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BY: \_\_\_\_\_

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

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

16 Plaintiff,

17 v.

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

Defendants.

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

**VERIFIED COMPLAINT FOR**  
**INJUNCTIVE AND**  
**DECLARATORY RELIEF**

## JURISDICTION AND VENUE

1  
2           1.     This action arises under the United States Constitution, particularly  
3 the First and Fourteenth Amendments, and under federal law, particularly 28  
4 U.S.C. § 2201, 2202 and 42 U.S.C. §§ 1983 & 1988.

5           2.     This Court is vested with original jurisdiction over these federal  
6 claims by operation of 28 U.S.C. §§ 1331 and 1343.

7           3.     This Court is vested with authority to grant the requested declaratory  
8 relief by operation of 28 U.S.C. §§ 2201 *et seq.*

9           4.     This Court is vested with authority to grant the requested injunctive  
10 relief pursuant to 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil  
11 Procedure.

12          5.     This Court is also authorized to award damages under 28 U.S.C. §  
13 1343(4).

14          6.     This Court is authorized to award reasonable attorneys' fees and  
15 expenses pursuant to 42 U.S.C. § 1988.

16          7.     Venue is proper in the United States District Court for the Central  
17 District of California under 28 U.S.C. § 1391(b), in that the events giving rise to  
18 this action occurred therein.

## INTRODUCTION

19  
20          8.     Defendants have instituted a Policy (the "Policy") and practice that  
21 permits students at Superior Street Elementary School to perform in a yearly talent  
22 show at the school. Defendants allow students to perform a talent of each student's  
23 choosing, including performing songs that contain lyrics discussing a variety of  
24 topics. Pursuant to this Policy and practice, Defendants have approved many other  
25 students at Superior Street Elementary School to perform their talents free of  
26  
27

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

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

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

12 Are you listenin'?

13 Hear me talk, hear me sing

14 Open up the door

15 Easy less, easy more

16 When you tell me to beware

17 Are you here? Are you there?

18 Is there something I should know?

19 Easy come, easy go

20 Noddin' your head

21 Don't hear a word I said.

22 I can't communicate. When you wait.

23 Don't relate.

24 I try to talk to you

25 But you never even knew

26 So what's it gonna be?

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

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

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

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

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

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

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

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



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

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

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

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

2 And now is the time for the people to rise

3 Lift up a shout, everybody cry out

4 Raise your voice, shout out a noise

5 And dance a dance of joy

6 [Chorus]

7 We're goin' into all the world

8 Carrying the light of Jesus

9 And we shine, yeah we shine

10 In the darkest place we shine (x2)

11 And now is the time for the people to rise

12 Lift up a shout, everybody cry out

13 Raise your voice, shout out a noise

14 And dance a dance of joy

15 [Chorus x2]

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

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

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

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

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

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

1 17. However, under the Policy, Defendants prohibit any song, dance, or  
2 other talent that has a religious message.

3 18. Defendants believe that performing a talent with a religious message  
4 is "offensive" and violates the separation of church and state.

5 19. Under Defendants' Policy, religious speech is treated similar to  
6 profanity or other vulgar speech that must be censored from Talent Show  
7 performances.

8 20. Just as students who auditioned to perform songs with profanity were  
9 told to select a different song to perform, Plaintiff B.H. was likewise told he must  
10 choose an entirely different song to perform, one which "does not say 'Jesus' so  
11 many times."

12 21. Defendants authorized and approved the Talent Show scheduled for  
13 February 4, 2011 at Superior Street Elementary School.

14 22. Pursuant to their Policy and practice, Defendants prohibited Plaintiff  
15 B.H. from performing his selected talent in the Talent Show due to the religious  
16 message contained in B.H.'s selected talent.

17 23. Alternatively, Defendant Board Members also delegated final  
18 policymaking authority to Principal Schubert to oversee the Talent Show and to  
19 approve all student performances for the Talent Show. The operation of the Talent  
20 Show, including the choice of music performed by the participants, is not governed  
21 by any policies of the Defendant Board Members, and therefore, the delegation of  
22 final policymaking authority to Principal Schubert as it relates to the Talent Show  
23 is not subject to review or constraints by the Defendant Board Members.

24 24. Pursuant to the Defendants' Policy and practice, Defendant Schubert  
25 prohibited Plaintiff B.H. from performing his selected talent in the Talent Show  
26 because of the religious message contained in B.H.'s selected talent.

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

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

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

## 11 IDENTIFICATION OF PARTIES

### 12 Plaintiff

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

3 **STATEMENT OF FACTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

3 118. Discrimination against a religious viewpoint is unconstitutional.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

17 **PRAYER FOR RELIEF**

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

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

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

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

10          4.     That the Court award Plaintiff nominal damages.

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

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

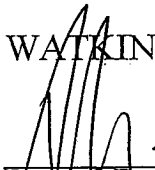
17          7.     That the Court grant such other relief as the Court deems equitable,  
18 just, and proper.

1 Respectfully submitted this <sup>th</sup> 27 day of January, 2011.

2  
3 ALLIANCE DEFENSE FUND

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10 \* Applications for admission pro hac vice submitted herewith.

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

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**VERIFICATION**

I, Adriana Hickman, verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Complaint and the facts contained therein are true and correct.

Executed this 25<sup>th</sup> day of January, 20 11, in Winnetka, California.

  
\_\_\_\_\_  
Adriana Hickman