

## **SETTLEMENT AGREEMENT AND ORDER THEREON**

The parties jointly move this Court for a fairness hearing. This Court having held a fairness hearing, now finds that this Agreement is a fair, adequate and reasonable resolution of the allegations of the complaint. Based upon the consent of the parties and the Court's review of this Agreement, IT IS THEREFORE ORDERED ADJUDGED AND DECREED AS FOLLOWS:

THIS SETTLEMENT AGREEMENT AND ORDER THEREON ("Agreement") is made and entered into by and between the FULLERTON SCHOOL DISTRICT (hereinafter "District") and the FULLERTON PARENTS FOR GOOD PUBLIC EDUCATION, ET AL. (hereinafter "Plaintiffs") is made by and through their undersigned counsel, who agree as follows:

### **I. INTRODUCTION**

1. Plaintiffs brought an action in Orange County Superior Court alleging that the District's Laptops for Learning Program (hereinafter "Program" or "Laptop Program") violated their rights and the rights of other parents, past, present, and future, to the state constitutionally guaranteed right of a free and equal public education.

2. On \_\_\_\_\_, 2006, the Court certified a plaintiff class defined as: "All parents, past, present, and future, whose students have been enrolled, are enrolled or will be enrolled in the Fullerton School District Laptops for Learning Program who have or may in the future pay fees or seek waivers from such fees." As a result, the named Plaintiffs and their counsel represent the members of the described class.

3. The District contests the allegations of the complaint and further denies that it has or would violate any of the Plaintiffs' or other class members' rights or has engaged or would in any way engage in any unlawful discrimination.

4. Both the Plaintiffs and the District desire to avoid the further expense in time and resource of pursuing this action through discovery and trial phases. Therefore, the parties agree that the terms of this Settlement Agreement and Consent Decree ("Agreement" or "Decree") are in the best interest of the District and the members of the Plaintiff class.

5. Plaintiffs believe that this Agreement represents a reasonable compromise of the claims alleged in this action, and that the terms of this Agreement adequately protect the legal interests of the Plaintiff class in the claims asserted against the District.

6. Once considered and approved by the Orange County Superior Court, this Decree fully resolves the claims alleged in this action.

7. The parties agree to the jurisdiction of this Court over the parties and the subject matter of this action and agree to the entry of this Agreement, which resolves all issues raised by the complaint. This Agreement is entered into by the District without admission that any of its acts, past or current, are in violation of any law; accordingly, this Agreement shall not constitute an admission, adjudication or finding on the merits of the allegations made in the complaint. The Agreement is, however, final and binding on the parties and their officers, agents, employees and successors and all persons acting in concert or participation with them and all class members represented by the Plaintiffs.

8. The terms of this Agreement shall bind the Plaintiff class and District, as well as any successors, agents, employees, assigns, or any others who exercise any of the authority possessed or controlled by District at the time of this lawsuit and agreement.

9. This Agreement shall have a term of five (5) years from the date of court entry of the Order, unless extended by agreement of the parties. The Court during that time shall retain jurisdiction over this matter to ensure compliance with the terms and conditions of this Agreement.

10. Plaintiff class members shall have the right to seek judicial relief if the District does not comply with any of the terms and conditions of this Agreement. Before seeking judicial relief, Plaintiff class members must have presented written objections within sixty (60) days from when a violation occurred or could have reasonably been discovered. The parties shall then have sixty (60) days from the date of Plaintiffs' service of the objections to negotiate a resolution. If the dispute cannot be resolved after the parties' good faith discussion, the parties will inform the Court of their progress and either submit a proposed order or a statement of unresolved issues and a request for a hearing.

## **II. GENERAL TERMS**

### **A. Future Operation of the Program and Policy Adoption.**

11. The District shall adopt a Laptop Program by way of the policy attached hereto as Appendix "A" and by this reference made a part hereof. It is expressly understood and agreed that so long as the District offers the program in accordance with the policy, such program would be consistent with and not in violation of any of the constitutional rights of members of the class. It is expressly agreed, however, that the adoption of such policy and the operation of such a program is related uniquely to the Laptop Program or a substantially similar program that involves parent financial contribution for computer acquisition. Any other program would operate outside the course and scope of this Agreement and would not be covered by this Agreement or by the decision in this matter. The amount charged by the District for insurance

will be consistent with industry standards, and the District shall bear the burden to justify, by a preponderance of the evidence, the reasonableness of the amount on a cost/benefit basis if for any reason it exceeds that amount.

12. In any materials describing the Laptop Program or any substantially similar program which involves parent financial contribution for computer acquisition, the District shall include the following statement in a clear and distinct manner (no smaller than 12 point font):  
“The Fullerton School District is committed to the California constitutional mandate of making educational activities available to all students without regard to their family’s ability or willingness to pay fees or request special waivers.”

B. Monetary Relief.

13. The District agrees to set aside in a special reserve fund the sum of Fifty-Two Thousand Dollars (\$52,000.00) to provide for the full settlement of individual claims of qualified claimants (“Fund” or “Claim Payment Fund”). In no event shall the District be required to augment or increase the amount set aside in the Fund. If, after payment of all approved claims, as further described below, any remaining portion of the fund which has not been distributed shall be returned to the District’s General Fund.

14. The claims process shall be as follows:

(a) Within thirty (30) days after entry of the Order on this Agreement, the District shall send a written notice (the form of which is set forth in Appendix B) of settlement of this action, and an individual claim form (the form of which is set forth in Appendix C) by certified mail to the last known address of any individual who may qualify for relief under the terms of this Agreement. Any person who entered into a parent laptop lease purchase agreement with the District or paid funds to the District for

the lease or use of a laptop computer for use in the Program, except for insurance, may qualify for relief. Claimants shall be entitled to a return of any monies actually paid for a laptop computer or laptop computer use, excluding any insurance payments, with the express understanding that anyone for whom a claim is granted waives and relinquishes any right, title or interest in having any ownership or right to purchase a laptop computer, and agrees to the return of the laptop computer currently being used, with the understanding that should claimant wish his/her child to continue in the program, the child would be allowed to continue in the program under the conditions and terms of the policy as outlined in Appendix A.

(b) To be eligible for monetary relief, an individual must submit a fully completed claim form to the District within thirty (30) days following the mailing of the notice.

(c) Within thirty (30) days after time for submitting claims has expired, the District shall provide copies of all claim forms received to the Plaintiffs' attorney, together with any dispute that the District has with respect to the validity of those claims.

(d) Within twenty (20) days of the submittal of the information, counsel for the parties will meet and agree to a final claim payment list by name and amount ("Approved Claim List"). Any disagreement shall be submitted to a single arbitrator for a final and binding decision, selected from a list of seven independent attorneys provided by the Public Law Center. The parties shall alternately strike names with the first strike determined by lot. Payment shall be made within thirty (30) days of final determination of allowed claims.

(e) Should the total amount of approved claims exceed the amount set aside in the fund, the fund will be distributed among the claimants on a pro rata basis, i.e., the payment shall be on the basis of the percentage of the total fund equal to the allowed individual claim's relationship to total allowed claims.

C. Attorneys' Fees and Costs.

15. The District shall be responsible for paying the Plaintiffs' attorneys' fees and costs in the amount of \$25,000.00.

D. Settlement and Release.

16. It is hereby expressly agreed between the parties on behalf of themselves and all members of the class, that this Agreement settles any and all claims, demands, causes of action, or matters raised by the complaint and that the consideration provided in this Agreement for claims is a full and complete settlement and satisfaction of any and all such claims. As a result, the Plaintiffs, on behalf of themselves and all members of the class, hereby release and forever discharge the District, its officers, agents, and employees, from any and all demands, claims, complaints, causes of action, obligations, damages, attorneys' fees and costs, and liabilities of any nature whatsoever, whether or not known, suspected or claimed as they relate to the Laptops for Learning Program.

17. All parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages and liabilities being released, and they expressly agree to assume the risk of possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects, regardless of such additional or different facts.

**ORDER**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

APPROVED AND AGREED TO:

RUTAN & TUCKER, LLP

By \_\_\_\_\_  
DAVID C. LARSEN  
Attorneys for District

AMERICAN CIVIL LIBERTIES UNION

By \_\_\_\_\_  
HECTOR VILLAGRA  
Attorney for Fullerton Parents  
for Good Public Education, et al

**APPENDIX A**  
**FULLERTON SCHOOL DISTRICT**  
**STUDENTS LAPTOP CHOICE EDUCATION PROGRAM**

**Purpose and Intent**

With the rapid changes in technology, many students are computer savvy and either own or have access to computers. In addition, there are many students and parents who would like the opportunity of having a computer or additional opportunities to use computers in connection with the instructional program. Technology through the use of laptop computers and wireless Internet access presents a unique and innovative opportunity to provide an alternative instructional methodology. In order for such instruction to be effective, however, every student in the classroom should have equal access to a computer during the instructional year.

The District has entered into an arrangement with a nationally recognized computer manufacturer to assist parents in the acquisition of laptop computers, and is willing to install a wireless network within classrooms to provide alternative instructional methodologies in addition to the traditional approach. The District developed a pilot program in the 2004-05 school year which has demonstrated that such a program may be successful with substantial community, parent and staff support.

It is the intent of this policy to provide a computer-based instructional program to be known as the Laptops for Learning Program as a District choice program in accordance with District policies 5116, 5117 and 5118, subject to the modifications contained in this policy, recognizing the unique aspects of that program. The choice program may be instituted on a school-wide or as a school within a school on a grade or classroom basis when the classroom is organized as a cohort for reasons independent of the laptop program, such as GATE, I.B.,

combination classes or other specialized classes or programs. When operated on a grade or classroom basis, the program should follow the students through their career at the same school, subject to the provisions of this policy, *e.g.*, a second grade program will become a third grade program the subsequent year. However, when students promote from sixth grade to seventh grade at a different junior high school, the program will have to be reinitiated in accordance with this policy, with the exception that those students in a sixth grade laptop program at the conclusion of the 2005-06 school year who matriculate to Ladera Vista or Parks Junior High School, will be continued in such a program until the completion of the eighth grade year, provided that the District in its sole discretion determines that it has the necessary resources to provide that program and that should there be any vacancies in the classes provided for those students, those vacancies will be filled by random selection from volunteers, without reference to whether a volunteer intends to lease a computer, request assistance in obtaining a computer, or desires to use a school-provided computer. When students within a grade or class have moved up a year and program status follows the students, the grade or classroom of origin must achieve its own choice status in accordance with the provisions of this policy.

Established laptop programs shall continue in existence, subject to the terms and conditions of this policy. See Continuation of the Program.

### **Initiation of the Program**

A parent or teacher may begin the process of creating a new program or expanding an existing program by submitting a written statement of interest to the principal. Upon receipt of such statement of interest from at least ten parents representing the same constituency or a teacher(s), or upon the principal's own initiative, the principal shall hold at least two (2) information meetings for parents and staff to discuss and explain the responsibilities and benefits

of the program. The principal will also present the statement of interest or the principal's intent to apply for recognition of a program to the school site council. After meetings have been held, the principal will survey in writing the parents of all currently enrolled students who would be impacted by the proposal, using the survey attached as Appendix D. The survey shall identify interest in participating in the program, including willingness to voluntarily purchase or lease a laptop computer through the District on the basis of a three-year commitment; provided that if parents choose to return the laptop and discontinue making payments before the end of the lease term, the lease shall terminate as provided in the lease/purchase agreement, and the parent shall have no continued liability for additional payments as of the day the lease is terminated. The survey shall also inform parents of the potential to borrow, at no cost other than insurance, District-owned computers if the 90% funding level is achieved, as well as the availability of financial support options for those needing assistance to lease/purchase their computers. The principal shall also determine whether other funds are available to acquire laptop computers on behalf of students such as state/federal funds available to the school apart from the District's general fund, as well as funds generated from community sources which could be made available as grants in aid or scholarships for students who cannot afford to purchase or lease a computer in accordance with District approved standards for aid/scholarships. Applications for aid/scholarships shall be received and maintained in a confidential manner. If the principal's survey of parents/guardians shows that at least 90% of the students eligible to participate in the program will either lease their own computer through a lease/purchase agreement or through a grant/aid program – e.g., for a fifth grade of 100 students, the parent or guardian of 90 students must have checked off item 1 or 2 on the survey (Appendix D) – the principal shall present an application for a Laptop Program to the Superintendent, with a copy to the school site council.

Alternatively, if the percentage of students that will lease their own computers, through lease/purchase agreements or grants/aid, plus the percentage of students that can be assigned computers purchased with local/state/federal funds apart from the District's unrestricted funds, is at least 90%, the principal shall present an application for a Laptop Program to the Superintendent, with a copy to the school site council. (The Board in its sole discretion may waive the 90% requirement on an individual school or grade basis.) The application will further set forth a plan to ensure computer availability for those students whose families choose to borrow a computer through the District. Any school implementing the program shall provide computer availability in accordance with this policy for those students enrolled in the program whose families choose to borrow a computer through the District. School-owned computers must be made available to such students for their school related use during the entire instructional year, both at school and at home. Upon receipt of an application, the Board may approve the application, return the application to the principal with direction for modification, deny the application, or defer implementation until adequate funds or technology resources are available to the District.

### **Access to the Program**

Notwithstanding Policy No. 5118, those students who reside in the established geographic attendance area of the school where the program is established will be given first priority for enrollment in the program. Any student not wishing to participate in the program shall have an absolute right to transfer from the school, grade or class where the program is in place to a traditional program within the District. After all students residing in the established attendance area have been accommodated, any remaining capacity will be filled by District transfers in accordance with District Policies 5116 and 5117, with the exception that those

students who attend on intradistrict transfer will not be required to reapply for a transfer, so long as they continue in the laptop program. If the number of transfer applications for the program exceeds the number of spaces available, the principal shall hold an impartial and random lottery in accordance with District procedures and applicable laws and regulations. Whether a family has bought or borrowed a computer, or intends to buy or borrow a computer, may not be considered when reviewing or approving transfer applications. No student residing in the established attendance area who wishes to be involved in the program shall be displaced by pupils transferring from outside the attendance area. All policy related to program computers – including, but not limited to, school-year access and usage – shall be the same for all students participating in the program, whether computers are bought or borrowed from the District. Among other things, computers shall be distributed and collected in such a manner as to afford the same school year access for all students participating in the program, and computers shall be functionally equivalent in terms of hardware, software, and technical support for all school related use for all students participating in the program. All District materials describing the Program shall include an explanation of parents’ options including the option to borrow, at no cost other than insurance, a District-owned computer if sufficient support of the program is established. Students who utilize a laptop computer owned by the District will be responsible for damage or loss on the same basis as textbooks or other school property; however, a District self-funded insurance program will protect against any cost which might result from non-negligent damage or loss in an amount consistent with industry standards. Current parent cost is \$55 per year.

### **Continuation of the Program**

Once a laptop program has been established for a group of students, the program should continue in effect for that group of students as they move through their educational experience, as set forth under “Purpose and Intent” above, provided that at least 85% of the students in the program have a computer available to them as a result of a lease/purchase, grant in aid/scholarship, or through special local/state/federal funding apart from the District’s unrestricted funds, the District has adequate resources to fund the program as determined by the Board of Trustees, and the educational value is validated through the evaluation process. (The Board in its sole discretion may waive the 85% requirement.) In the event that the program for any particular group is discontinued, network access will remain available for use of the leased/owned computers as part of the educational experience to the extent possible and economically feasible.

All programs shall be evaluated annually. The evaluation shall include reviewing the test scores relating to basic skills for students participating in the program, and be based upon teacher, parent and student input. An evaluation report shall be completed annually to the extent required by the Education Code.

A statistical summary of the survey showing the number of parents surveyed and the responses to each of the four questions in Appendix D and any evaluation reports shall be published on the District’s website within fourteen (14) days of the survey or evaluation’s completion.

**APPENDIX B**

**NOTICE OF RIGHT TO FILE A CLAIM**

TO ALL PARENTS OF STUDENTS IN THE LAPTOPS FOR LEARNING PROGRAM WHO ENTERED INTO A LEASE/PURCHASE AGREEMENT WITH THE FULLERTON SCHOOL DISTRICT FOR A LAPTOP PURSUANT TO THE LAPTOPS FOR LEARNING PROGRAM OR PAID FUNDS TO THE DISTRICT FOR THE LEASE OR USE OF A LAPTOP COMPUTER:

**Please read this notice carefully. It may affect your rights.**

On \_\_\_\_\_, a group of parents under the title of Fullerton Parents for Good Public Education filed a complaint in the Orange County Superior Court against the Fullerton School District. The complaint alleged, among other things, that the Laptops for Learning Program violated the state constitutional guarantees of a free and equal public education. The District denied the allegations of the complaint and further denied that any of its acts, past or current, are in violation of law or state constitution. Notwithstanding this dispute, the District and the Plaintiffs both share the goal of having an effective, non-discriminatory free public education, and ensuring that any Laptops for Learning Program is truly voluntary, and participation in any such program is not conditioned on payment of fees. Therefore, in the interest of resolving this action without contested litigation, the District and the Plaintiffs have reached a settlement.

The Settlement Agreement which is enforceable by the Court was entered by the Court on \_\_\_\_\_.

You are receiving this notice because you may be entitled to monetary relief under that Agreement. Please read the rest of this notice carefully, because it explains portions of the Agreement. If you then believe that you may be entitled to relief, follow the instructions at the end of this notice.

Under the terms of the Agreement, the District agreed to permit any individual who entered into a Lease/Purchase Agreement with the District to cancel it. An individual who wishes to cancel the Lease/Purchase Agreement has the option to seek a refund of monies paid under it. Whether a refund is sought or not, by canceling the Lease/Purchase Agreement, you will no longer be entitled to purchase or retain the computer at the conclusion of the Lease/Purchase Agreement. You would still, however, be entitled to remain in the Laptop Program and be eligible to borrow at no cost other than insurance a District-issued computer, if in fact enough individuals choose to voluntarily continue with the program by way of continuing to maintain their Lease/Purchase Agreements or request and are qualified for assistance.

To cancel your Lease/Purchase Agreement and/or claim a refund, you must submit a fully-completed claim form within thirty (30) days of the date this notice was mailed on the form provided with this notice. The claim must be submitted to: Fullerton School District, Laptop Claims, 1401 West Valencia Drive, Fullerton, CA 92832. If you do not wish to cancel your Lease/Purchase Agreement, you do not need to take any further action.

If you have any questions concerning this Settlement Agreement or your right to relief, you may call: Hector Villagra, at the American Civil Liberties Union, 2140 W. Chapman Avenue, Suite 209, Orange, CA 92868, (714) 450-3962, or write to Tony Anderson at the Fullerton School District, 1401 West Valencia Drive, Fullerton, CA 92833.

**APPENDIX C**

**CLAIM FORM**

(Fullerton Parents for Good Public Education, et al. v. Fullerton School District)

To cancel your Lease/Purchase Agreement and/or make a claim for individual relief under the Settlement Agreement in the case of *Fullerton Parents for Good Public Education, et al. v. Fullerton School District*, you must complete, sign, and date this entire form, and mail or deliver the form to the Fullerton School District by \_\_\_\_\_. Completing this form does not entitle you to relief, but it is necessary in order for you to be considered for relief under the Settlement Agreement. You must send the form to: Laptop Claims, Fullerton School District at 1401 West Valencia Drive, Fullerton, CA 92832.

**SELECT ONLY ONE:**

- I wish to cancel my Lease/Purchase Agreement and file a claim for refund.
- I wish to cancel my Lease/Purchase Agreement but do not want to claim a refund

Full Name of Claimant: \_\_\_\_\_

Address of Claimant: \_\_\_\_\_

Name of Student: \_\_\_\_\_

Date of Attendance: \_\_\_\_\_

School of Attendance \_\_\_\_\_

Amount of Monies Paid for a Laptop  
Computer Lease Exclusive of Insurance \_\_\_\_\_

I understand that as a result of canceling the Lease/Purchase Agreement, I will no longer have any right, title, or interest in any laptop computer, or the right to purchase a laptop computer as set forth in the Lease/Purchase Agreement. It is further understood that should there be inadequate funds in the amount set aside, I will receive a pro rata share of funds. I further understand that by canceling the Lease/Purchase Agreement I am not precluded from continuing in the Laptop Program with a borrowed computer if such a program continues. (The Program may be discontinued if in fact the number of individuals requesting refunds exceeds 15% of those currently enrolled in the program.)

Date: \_\_\_\_\_

**APPENDIX D**  
**FULLERTON SCHOOL DISTRICT**  
**Student Laptop Program**

Dear Parent,

Your child's grade level has the opportunity to participate in the Student Laptop Program in the coming year. This program is only possible if 90% of the necessary funds can be identified through a combined percentage of parent-lease agreements, site funds (if available) and site/district technology fundraising.

Your response to this survey will assist your child's school in determining its ability to proceed with implementation of the program. It will also indicate your intent to lease, borrow or request financial assistance toward ownership of the laptop for your child.

Student Name(s): \_\_\_\_\_

Parent Name(s): \_\_\_\_\_

Date: \_\_\_\_\_

Student Grade in 2006-2007: \_\_\_\_\_

PLEASE SELECT ONE OF THE FOLLOWING:

\_\_\_\_\_ **I want my student to participate in the Laptop Program through a lease/purchase agreement.** I understand that the costs for participating are estimated at \$50.00 per month for three years or, in the alternative, a one lump sum payment of approximately \$1,500, including warranty and insurance, per student for a 3-year lease/purchase term and will result in ownership of the computer at the end of the term. Lease/purchase options include monthly, quarterly, annual or one-time full-payment options.

\_\_\_\_\_ **I want my student to participate in the Laptop Program through a grant/aid program.** I understand that the financial assistance model I select will give my child full educational usage of the computer and may include ownership options at the end of the term of agreement. In order to provide financial assistance, a confidential meeting with the site principal is required to determine appropriate financial support options.

\_\_\_\_\_ **I want my student to participate in the Laptop Program using a District-owned computer at no cost to me other than insurance.** I understand that my student will borrow a computer and have access to the computer throughout the instructional year both at school and at home, and will return the computer to the school at the end of the school year. There are no ownership options available with this selection.

\_\_\_\_\_ **I do not want a laptop program initiated at my child's grade level.**

THIS FORM IS DUE TO YOUR CHILD'S SCHOOL BY \_\_\_\_\_.

A summary of the survey will be shared with you along with information on next steps, if any, toward implementation or cessation of the program.