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June 13, 2018  
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Office for Civil Rights  
U.S. Department of Health & Human Services  
200 Independence Ave. S.W.  
Washington, D.C. 20201

ATT: David M. Hyams, Esq.  
Senior Enforcement Advisor (Contractor)

RE: **REQUEST FOR RECONSIDERATION**  
OCR Refusal to Investigate Complaint, by Michael Leoz  
**Vaccine Religious Freedom Class Action Complaint**  
**Criminal Participant Superintendent Karen Janney**  
**and the Sweetwater Union District High School District**  
OCR Transaction Number 18-296709

David and Michael,

This is a request for Reconsideration of the U.S. Department of Health and Human Services Office of Civil Rights' decision to refuse to investigate my **Vaccine Religious Freedom Class Action Complaint** (hereinafter VRF Complaint), OCR Transaction Number 18-296709, in particular against Criminal Participant Superintendent Karen Janney and the Sweetwater Union High School District (hereinafter the District), including their Board of Directors. The following reasons explain why OCR should have taken action on my VRF Complaint, and therefore why the decision to not take affirmative action on my behalf was arbitrary and capricious and an abuse of discretion and in its totality wrong and unjustified.

#### **BACKGROUND**

On July 2, 2017 I submitted to the U.S. Dept. of Health Services Civil Rights Division my **Class Action Complaint: Violation of Civil Rights and Criminal Conspiracy by Criminal Participants – First Amendment Demand for Civil and Criminal Prosecution and Withholding of Federal Financial Assistance – Restitution for Harm and Injury**, OCR Transaction # 17-277069. In such complaint I named 16 plus entities and individual, which I refer to as Criminal Participants, that jointly, among themselves and separately were violating my constitutional rights, among them my religious right and freedom to not vaccinate my children, in particular Criminal Participant Francisco Escobedo, Superintendent of the Chula Vista Elementary School District, whose actions were affecting my children Adrian and Annette Beas' ability to attend elementary school.

On Feb. 15, 2018 I submitted to OCR my **Vaccine Religious Freedom Class Action Complaint**, OCR Transaction Number 18-296709, which I addressed to the U.S. Dept. of Health and Human Services' Office of Civil Rights, Conscience and Religious Freedom Division (hereinafter OCR). In the VRF Complaint I clearly note that Superintendent Janney and the Sweetwater Union High School District (hereinafter the District) were refusing to allow my daughter Annette Beas to attend 7<sup>th</sup> grade in the 2018-2019 school year for lack of vaccination as required by California's Senate Bill 277 (SB 277). **Vaccination and vaccines of any**

**kind are against me and my daughter's firmly held religious beliefs, as is clearly explained in my VRF Complaint.**

In the OCR Conscience and Religious Freedom internet portal<sup>1</sup> it provides the information necessary for any man or woman such as myself to file a complaint with OCR. It states that, as pertains any complaint and complainant, that such complaint must provide "a brief description of what happened, including how, why, and when you believe your (or someone else's) conscience or religious freedom rights were violated", as well as "any other relevant information".

My VRF Complaint contains all the necessary information to prove that me and my daughter Annette's religious rights are being violated by the District, and that OCR must take action because OCR has the jurisdiction to do so. The OCR internet portal instructions do not request that I explain to OCR what its jurisdiction is; OCR must find how such laws and regulations apply, should identify specific provisions of laws and regulations that would apply to my VRF complaint, and determine to what extent its authority exists to favor me and my VRF Complaint, which includes verifying if the Criminal Participants named therein have any agreement and or obligation directly or indirectly with OCR to determine if OCR has jurisdiction to investigate and take action on my VRF Complaint.

This Request for Reconsideration is for, covers and is only in reference to my **Vaccine Religious Freedom Class Action Complaint, and Criminal Participants Superintendent Karen Janney and the Sweetwater Union High School District.**

I adopt herein my **Vaccine Religious Freedom Class Action Complaint** and all information therein in its entirety by reference and incorporation.

#### **TIMELINESS**

OCR issued its response letter refusing to investigate my VRF Complaint (hereinafter OCR's response letter) on May 14, 2018. David Hyams sent me an email stating that I had 30 days from his email date, May 18, 2018, to file my request for reconsideration, therefore my request is submitted timely.

#### **INABILITY TO PERFECT COMPLAINT AND ADEQUATELY REQUEST RECONSIDERATION - STANDARD FOR REVIEW -**

Since the submission of my VRF Complaint I have contacted numerous persons in OCR, including David Hyams and Michael Leoz requesting a copy of OCR's procedures for handling complaints so I could supplement my VRF Complaint as necessary in order to provide OCR all necessary information to proceed to investigate my VRF Complaint, but OCR has refused to provide such readily available information. Therefore, deficiencies in my filings should be addressed by OCR under less stringent requirements being that I am not learned in the law, I am not represented by an attorney, and in particular **because the OCR complaint procedures do not require such legal expertise from me in order for OCR to investigate my VRF Complaint.**

David Hyams has advised me that there are no appeal procedures afforded by OCR, that my only option to challenge OCRs' refusal to investigate and take action on my VRF Complaint is through a request for reconsideration. Therefore, it is understood that such request for reconsideration will be a review of OCR's

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<sup>1</sup> See <https://www.hhs.gov/conscience/complaints/filing-a-complaint/index.html>.

response, a second view or examination, revision, consideration for purposes of correction,<sup>2</sup> and that it will be done with fairness and objectivity, while following applicable law.

### THE RESPONSE LETTER FROM OCR IS INADEQUATE AND VAGUE

The response letter issued by OCR is inadequate, as it is vague and issued under color of law. The response reads in part:

*“OCR enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act (HIPPA) Privacy, Security and Breach Notification Rules.*

***We have Reviewed your complaints and have determined that OCR will not further investigate your allegations regarding the “Criminal Participants” in either 17-277069 or 18-296709. Therefore, OCR is closing these complaints with no further action, effective the date of this letter.*** See Exhibit 1, OCR response by Michael Leoz, OCR Regional Manager.

The OCR response letter is general in nature and does not express any reasoning; it simply implies the existence of certain laws and regulations over which OCR has authority and jurisdiction, simply referring to *“federal civil rights laws which prohibit discrimination in the delivery of health and human services”*, and it advises that it is closing my VRF Complaint, **BUT the response letter never explains under what grounds it was closing my VRF Complaint**, making the response vague, written in language that is so indefinite or lacking in precision that an individual of ordinary intelligence is forced to guess at its meaning. In such general terms OCR is simply saying that it only has jurisdiction over entities that *“deliver health and human services”*, and therefore it further implies that such jurisdiction extends to persons affected by such delivery or refusal to deliver such health and human services to any man and woman entitled to it who might file a religious rights and freedom civil rights complaint with OCR.

The OCR response has no explanation as to why OCR does not have subject matter jurisdiction over my VRF Complaint, or why it does not have personal jurisdiction over the involved parties, and does not state why the District is not under its jurisdiction, giving no findings of fact and no conclusions of law, and such decision is therefore arbitrary and capricious and an abuse of discretion. The response failed to address why and how the OCR subject matter jurisdiction does not apply to any and all of the Criminal Participants named in my VRF Complaint. If OCR were to have civil rights complaint procedures similar to those from the U.S. Dept. of Education<sup>3</sup> (which is unknown to me because **OCR refuses to disclose what its complaint handling procedures are**), then OCR should have **“issue a letter to the me EXPLAINING the reason for the decision.”**

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<sup>2</sup> See “Reconsideration - to consider again especially with a view to changing or reversing”, Merriam-Webster Dictionary. See also “Review”, Blacks’ Law Dictionary.

<sup>3</sup> See DOEd’s February 2015 “OCR COMPLAINT PROCESSING PROCEDURES”. See also the DOEd’s March 2018 Case Processing Manual, at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>. **DOEd is transparent enough in its dealing with the public that it publishes its complaint procedures online, while HHS refuses to make such similar procedures accessible**, and I contend in violation of my God-given, Natural Law, Common Law, U.S. and California constitutional, and international rights; as well as in **the violation of the oath of office of all OCR personnel involved in the mishandling of my VRF Complaint**, all of them having lost governmental immunity for acting outside of their authority, which results from the violation of me and my daughter’s rights to defend our constitutional rights.

The allegations in my VRF Complaint clearly state the violation of one or more of the laws and regulations OCR enforces, such as the protection of me and my daughter's religious rights from HHS regulated entities.

The allegations on my VRF Complaint have sufficient detail (e.g., who, what, where, when, how) for OCR to infer and determine that DISCRIMINATION AND OR RETALIATION HAS OCCURRED AND IS OCCURRING AGAINST ME AND MY DAUGHTER ANNETTE.

The allegations on my VRF Complaint are not speculative, nor conclusory, nor incoherent, and therefore there are sufficient grounds in fact for OCR to infer that DISCRIMINATION AND OR RETALIATION HAS OCCURRED AND IS OCCURRING AGAINST US, and therefore my VRF Complaint ESTABLISHES A VIOLATION OF ONE OF THE LAWS AND REGULATIONS OCR ENFORCES, specifically **THE PROTECTION OF ME AND MY DAUGHTER'S RELIGIOUS RIGHTS** from OCR covered entities.

The only thing that can be concluded by the OCR vague response is that it is claiming that OCR does not have jurisdiction and authority to investigate my complaint and to take action against any named Criminal Participant under its jurisdiction. In an email that Hyams sent me with instructions as to submitting my request for reconsideration he states:

*"Any such request should identify specific provisions of laws or regulations that would change the outcome of the decision. In particular, such a request should include reference to legal authority that would vest the U.S. Department of Health and Human Services Office for Civil Rights with jurisdiction over the covered entities identified in the closed complaint, jurisdiction over the subject matter set forth in the complaint, and the authority to afford relief. Please do not repeat any authorities or arguments already submitted to our office. Failure to provide such supporting information will result in a denial of the request for reconsideration."*

This statement from Hyams, as well as the response from Leoz, again implies that the complainant is responsible for telling OCR what its responsibilities and duties are, what laws and regulations are applicable, and where they are violated, how and when it can apply it jurisdiction and authority. It also implies that my VRF Complaint did not provide sufficient information to address all of the above requirements to prove my position.

Therefore, as a courtesy to OCR and in the spirit of having it reconsider its decision to close my VRF Complaint, and with the hope of having OCR proceed in this matter, I will herein provide information to prove (a) that the U.S. Department of Health and Human Services Office for Civil Rights is vested with jurisdiction over the covered entities identified in the closed complaint, (b) that OCR has jurisdiction over the subject matter and involved parties identified in my VRF Complaint, and (c) that OCR has the authority to afford relief.

### **APPLICABLE LAWS AND REGULATIONS**

As noted in the OCR internet portal, OCR has jurisdiction over the following laws and regulations:

#### **I. SOCIAL SECURITY ACT – SECTION 508**

Section 508 of the Social Security Act prohibits discrimination on the basis of age, race, color, national origin, disability, sex, or **RELIGION** in the Maternal and Child Health Services Block Grant (42 USC § 708). Title 42 USC section 708, "Nondiscrimination Provisions", states in part:

**“(a) Federally Funded Activities**

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], **programs and activities funded in whole or in part with funds made available under this subchapter are considered to be programs and activities receiving Federal financial assistance.**

(2) No person shall on the ground of sex or **RELIGION** be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, **any program or activity funded in whole or in part with funds made available under this subchapter.**

**(b) Compliance**

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 702(c) of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.”

**Title 42 U.S. Code § 201(a) – Definitions**, defines the term “Service” as meaning “Public Health Service.”

**42 U.S. Code § 701 - Authorization of appropriations; purposes; definitions**, states in part,

*“(a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act [42 U.S.C. 201 et seq.] for the year 2000, there are authorized to be appropriated \$850,000,000 for fiscal year 2001 and each fiscal year thereafter—*

*(1) For the purpose of enabling each State—*

*(A) To provide and to assure mothers and children (**in particular** those with low income or with limited availability of health services) access to quality maternal and child health services.”*

While 42 U.S. Code 701 has a focus on children with low income and or limited availability to health services, it does not exclude other mothers and children that could be afforded such services by entities receiving federal funds as noted above.

**42 U.S. Code 701(a)(B)** states,

*“To reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children.”*

**42 USC § 1395u(i)(4)** defines “Primary Care Services” as follows:

*“The term “primary care services” means physicians’ services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.”*

## **II. PUBLIC HEALTH SERVICE ACT – SECTION 1908**

Section 1908 of the Public Health Service Act (42 USC § 300w-7) prohibits discrimination on the basis of age, race, color, national origin, disability, sex (gender), or **RELIGION** in programs, services, and activities funded by Preventative Health and Health Services Block Grants.

**Title 42 U.S. Code § 300w-1 - Project grants for preventive health services**, state in part,

*“(a) Availability based upon prior year distributions*

*(1) From the amounts appropriated under section 300w of this title for any fiscal year and available for allotment under this subsection, the Secretary shall allot to each State an amount which bears the same ratio to the available amounts for that fiscal year as the amounts provided by the Secretary under the provisions of law listed in paragraph (2) to the State and entities in the State for fiscal year 1981 bore to the total amount appropriated for such provisions of law for fiscal year 1981.”*

**Title 42 U.S. Code § 247b - Project grants for preventive health services**, states in part,

*“(a) Grant authority*

*The Secretary may make grants to States, and in consultation with State health authorities, to political subdivisions of States and to other public entities to assist them in meeting the costs of establishing and maintaining preventive health service programs.*

*(b) Application. No grant may be made under section (a) [1] unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—*

*(1) a complete description of the type and extent of the program for which the applicant is seeking a grant under subsection (a);*

*(2) with respect to each such program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period for the provision of such program, (B) a description of the*

services provided by the applicant in such program in such period, (C) the amount of Federal funds needed by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) will be provided in a manner consistent with the State health plan in effect under section 300m-3(c).

(j) Authorization of appropriations

(1) **Except for grants for immunization programs the authorization of appropriations for which are established in paragraph (2), for grants under subsections (a) and (k)(1) for preventive health service programs to immunize without charge children, adolescents, and adults against vaccine-preventable diseases, there are authorized to be appropriated such sums as may be necessary. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(1) for such fiscal year.**

(2) **For grants under subsection (a) for preventive health service programs for the provision without charge of immunizations with vaccines approved for use, and recommended for routine use, there are authorized to be appropriated such sums as may be necessary.**

(m) Demonstration program to improve immunization coverage

(1) In general

**The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a demonstration program to award grants to States to improve the provision of recommended immunizations for children, adolescents, and adults through the use of evidence-based, population-based interventions for high-risk populations.**

(2) State plan

To be eligible for a grant under paragraph (1), a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a State plan that describes the interventions to be implemented under the grant and how such interventions match with local needs and capabilities, as determined through consultation with local authorities.

(3) Use of funds. Funds received under a grant under this subsection shall be used to implement interventions that are recommended by the Task Force on Community Preventive Services (as established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention) or other evidence-based interventions, including—

(B) educating targeted populations and health care providers concerning immunizations in combination with one or more other interventions;

*(D) carrying out immunization-promoting strategies for participants or clients of public programs, including assessments of immunization status, referrals to health care providers, education, provision of on-site immunizations, or incentives for immunization;*

*(G) conducting assessments of, and providing feedback to, immunization providers;*

*(I) immunization information systems to allow all States to have electronic databases for immunization records.”*

**Title 42 U.S.C. section 300jj(3) – Definitions**, defines a “health care provider” as follow:

*(3)The term “health care provider” includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, **health care clinic**, community mental health center (as defined in), renal dialysis facility, blood center, ambulatory surgical center described in section 1395l(i) of this title, emergency medical services provider, **Federally qualified health center**, group practice, a pharmacist, a pharmacy, a laboratory, a physician (as defined in), a practitioner (as described in), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act [et seq.]), tribal organization, or urban Indian organization (as defined in), a rural health clinic, a covered entity under, an ambulatory surgical center described in section 1395l(i) of this title, a therapist (as defined in), **and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary.**”*

**Title 42 U.S.C. section 1396a - State plans for medical assistance**, state in part,

*“(a) Contents A State plan for medical assistance must—*

*(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;*

*(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;*

*(9) provide—*

*(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,*

*(10) provide—*

*(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17), (21), and (28) of section 1396d(a) of this title, to—*

*(i) all individuals—*

*(I) who are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A or part E of subchapter IV (including individuals eligible under this subchapter by reason of section 602(a)(37),[1] 606(h),[1] or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 682(e)(6)[1] of this title).”*

Title 42 U.S.C. section 1396d – Definitions, defines “Medical Assistance” in part as follows:

*“(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider.”*

Title 42 U.S. Code § 1396f - Observance of religious beliefs, states and orders the following:

*Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), **IF SUCH PERSON OBJECTS (OR, IN THE CASE SUCH PERSON IS A CHILD, HIS PARENT OR GUARDIAN OBJECTS) THERETO ON RELIGIOUS GROUNDS.**”*

The Centers for Medicare & Medicaid Services (CMS), previously known as the Health Care Financing Administration (HCFA), is a federal agency within the United States Department of Health and Human Services (HHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, the Children's Health Insurance Program (CHIP), and health insurance portability standards.

Title 42 U.S. Code § 1396 - Medicaid and CHIP Payment and Access Commission, states in part,

*“(a) Establishment*

*There is hereby established the Medicaid and CHIP Payment and Access Commission (in this section referred to as “MACPAC”).*

*(b) Duties*

*(1) Review of access policies for all States and annual reports MACPAC shall—*

*(A) review policies of the Medicaid program established under this subchapter (in this section referred to as “Medicaid”) and the State Children’s Health Insurance Program established under subchapter XXI (in this section referred to as “CHIP”) affecting access to covered items and services, including topics described in paragraph (2);*

*(B) Eligibility policies*

*Medicaid and CHIP eligibility policies, including a determination of the degree to which Federal and State policies provide health care coverage to needy populations.”*

**OCR HAS VESTED JURISDICTION OVER CRIMINAL PARTICIPANTS  
KAREN JANNEY AND THE SWEETWATER UNION HIGH SCHOOL DISTRICT**

My VRF Complaint names the health care and or social service provider involved, and describes the acts or omissions by such Criminal Participants which I believe and contend violated and are violating OCR

regulated conscience or religious freedom laws and regulations. Specifically, my VRF Complaint clearly identifies the **health care and or social service provider** who violated me and my daughter Annette's conscience and religious rights and freedoms: **Superintendent Karen Janney and the Sweetwater Union High School District.**

OCR has jurisdiction over Superintendent Janney and the District for the following reasons:

(1) The District receives funds from HHS to deliver health and human services to all students enrolled in the District schools. See Exhibit 2, letter to me from the District confirming that it receives funds from the U.S. Dept. of Health and Human Services indirectly from the State of California Dept. of Health & Care Services.

(2) The District signed a "Participation Agreement" to provide "School-Based Medi-Cal Administrative Activities" (SMAA). See Exhibit 3, pertinent parts of the District's 2017 participation agreement.

In such agreement the Superintendent and the District have agreed and committed to, among other thing, to do the following:

(a) **To comply with ALL FEDERAL program requirements** [clause 2.0a]

(b) To monitor compliance of District with **all federal program requirements** [clause 2.0t]

(c) to use vendors to deliver health and human services for **beneficiaries of the federal program** [clause 6.0b]; and

(d) **to not engage nor employ any unlawful discriminatory practices** ... in any other respect on the basis of **RELIGION, MEDICAL CONDITION**, or any other protected group in accordance with the requirements of **ALL APPLICABLE FEDERAL OR STATE LAWS**, which include me and my daughter's U.S. and California constitutional rights to practice our religious beliefs, rights and freedoms without government interference of any kind [clause 18.0].

(3) The District is registered as a Local Educational Agency (LEA) and is therefore a Medi-Cal and Medicaid Service Provider, and has a **LEA Federal Employer Identification Number of 95-6003082**, as well as a **National Provider Identification (NPI) Number of 1952458242**. A National Provider Identifier or NPI is a unique 10-digit identification number **issued to health care providers** in the United States by the Centers for Medicare and Medicaid Services (CMS). **The CMS is a federal agency within the U.S. Department of Health and Human Services.** See Exhibit 4, the District's Medi-Cal Provider Enrollment Information Sheet dated November 16, 2017.

(4) The District uses HHS funds received for activities applicable and afforded to any, some and or all students of its schools, such as my daughter Annette, including but not limited to:

(a) Mental health services, including primary prevention, crisis intervention, assessments, and referrals, and training for teachers in the detection of mental health problems.

(b) Counseling, including family counseling and suicide prevention.

(c) Community resource centers; **support staff at school clinics, extra duty for nurses**, travel for psychologists and speech language pathologists.

(d) **Support for nurses, psychologists, speech therapist and health care assistants.**

(e) Implementation of medical outreach, support for medically fragile students, support for students and staff in Special Education, support for student/families receiving or who are eligible to receive Medi-Cal services.

See Exhibit 5, the District's Annual Report Financial Statement Data for LEA program for the period 2016-2017. See also Exhibit 6, the District's Statement of Commitment to Reinvest, LEA annual report for the period 2017-18.

(f) The District offers vaccination to all students, including my daughter Annette, in their schools under all applicable federal and state programs. See Exhibit 7, letter from Jennifer Carbuccia, General Counsel for the District, dated April 10, 2018, where it confirms such vaccination services are provided ("*the District will do no such thing [vaccination] absent your written consent*").

**OCR and its involved representatives in my VRF Complaint, including David Hyams and Michael Leoz, knew, know or should have known that some, most or all public schools and school Districts in the United States, and as a minimum the Sweetwater Union High School District that I am complaining about, are health care providers as described above, providing health and human services, under the jurisdiction of HHS and OCR, as confirmed by all the legal and written evidence referenced above, as well as below.**

#### **OCR HAS JURISDICTION OVER THE SUBJECT MATTER SET FORTH IN THE COMPLAINT**

As implied in the OCR response by Michael Leoz, HHS's Office of Civil Rights has authority to receive conscience and religious rights complaints regarding persons and the entities they represent which deliver health and human services to men and woman throughout the United States.

As noted in the OCR portal, OCR enforces laws as they apply to recipients of HHS federal financial assistance, which includes as a recipient my daughter Annette.

Even in cases where a student is not receiving any HHS assistance currently directly (yet always indirectly<sup>4</sup>), OCR has the obligation to prohibit the District from discriminating against such student based on his or her religious rights and freedoms, regardless of who the child is, and the District's receipt of HHS funds commits the District to not violate such rights of any student participating or potentially participating in such funded school programs.

In the case of OCR and my VRF Complaint, "Subject Matter Jurisdiction" refers to OCR's competence and power to hear, determine and deal with the general subject involved in my complaint. Therefore, the following facts apply to my VRF Complaint:

(1) The HHS Office of Civil Rights' Conscience and Religious Freedom Division enforces laws that apply to and affect the recipients of HHS federal financial assistance, directly or indirectly. **FACT:** My daughter is a recipient of such funds and related services through school nursing and other services provided by the District as described above.

(2) OCR has a procedure to submit complaints for violations of conscience and religious rights and freedoms. **FACT:** My VRF Complaint clearly establishes that vaccination is against my deeply held religious

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<sup>4</sup> All students are afforded HHS funded services. For example, any school yard injury, or a student feeling sick, will result in a visit to the school nurse, which is covered under HHS funding.

practices, rights and Freedoms. OCR has jurisdiction to entertain, decide and take action on complaints that comply with their complaint requirements, including my VRF Complaint.

(3) My VRF Complaint provides proof that the District refuses to allow my daughter Annette to attend school if she does not comply with the vaccination requirements of SB 277 or a medical exemption for all required vaccines. My daughter presently does not have a written medical exemption for any such vaccines. **FACT:** The District refuses to allow my daughter Annette to register simply based on our deeply held religious practices and beliefs against vaccination. See Exhibit 8, my email to Superintendent Janney dated January 29, 2018, sent through Imelda Genovese, Executive Assistant to the Superintendent, which includes my attachment therein, titled "Annette Beas – Vaccine Exemption Letter.pdf".

Based on numbers (1), (2) and (3) above it is obvious and irrefutable that OCR has subject matter jurisdiction over my VRF Complaint and the allegations therein, **the OCR Subject Matter Jurisdiction being the violation of civil rights, including conscience and religious rights by an individual and or entity, such as a healthcare provider, and the Sweetwater Union High School District is one such healthcare provider, Superintendent Janney representing such District.**

### **OCR HAS THE AUTHORITY TO AFFORD RELIEF**

It is common for federal executive agencies, such as HHS, the U.S. Equal Employment Opportunity Commission, and the U.S. Dept. of Education (DOEd), which have departments to defend men and women's violations of civil rights, such as religious rights under their jurisdiction, to have a complaint procedure for men and woman to file such complaints with those agencies. With OCR having refused to provide me its complaint procedures manual or the like, I can only speculate what such procedures are.

In my **Vaccine Religious Freedom Class Action Complaint** I requested several remedies and relief which OCR could afford me as a result of my VRF Complaint and the authority of HHS and OCR to demand action from the person and entity against whom the complaint is filed. If OCR has similar complaint procedures as the DOEd's Office of Civil Rights<sup>5</sup>, then OCR has the authority to do the following to afford me relief:

(1) Determine and agree with me that (a) OCR has Subject Matter jurisdiction as regards my VRF Complaint, (b) that it also has personal jurisdiction over me, my daughter, Superintendent Janney and the District, and (c) that such Criminal Participants Janney and the District are violating my and my daughter's religious rights;

(2) Use OCR's authority to the fullest extent of the law to investigate and take legal action to stop Superintendent Janney and the District from violating me and my daughter Annette's conscience and religious freedom rights to attend school as regards the right to refuse any and all vaccination for my daughter Annette based on our personal, medical, conscience, religious freedom and constitutional rights as protected by the First Amendment to the U.S. Constitution. In other words, OCR can order the Criminal Participants named herein to allow my daughter Annette to attend school without the SB 277 required mandatory vaccinations and without a medical exemption. This can be accomplished as follows:

(a) OCR to contact Superintendent Janney and the District, advise that I have filed a complaint and that a clear violation of me and my daughter's religious rights has been identified and confirm, and for them to proceed to allow my daughter to enroll and attend one of the District Schools. If Superintendent Janney and the District refuse to follow OCR's orders,

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<sup>5</sup> See DOEd's February 2015 "OCR COMPLAINT PROCESSING PROCEDURES", supra.

(b) Issue Superintendent Janney and the District an order to cease and desist from violating our rights and that it allow us to enroll my daughter and to attend school.

(c) INITIATE ADMINISTRATIVE PROCEEDINGS WHERE APPROPRIATE. When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will request that an administrative proceeding be initiated. OCR will establish a team to prosecute the case.

(d) **REFER MY VRF COMPLAINT AND THIS MATTER TO THE U.S. DEPT. OF JUSTICE.** When post-Letter of Impending Enforcement Action negotiations and or similar letter or request do not result in a resolution agreement, OCR must issue a letter to the recipient stating that the case will be referred to U.S. Dept. of Justice if the District fails to act in my favor. If the District still refuses to do so,

(e) OCR to work in conjunction with the U.S. Dept. of Justice in bringing a lawsuit against Superintendent Janney and the Sweetwater Union High School District to force them to stop the violation of me and my daughter's religious rights and freedom to not vaccinate my daughter in order to attend a District school.

### **REMEDY AND RELIF REQUESTED**

Based on all the facts, laws and regulations, findings of fact and conclusions of law noted herein, I request that OCR grant my request for reconsideration and that it agree with me and admit that OCR's analysis of the facts regarding my VRF Complaint was incorrect, and or that the appropriate legal standards were not applied properly, and as a result of this it would change OCR's determination in the case in my favor, and that it order OCR personnel to investigate my VRF Complaint and proceed to take legal action against Superintendent Janney and the District as may be necessary until they allow my daughter Annette to attend one of their schools, including but not limited to referring my VRF Complaint to the U.S. Dept. of Justice for legal action, civil and or criminal, as justice may deem appropriate, due to the named Criminal Participants' violation of me and my daughter's constitutional rights, and the violation of the named Criminal Participant's oath of office to not violate me and my daughter's constitutional and other rights referenced herein.

### ***REQUEST TO EXPEDITE RECONSIDERATION AND TO TAKE TIMELY ACTION:***

As noted herein, Superintendent Janney and the District have made it clear that my daughter Annette will not attend school unless vaccinated, and they refused to allow me to enroll her recently. District school classes begin on July 23, 2018.<sup>6</sup> Therefore, I further request that OCR take immediate action on my VRF Complaint and contact the above Criminal Participants and that it order them to allow me to timely enroll my daughter Annette in one of their schools, in particular Hilltop Middle School, to which they have agreed to allow my daughter to transfer to if she is fully vaccinated, and that she be allowed to attend classes by the beginning of the District 2018-2019 school year.

Respectfully Submitted,

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Ricardo Beas

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<sup>6</sup> See District Student Calendar, at <https://drive.google.com/file/d/1hpTXVAR0p9kNasun-4DKlq53vHcj7Qbk/view>.