that school officials may not promote, lead, or participate in any such meetings. The assignment of a teacher, administrator, or other school employee to any meeting is limited to oversight and is merely to insure order and good behavior.

The Act provides that non-school persons may not direct, control, or regularly attend activities of student groups. The meetings of any such religious groups must be voluntary and student-initiated. If such meetings are conducted and controlled by non-school personnel, the District will refuse to permit the meetings. If non-school personnel regularly attend the activities of such a group, the group enjoys no protection under the Act.

School Sponsorship

The District will not sponsor a religious club. The District will treat all non-curriculum related student groups in a manner that is viewpoint neutral. Religious and non-religious student groups are entitled to the same access to the school newspaper, bulletin boards, and the public address system.

Accommodation of Prayer During Instructional Time

The District may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, the District may excuse Muslim students from class to enable them to fulfill their religious obligations to pray during Ramadan.

Moments of Silence

If a school has a “moment of silence” or other quiet period during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other

Exhibit C

Real World Problems and Examples

The following "Real World Problems and Examples" may be helpful in understanding and implementing the School District's Religion policy. However, the correct response to a particular "real world" scenario may depend upon facts that are not present in the following examples. If any teacher, principal, or other administrator is unsure about how to respond to an incident, he or she should bring the incident to the attention of appropriate District personnel.

1. Athletic Teams and Prayer

On the day of the homecoming game, Coach Dale gave his team a last-minute pep talk in the locker room. He then led the team in prayer, as he traditionally did before each athletic event. If any player complained, the coach would say that the player could either stand silently or leave the room while his teammates prayed. Are the coach's prayers constitutional?

Analysis:

No. It is unconstitutional for the coach to participate in a prayer with his students. Although the coach allows players to stand silently or leave the room, this solution is unacceptable. Objecting players would feel isolated and that they belonged less to the group than the other athletes. Also, as a school official, the coach cannot participate in the prayer without implying that the school endorses it.

However, if the students initiated the prayer on their own, the coach did not participate in the prayer with the students, the coach did not sanction or approve of the prayer, and other students were not coerced to participate (e.g., other students pressured or intimidated those students to pray), then the prayer would be constitutional.

2. Religious Discussion by Students at Recess

Every day at recess, Melissa reads her Bible, recites prayers and discusses religion with her fellow students. Melissa is not disruptive and does not coerce any student into participating with her. A teacher, worrying that Melissa might have violated the District's policy on Religion, tells Melissa to stop. Was the teacher's decision constitutional?

Analysis:

No. So long as Melissa does not disrupt the learning process, does not coerce or pressure any other student to participate nor violate any other students' rights, the teacher was wrong to tell Melissa to stop.

However, if Melissa interrupted one of her classes to lead other students in prayer, then the teacher would be correct in telling Melissa to stop. In fact, if the teacher allowed Melissa to interrupt a class for prayer, and the teacher wouldn't allow any non-religious interruption, then the teacher would create the impression of state endorsement of religion which would be unconstitutional.

3. Religious Discussion by Students at Recess - Variation

Now assume that Melissa wants to include her friend, Peter, in her religious discussions during recess. Peter does not want to participate because his parents have raised him in a different belief system than Melissa's. Melissa bothers Peter on a daily basis to join her discussions. When that doesn't work, she decides to quote scripture to Peter whenever she sees him at the start of the day. Peter complains to his teacher that Melissa is bothering him and that she won't stop. Can the teacher tell Melissa to stop quoting scripture to Peter or to stop trying to get Peter to discuss religion?

Analysis:

Yes. Peter does not wish to attend Melissa's religious meetings and Melissa has been harassing him in order to force attendance. Now Melissa's conduct has become unacceptable and the teacher can tell Melissa to stop.

4. Graduation Prayer

Members of the student council approach the principal of their high school and ask to include a prayer at the graduation. The students say that they are the elected representatives of the student body and if it were put to a vote, everyone would agree. Can the principal allow a prayer at graduation?

Analysis:

No. Even though students are asking to include a prayer in the graduation, there are two problems with the request. First, it uses the machinery of student government to include a prayer at the graduation, and student elected prayers at graduation are unconstitutional. Second, the school would approve the prayer at the school-run graduation ceremony. This would be an example of state endorsement of religion and would be unconstitutional.

5. Valedictorian Speaker Gives Prayer

A District high school has a tradition of allowing the Valedictorian to give a speech to the graduating class as a part of the official graduation ceremonies. However, the school also edits the Valedictorian's speech to make sure that it is appropriate for the occasion. These edits go beyond making sure that it isn't disruptive, but also suggest changes to the content of the speech until the school deems the speech appropriate for a graduation ceremony. If Chris, the current Valedictorian, wishes to include a prayer in the speech, may the school allow it?

Analysis:

No. Because the school exercises editorial control over the contents of the speech, allowing a prayer would amount to state endorsement of religion.

6. Valedictorian Speaker Gives Prayer (Alternative)

Unlike in the example above, the school limits its editorial control to ensure only that the speech would not be likely to cause a disruption or provoke a violent reaction. Beyond that, the speaker has full control over the content of the speech and can discuss any topic that the speaker chooses. If Chris now wants to include a prayer, can Chris do so?

Analysis:

Yes. Now that Chris has final say over the content of his speech, the school cannot prohibit the speaker from giving a prayer. In fact, if the school were to do so, it would infringe on Chris's rights to free speech and free exercise of religion.

7. Teaching the Bible

Mr. Mather wants to include in his lesson plan some instruction on the Bible as a literary source. One of the reasons for it is that Mr. Mather's course also includes material on early American writers who frequently cite the Bible. Mr. Mather intends to limit his instruction on the Bible solely as the source material for some of those writers. Mr. Mather will not include in the discussion any comments as to the veracity of the Bible or the nature of his own religious beliefs. May Mr. Mather include this instruction in his lesson plan?

Analysis:

Yes, but the teacher needs to present the material in a secular, objective and non-doctrinal manner. Because this can be a difficult subject matter, the teacher may wish to obtain additional training on how to discuss the Bible, or any other religious material, before proceeding.

8. Bible Club

Students have asked Ms. Springfield to supervise a Bible Club that the students have formed. Instead of just supervising the club, however, Ms. Springfield prepares topics for discussion and reads from scripture to the students. Finally, Ms. Springfield also discusses with the students how she reconciles her own religious beliefs with subjects that the students cover in their classes (for example, her views on creation compared to the theory of evolution). Is Ms. Springfield's conduct appropriate?

Analysis:

No. The Equal Access Act allows students to form non-curriculum related student groups that meet during non-instructional time. However, the act prohibits school officials from running or leading those clubs. Ms. Springfield is actively involved in managing what goes on at Bible Club meetings. As such, the Club violates the Equal Access Act. Ms. Springfield's conduct also violates the Constitution because she, acting as a teacher, provides religious instruction to her students. Unlike Mr. Mather in Question 7, above, Ms. Springfield does not present an objective view-point and her conduct signals an endorsement of a specific religious belief.

9. Teaching Creationism

In addition to teaching about the theory of evolution in his biology class, Mr. Carter also teaches his students about the Theory of Creationism, which posits that the earth is 6,000 years old and follows the Biblical account of Genesis. Is this instruction constitutional?

Analysis:

No. The Theory of Creationism is a religious doctrine and not a scientific theory. Therefore, much like Ms. Springfield's lessons in Question 8, above, Mr. Carter's lessons have made an official endorsement of religion and, as such, violate the constitution.

10. Religious Text Distribution

The Church of Scientology approaches the principal of a District school with a request to distribute copies of Dianetics (the Church's principal religious text) to the school's students. The principal agrees and offers his help. He not only allows the Church of Scientology to set up a table in the main hallway of the school, but he also makes a morning announcement over the school intercom reminding students to pick up their copies of Dianetics before leaving that day. Fearing that the reminder won't be enough, the principal also has teachers dismiss students from class so that they could go and get their own copies. Is the school's participation in the distribution of a religious text constitutional?

Analysis:

No. The school actively encourages students to pick up their own copies of a religious text (the same would apply if it were the Gideons wishing to distribute the Bible or if the Islamic Society of North America wished to distribute the Qu'ran). The school has interrupted classes and reminded students to get their copy of this religious text, which would give an impression of state approval of a religious belief. This goes beyond a merely passive participation in the distribution of material and as such is unconstitutional.

11. Religious Text Distribution - Variation

Instead of the active involvement described in item 10, the school has a history of allowing outside groups some limited access to the school in order to distribute materials. These groups can set up a table outside of the main entrance to the school. The items they wish to distribute are then left on the table for any interested student to pick up (no adult is present to encourage or entice students into picking up the materials). The school is not actively involved in either promoting or discouraging students from picking up these materials. Groups that have distributed materials through this process include the 4-H Club, the Boy and Girl Scouts of America, the local Little League association and the Future Farmers of America (among others).

Now, the Church of Scientology requests the same access: it wishes to set up a table and leave copies of Dianetics on the table for students to take if they so choose. Can the school prohibit them from doing so?

Analysis:

No. If the school prohibited the Church of Scientology from setting up its own table, then the school would probably violate the constitution. The school has provided limited access to outside groups to distribute materials to students. There is no encouragement involved in the distribution. To deny a religious group similar access to distribute a religious text may be taken as disapproval of religion or that specific religion, which would be unconstitutional.

12. School Official Encouraging Bible Club

Middle school students have created their own Bible Club which meets during lunch time. While a teacher is present during the club's meetings, the teacher is there simply to monitor the students and, in fact, spends most of the time grading homework. The Bible Club students really enjoy going, and they invite all of their friends to join.

They have invited their classmate John numerous times and now John is feeling pressured to go. John complains to his dad, Bertrand, about the peer pressure. Bertrand then raises the issue with a school counselor. The school counselor, misunderstanding Bertrand's complaint, tells Bertrand that John could go to Bible Club. Bertrand then points out that they are agnostics and that John doesn't want to go. The school counselor then says that John should go to Bible Club. Is the school counselor's insistence that John go to Bible Club constitutional?

Analysis:

No. First, the counselor cannot encourage students to attend a voluntary student club, let alone a religious one.

Second, the school counselor insisted that John attend Bible Club after learning that his family was not Christian. Not only is this insensitive, but the school took sides between two different religious beliefs and expressed its approval of one of them.

Instead, the counselor should have told the Bible Club students that they cannot continue to ask John to go (or any other student who has declined an invitation to attend).

13. Proselytizing Messages

Because of her outstanding academic accomplishments, Mary has been selected to deliver a speech at her high school graduation. Mary submits her proposed speech to her school's principal to make sure that it wouldn't be disruptive. The speech reads:

"I urge you to seek out the Lord, and let him guide you. Through His power, you can stand tall in the face of darkness, and survive the trends of 'modern society.'

"As Psalm 146 says, 'Do not put your trust in princes, in mortal men, who cannot even save themselves. When their spirit departs, they return to the ground; on that very day their plans come to nothing. Blessed is he whose help is the God of Jacob, whose hope is in the Lord his God, the Maker of heaven and earth, the sea, and everything in them—the Lord, who remains faithful forever. He upholds the cause of the oppressed and gives food to the hungry. The Lord sets prisoners free, the Lord gives sight to the blind, the Lord lifts up those who are bowed down, the

Lord loves the righteous. The Lord watches over the alien and sustains the fatherless and the widow, but he frustrates the ways of the wicked.

“For the wages of sin is death; but the gift of God is eternal life through Jesus Christ our Lord. Have you accepted the gift, or will you pay the ultimate price?”

May the school principal prohibit Mary from making this speech? Analysis:

Yes. Mary's speech is a proselytizing speech. The speech is not only overtly sectarian, but she is trying to convert others to her beliefs.

However, if Mary simply wished to make reference to her personal beliefs with a statement of "Good Luck and God Bless!," the message would not be proselytizing and the school could not prevent her from saying it.

14. Baccalaureate Services

Principal Skinner plans to hold an Episcopalian, baccalaureate service two days before the high school graduation. Principal Skinner writes a letter on school stationery inviting a local reverend to officiate. The school's formal invitations to the graduation include an invitation to the baccalaureate service. Principal Skinner also arranges for the school orchestra to perform at the service and, unless the student has a valid excuse, if an orchestra member does not perform, then they would receive a failing grade in orchestra. Finally, in order to discipline three students who were caught drinking on a school trip, Principal Skinner prohibits them from attending the service. Is the baccalaureate service constitutional?

Analysis:

No, because the school has sponsored the service and a reasonable observer would conclude that the school has endorsed a religious service. A school official (Principal Skinner) was actively involved in planning the service. The school also included an invitation for the service with the school's official invitation for graduation. Finally, the school has exercised control over student attendance at the service by either requiring or prohibiting student attendance. The baccalaureate service is unconstitutional.

15. Baccalaureate Services - Variation

Proud of their children's graduation from high school, a group of parents decide to hold a baccalaureate service. First, they apply for and obtain permission to use of the high school auditorium under the District's open use policies. Second, the parents arrange who the speakers will be and take all necessary steps to set up the facilities on the appointed day. Third, the parents place an ad in the Delaware Wave which reads:

“Proud parents of students graduating from high school have leased the high school auditorium for a privately sponsored baccalaureate service, to be held this coming Sunday. We invite the general public to attend.”

Can the District allow the baccalaureate ceremony to proceed?

Analysis:

Yes. Unlike in the example above, the District is not sponsoring the ceremony. Instead, parents have obtained the use of school facilities in compliance with other District policies. The District's involvement is neutral to this particular use. And because of the newspaper ad, a reasonable observer would know that the baccalaureate service is privately sponsored, not sponsored by the District. There is no fear here that the baccalaureate service would violate the constitution.

16. Prayer By District Employees

The high school football team is playing their arch-rivals at home before an enthusiastic crowd of teachers, parents and students. The team takes a timeout before an attempt at a field goal that could win the game. During the timeout, a student speaker introduces Mr. Hundert, a high school history teacher, over the stadium's public address system. Mr. Hundert steps to the microphone and shouts into it: "parents, teachers and students, let us pray to God to bring our Golden Knights victory...." Is Mr. Hundert's conduct constitutional?

Analysis:

No. Even though Mr. Hundert is not acting as a history teacher at the football game, he nevertheless represents the District when he speaks over the public address system. Mr. Hundert is a school employee using the school's public address system to address a crowd at a school-sponsored event on school property. Because a reasonable observer would perceive his message as government speech endorsing religion, his conduct is unconstitutional.

17. Prayer By District Employees (Variation)

Mr. Hundert's son is the Sussex Central team's kicker. During the timeout, Mr. Hundert does not address the crowd but instead bows his head and quietly prays to God to bring the Golden Knights victory (and his son back to the sideline unhurt). Is Mr. Hundert's conduct constitutional?

Analysis:

Yes. Mr. Hundert is entitled to pray. Since he is not using the school's public address system to address people who perceive him to be representing the District, his prayer constitutes private speech protected by the First Amendment.

18. Homework Assignments

Mr. Smith, a 10th grade English and literature instructor, has assigned his students a book report project in which they are to read a book about a female hero or leader in history or in fiction. He leaves it up to the students to choose the book or piece of literature they will report upon, except that it cannot be something obscene or indecent. Lori, who is Jewish, has a life-long admiration of Esther, as depicted in the Old Testament of the Bible. When Lori makes her proposal to do her report on the Book of Esther known to Mr. Smith, he tells her that she cannot do a report on the Book of Esther because it is religious in nature. Mr. Smith tells Lori that she

must choose a different piece of literature. Is Mr. Smith's instruction that Lori choose another book constitutional?

Analysis:

No. The Establishment Clause only forbids state sponsorship or endorsement of religion or religious activities. When a student independently chooses to address a homework assignment from a religious viewpoint, the Establishment Clause is not implicated because no state actor is involved in either promoting or endorsing the viewpoint. So long as Lori's choice is within the scope of the assignment, she is entitled to have her choice accepted by Mr. Smith. Furthermore, Mr. Smith must judge it against the standards applied to the work of other students.

19. Panel Discussions and Forums

The District dedicated a week at each high school to promote and celebrate diversity. At one of the schools, school officials decided to present a panel discussion on sexual orientation and religion. School officials invited only religious leaders to the panel who represented institutions that accommodated homosexuality. School officials also extended an invitation to students to allow them to participate in the panel discussion. The school vetted the panelists to ensure that they would discuss interpretations of the Bible and other religious documents which supported the argument that homosexuality is not condemned in the Bible. Elizabeth, the class president, asked to be a part of the panel so that she could express her views that homosexuality was against her religious beliefs. The school would not allow Elizabeth to speak because the school considered her views to be inconsistent with the message the school was trying to promote. Was the school's decision to prevent Elizabeth from participating constitutional?

Analysis:

No. First, the school's decision to exclude Elizabeth violated her free speech rights because the decision to prevent her from speaking was not view-point neutral. The school's decision was based on its unconstitutional desire to suppress Elizabeth's view-point.

Furthermore, the school endorsed religion by creating the panel to convey a religious view about homosexuality. The school also excessively entangled itself in religion by selecting religious leaders for the panel and vetting their religious beliefs to ensure that they complied with the message the school was trying to promote. Because of this endorsement and excessive entanglement, the school violated the Establishment Clause.

20. Prayer as Celebration in Sports

Student-athletes on the high school football team are allowed to perform on-the-field celebrations of their on-the-field accomplishments so long as those celebrations are not excessive or taunting. Jordan is a gifted running back and stars on the football team. He is also an altar boy and deeply devoted to the Roman Catholic faith. In order to dedicate his accomplishments to Jesus, Jordan kneels in the end zone after scoring a touchdown, bows his head, prays and then crosses himself. Can Jordan's coach or the school instruct Jordan to stop engaging in this prayer after he scores?

Analysis:

No. Because the school allows on-the-field celebrations, Jordan is entitled to celebrate his accomplishments according to his conscience so long as he does not violate any rule applicable to the contest. The religious expression is a personal one that is neither encouraged nor endorsed by the school or school officials. As such, it does not violate the Establishment Clause.

21. Teacher Prayer Circle in the Cafeteria

Every day at the start of lunch, a group of teachers gather in the middle of the cafeteria and form a prayer circle. The teachers bow their heads and say grace for the assembled students before they let the students get up in lunch lines to get their meals. Is this prayer circle constitutional?

Analysis:

No. The overall context gives the impression that the teachers are acting as government employees. Students are present and would perceive the teachers as government employees while the teachers prayed. The teachers' prayer circle excessively entangles the government in religion, suggests government endorsement of religion and is unconstitutional.

22. Teacher Prayer Circle in the Teacher's Lounge

Every day when they gather for lunch in the teachers' lounge, a group of teachers form a circle, bow their heads and say grace before sitting down to enjoy their lunch. No students are present when the teachers pray, and no teacher or other district employee present in the teachers' lounge at that point is required to acknowledge or participate in the prayer circle. Can the school prohibit the teachers from praying under these circumstances?

Analysis:

No. Students are not present, so the teachers are not likely to create an impression of either governmental endorsement or excessive entanglement of religion. Furthermore, no teacher or district employee is required to participate in the prayer circle. The overall context makes clear that the teachers are not participating in the prayer circle in their official capacities.

23. Silent Teacher Prayer in the Cafeteria

Mrs. Anderson sits down with her lunch in the cafeteria while students are present eating their own lunches. Before eating, Mrs. Anderson bows her head and offers a silent prayer for grace. Can the school tell Mrs. Anderson to stop saying grace under these circumstances?

Analysis:

No. Mrs. Anderson's expression is purely personal in nature. She is not suggesting that students participate in her prayer. The overall context makes clear that she is not acting in her official capacity.

24. Teacher Prayer in the Cafeteria – Variant

Mr. Jones, after monitoring children as they get their lunches, took his lunch and sat at a table with students. Mr. Jones then asked Timmy, a student, if he would like to join him while Mr. Jones said grace. Timmy said “sure,” bowed his head and listened while Mr. Jones said a quick prayer. Was Mr. Jones’ act constitutional?

Analysis:

No. Given the overall context, Mr. Jones would appear as a teacher to Timmy. Mr. Jones’ request that Timmy join him in prayer and his verbalization of that prayer would be a government endorsement of religion.

25. Religious Music at School Sponsored Concerts

In December, the high school sponsors a concert, which it refers to as the “Holiday Concert.” At the concert, the students are invited to sing traditional, religious holiday songs, such as “Silent Night, Holy Night,” “Chanukah, oh Chanukah,” and “African Noel,” as well as secular songs, such as “Let it Snow.” Is the concert constitutional?

Analysis:

Yes. The celebration of winter holidays may have secular and religious aspects. The performance of religious songs does not render the concert predominately religious in nature, so long as the inclusion of a variety of secular songs creates a balanced repertoire that, taken as a whole, clearly demonstrates that no one religion is favored, and that does not endorse or denigrate any particular religious sect or belief.

Exhibit D

School Prayer at Commencement/Graduation and Baccalaureate Ceremonies

The following policy prescribes the method by which employees and agents of the District shall protect the First Amendment rights of students, employees, and citizens of the District as it pertains to Commencement/Graduation and Baccalaureate Ceremonies.

Definitions

- (a) "Student-initiated" refers to any action that is taken only after students have asked that such an action be taken;
- (b) "Student-delivered" refers to any message spoken by a student of the public school at which the message is delivered.

Commencement/Graduation Ceremony

1. School officials may not mandate or organize prayer at graduation or select speakers in a manner that favors religious speech. The keynote speaker at commencement/graduation ceremonies shall be selected by the senior class officers by whatever method they decide. Subject to the provisions of Paragraph 3 below, the content of the keynote address shall be determined exclusively by the keynote speaker. Neither the class officers, the District, nor any District staff member shall implement any selection process (including student-elections) or exercise any editorial control to determine whether or not a political, philosophical, religious, or other message shall be presented during the keynote address. School officials shall include in the graduation program the following disclaimer:

The content of any remarks by the keynote speaker and/or student speakers does not reflect the views of the Indian River School Board or School District, or its staff or other students.
2. Student-initiated, student-delivered, voluntary messages by the Valedictorian, the Salutatorian and/or the Senior Class President may be permitted during graduation or commencement ceremonies. Subject to the provisions of Paragraph 3 below, the content of their respective messages shall be determined exclusively by the student delivering the message. No District staff members shall exclude, include, or otherwise discriminate for or against any student on the basis of the political, philosophical, or religious views of that student, or the content of the message that the student intends to deliver or does deliver.
3. Notwithstanding any of the above, the District, through its agents and employees, has authority to take all actions necessary to maintain order and discipline on district premises, in order to protect the well-being of all persons present. No graduation speaker shall use or exploit the opportunity to speak at graduation to proselytize, convert anyone, or advance, derogate or disparage any particular faith or belief.

Baccalaureate Ceremony

1. Baccalaureate services may be allowed on District property, but may not be initiated, organized, sponsored, conducted, or promoted by the District staff.

Adopted 10/19/04
Revised (formal adoption date)

Exhibit E

COMPLAINT PROCEDURES FOR POSSIBLE POLICY VIOLATIONS

Purpose

The policies contained in this manual represent the official position of the Indian River School Board and the Indian River School District. Noncompliance with these policies could be considered an act of insubordination which could lead to disciplinary action up to and including termination.

It is the intent of the School Board and the School District to ensure compliance with all District policies. Any District employee, guardian, parent, student, or resident of the District who believes that a District policy has been violated is encouraged to raise his or her concern with appropriate District personnel in order to resolve such complaint. It is preferable for complaints concerning policy violations to be resolved at the lowest administrative level and in the most informal manner possible. However, because it may not always be possible or desirable to attempt to resolve complaints on an informal basis, the School Board adopts the formal complaint process contained herein.

Formal Complaint Procedure

1. Formal Complaint

When a District employee, guardian, parent, student, or resident of the District (the "Complainant") believes that a District policy has been violated, he or she may file a Formal Complaint with the Superintendent's designee. The Complainant may obtain a copy of a Formal Complaint form from any District school's main office, the District's central office or the District's webpage.

Complainants may file confidential Formal Complaints by marking the appropriate section on the form. If a Complainant files a confidential Formal Complaint, the identity of the Complainant will not be used in the District's investigation of the complaint unless it is absolutely necessary (for example, where it is the Complainant's word against the Subject's and there are no other witnesses to the alleged violation). If the School Board reviews a confidential Formal Complaint, the School Board will conduct the review in an executive session.

2. Investigation and Corrective Action

The Superintendent's designee who receives a Formal Complaint will promptly investigate the allegations contained in the Formal Complaint. After the complaint has been investigated, but not later than sixty (60) calendar days following the receipt of the Formal Complaint, the administrator responsible for the investigation will issue a written response ("Written Response") to the Complainant. The Written Response will address the allegations of the complaint and may

also include, subject to the parties' rights under law and/or contract, a description of the offending conduct, the manner of investigation, the identity of the investigating administrator, whether the complaint was substantiated, and whether corrective action was taken.

Corrective action, where appropriate, may include the imposition of a sanction against the Subject. Sanctions will be imposed in a manner to deter future violations. Subject to the rights of the Subject under law or contract, sanctions may include, but are not limited to, formal or informal reprimand, suspension, or termination. Factors to be considered in determining an appropriate sanction may include whether the violation was intentional or accidental, whether there is a history of warnings for previous policy violations, and whether the violation has resulted in harm to others.

3. First Level Appeal

If either the Complainant or the Subject of the complaint is dissatisfied with any aspect of the Written Response, either may appeal to the Superintendent for further review of the Written Response. The Complainant or Subject may present any facts that he or she believes are necessary for the Superintendent's review. If permitted by law and contract, the Superintendent will draft his or her own response which will briefly describe his or her own review of the Written Response. The Superintendent's Response will be completed within thirty (30) calendar days of receiving the request for review, and forwarded to the Complainant and the Subject of the Complaint.

4. Second Level Appeal

If either the Complainant or the Subject is dissatisfied with the results of the Superintendent's response, either may request a review by the Board of Education. The Board of Education shall conduct a hearing within seventy-five (75) calendar days of the receipt of a request for School Board review. The Board of Education will conduct its investigation in executive session. The Complainant and the Subject will each have the right to present their case to the Board of Education in person and to be represented by legal counsel if desired. The Board of Education may establish rules for the presentation of evidence during the Board of Education hearing. However, the Complainant and the Subject will each receive at least five (5) minutes to speak before the Board of Education.

After conducting its review, the Board of Education will make a final determination and, if permitted by law and contract, provide its own response ("Board of Education Response") to the Complainant and the Subject. The Board of Education will prepare its Response within sixty (60) calendar days of the completion of the Board hearing. If permitted by law and contract, the Board will provide the Complainant and the Subject copies of the Board Response. The decision of the Board will be final.

Other Rights Under Law or Contract

Nothing in this policy is intended to abrogate the rights under law or contract of any Complainant or Subject. To the extent that anything set forth in these procedures is inconsistent with any parties' rights under applicable law or contract, it is the intent of this policy for the parties' rights under law or contract to be controlling.

Adopted (formal adoption date)

Exhibit F

**Indian River School District
Formal Complaint for Reporting Violations Of The District's Policies**

1. Name of aggrieved person (Mr., Mrs., Miss, Ms.). If you wish to file an anonymous complaint, state "Doe." ¹	Home Phone ()	Business Phone ()
Street address or, if an anonymous complaint, an address to which the response could be sent (city, state and zip code)	If you wish to file a confidential complaint, please indicate so by marking here: <input type="checkbox"/> Yes, this complaint is confidential. <input type="checkbox"/> No, this complaint is NOT confidential.	
2. Against whom is this complaint being filed? Name (last name, first name, middle initial)		
School or District office where this individual works		
Name and place of employment of other individuals (if any) you believe violated the policies in this case:		
3. What did the person(s) against whom the complaint was filed do? Additional details may be submitted on an attachment.		
4. When did these acts occur? Please give the most recent date first if several dates are involved.		
5. Who witnessed these acts?		
6. Where did these acts occur?		

You may file this complaint with the Principal or Assistant Principal of the school where the person you're filing this complaint against works. You may also file a copy of this complaint with the Director of Instruction, Director of Personnel or Assistant Superintendent by mailing it to either of them, care of:

Indian River School District
31 Hoosier Street, RD 2, Box 156
Selbyville, DE 19975

¹ If you file an anonymous complaint, the District's ability to conduct a comprehensive investigation may be limited.

Exhibit G

Dear [Parent/Teacher]:

Enclosed for your information are two policies of the Indian River School District. One policy relates to Religion and one policy relates to School Prayer at Commencement/Graduation and Baccalaureate Ceremonies. These policies have been revised and adopted in response to complaints received from, and litigation filed by, families in the District. The text of the policies was developed by the Board in consultation with the plaintiff families and their lawyers, and lawyers representing the School District, and is intended to strike an appropriate balance between the Constitutional prohibition against state establishment of religion, on the one hand, and the Constitutional guarantees of freedom of speech and the free exercise of religion, on the other. These policies supersede policies previously provided by the District.

/s/ Susan Bunting, District Superintendent of Schools

/s/ Charles M. Bireley, President, Indian River Board of Education

Exhibit H

FOR IMMEDIATE RELEASE

[Date], 2007

Families and the Indian River School District Settle First Amendment Litigation

Wilmington, Delaware --, 2007 -- The Dobrich family, an unnamed family and the Indian River School District have settled litigation that began on February 28, 2005, when the Dobrich family and the unnamed family filed suit seeking damages and declaratory and injunctive relief for what they claimed was a pattern and practice of unconstitutional behavior on the part of the Indian River School Board, the District and District employees. The Board and District denied that there was a custom and practice of conduct that violated the Constitution.

The families and the District have agreed to a settlement that includes the adoption of: (1) revised policies on Religion and on School Prayer at Commencement/Graduation and Baccalaureate Ceremonies which will be mailed to every parent of a student in the District, and to every District teacher, administrator, and staff employee; (2) training procedures for District employees on constitutional religious conduct in a public school setting; and (3) complaint and disciplinary procedures to investigate and correct violations of these and other District policies. In some cases, the written policies were revised to clarify rather than change District procedures that were in place prior to the litigation.

The District's revised policies on Religion and School Prayer at Commencement/Graduation and Baccalaureate Ceremonies (which are attached to this press release) provide for guidelines that will clarify for teachers, administrators, other District employees and students their constitutional rights and responsibilities. Specific examples are included with these policies to provide teachers, administrators and District employees guidance in resolving real world situations that they may face.

Exhibit I

TRAINING

In conjunction with the District's general training practices and procedures, the District will instruct each District employee to review the Religion Policy and the "Real World Problems and Examples," and the School Prayer at Commencement/Graduation and Baccalaureate Ceremonies. In addition, the District will require that District employees sign a statement attesting that they have read and been given an opportunity to ask questions about the substance of these policies as well as the "Real World Problems and Examples." All of these signed statements will be retained in a central file by the District.