

SETTLEMENT AGREEMENT

This **Agreement** is entered into by and between (1) **Petitioners** D.J., E.A., M.R., S.M., A.M., and Walt Dunlop, and (2) **Respondents** the State of California, the California Department of Education, the California State Board of Education, and the California Superintendent of Public Instruction in the matter of *D.J., et al. v. State of California, et al.*, previously pending in Department 85 of the Los Angeles Superior Court (the "Court"), Case No. BS142775, and presently before the Second District California Court of Appeal, Case No. B260075 (collectively, the **Action**).

Petitioners and **Respondents** may be referred to herein collectively as the **Parties** or individually as a **Party**.

On April 24, 2013, **Petitioners** filed a Petition for Writ of Mandate in the Los Angeles County Superior Court, Case No. BS142775, against **Respondents** alleging statutory and constitutional violations. **Petitioners** filed a First Amended Petition on May 28, 2014. On September 16, 2014, the Court entered Judgment and issued a writ of mandate in favor of **Petitioners** on three of their five causes of action (collectively the **Judgment**). On November 12, 2014, **Respondents** timely appealed to the Second District California Court of Appeal, Case No. B260075 (the **Appeal**). On November 14, 2014, **Petitioners** filed a motion for attorneys' fees and costs (the **Fee Motion**) seeking reimbursement of approximately \$2.3 million from **Respondents**. On January 2, 2015, the **Parties** jointly stipulated to an order staying hearing on the **Fee Motion** pending the outcome of the **Appeal**.

The **Parties** desire to resolve the **Action** between them on the terms and conditions set forth below. In consideration for their mutual promises, the **Parties** agree as follows:

1. Statement of Intent: The **Parties** have entered into this **Agreement** to resolve the **Action** in the manner prescribed below and for the purpose of compromising and settling all claims

and issues related to the subject matter of this **Action**. This **Agreement** does not constitute, nor shall it be construed as, an admission of liability by **Respondents**.

2. **Acronyms and Initialisms:** the following acronyms and initialisms are used throughout this **Agreement**:

- a. CDE California Department of Education
- b. CALPADS California Longitudinal Pupil Achievement Data System
- c. FPM Federal Program Monitoring
- d. LEA local educational agency

3. **Appeal:** **Respondents** will request dismissal of the **Appeal** within seven days of the full execution of this **Agreement**.

4. **Judgment:** **Petitioners** will draft and file a notice with the Court indicating that **Respondents** have fully complied with the Court's **Judgment** and request dismissal of the **Action** within seven days of dismissal of the **Appeal**.

5. **Fee Motion:** **Petitioners** will withdraw the **Fee Motion** within seven days of dismissal of the **Appeal**. Except as specified in paragraph 16, **Petitioners** hereby expressly waive the right to recover and will bear all fees and costs arising from and related to the **Action**, including fees and costs associated with the implementation, monitoring, and/or oversight of this **Agreement**.

6. **2010-2011 R-30 Data Review:** CDE will draft a written notice to each of the 251 LEAs that self-reported data in the 2010-2011 R-30 language census, Section B, Line 9 "English learners not receiving any English learner instructional services" column. The written notice will remind those LEAs of their legal obligations to provide English Learner instructional services to all English Learner students, and instruct LEAs that they are required to provide English Learner instructional services, and other services determined necessary by the LEA, immediately. The written notice will also be posted on CDE's website. CDE will provide a copy of the draft notice to counsel for **Petitioners** within 15 working days of the full execution of this **Agreement**. CDE will

consider in good faith any suggestions proposed by counsel for **Petitioners**, but counsel for **Petitioners** will not have editorial rights to the content of the notice to LEAs. CDE will send the final written notice to those LEAs no later than 30 days after the date CDE receives suggestions for the draft written notice from counsel for **Petitioners**.

7. CALPADS Education Service Codes: Beginning in the 2015-2016 school year, CDE will add an Education Service Code of "None" to CALPADS field 9.20 indicating the type of English Learner instructional services a course provides so that LEAs can affirmatively report a course as not providing any English Learner instructional services. CDE will further modify CALPADS to require LEAs to populate a response to field 9.20 so that submission of a course would be fatal if the field is not populated, meaning that an Education Service Code must be affirmatively reported for each course.

8. Guidance to LEAs: CDE will draft written guidance to LEAs to remind LEAs of their legal obligation to provide English Learner students with appropriate language instructional services to help overcome the language barriers that impede equal participation by English Learner students in instructional programs. The written guidance will clarify how to identify the provision of English Learner instructional services in courses so that LEAs may complete field 9.20 correctly, and will be reasonably calculated to ensure the appropriate reporting of delivery of English Learner instructional services. CDE will provide a draft of the written guidance to counsel for **Petitioners** on or before September 30, 2015. CDE will consider in good faith any suggestions proposed by counsel for **Petitioners**, but counsel for **Petitioners** will not have editorial rights to the content of the guidance. CDE will send the final guidance to LEAs no later than 30 days after the date CDE receives suggestions from counsel for **Petitioners**.

This written guidance will clarify that:

- a. LEAs may not identify the type of instructional services a course provides based solely on the credentials or authorization of the teacher.

- b. Counseling and tutoring do not qualify as English Learner instructional services.
- c. Charter schools must provide English Learner instructional services to English Learner students.
- d. LEAs must provide English Learner students with disabilities who are eligible for special education with English Learner instructional services in accordance with the students' Individual Educational Program.

9. CALPADS Data Review: Following the 2015-2016 Fall 2 Amendment Window Deadline in Spring 2016, CDE will review the 2015-2016 certified data from CALPADS to identify the number of English Learner students that are not assigned to any courses that provide English Learner instructional services. By May 16, 2016, CDE will send written notice to each LEA that failed to assign one or more English Learner students to at least one course that provides English Learner instructional services. The written notice will remind the LEA of its legal obligation to provide English Learner instructional services to all English Learner students, and be reasonably calculated to ensure the appropriate reporting of delivery of English Learner instructional services.

CDE will provide a copy of this draft written notice to counsel for **Petitioners** on or before April 29, 2016. CDE will consider in good faith any edits proposed by counsel for **Petitioners** submitted to CDE by May 6, 2016; however, counsel for **Petitioners** will not have editorial rights to the content of the notice to LEAs.

10. CALPADS Data Publication: Beginning with the 2016-2017 school year, and continuing as long as the data are collected, which will be no less than three years from the date of this **Agreement**, CDE will post LEA instructional services data on its website consistent with the manner and extent in which the data are collected in CALPADS. The posted data will identify reporting on an LEA level. Data collected for successive school years shall be available on CDE's website for a period not less than two years from the initial date of the posting.

11. FPM Reviews: Beginning with the 2016-2017 school year, CDE will add an indicator to the FPM selection criteria to increase the probability of onsite and online monitoring for LEAs that fail to assign English Learner students to at least one course that provides English Learner instructional services. CDE will consider compliance history when selecting LEAs for onsite and online FPM reviews. For the review of the 2016-2017 school year, CDE will consider an LEA's 2010-2011 Row 9 data and its 2.4 reports as part of the compliance history factor when selecting LEAs for onsite and online FPM reviews.

In selecting LEAs for onsite and online monitoring for the 2016-2017 review year and subsequent review years, CDE will consider the following factors: (1) the number and percentage of English Learner students an LEA reports in CALPADS as not assigned to any course providing English Learner instructional services, prioritizing LEAs reporting the largest numbers and percentages of English Learner students not assigned to any course providing English Learner instructional services; (2) the number of years, and how recently, an LEA reported English Learner students as not assigned to any course providing English Learner instructional services; and (3) whether CDE has conducted onsite monitoring of an LEA within three years of the last CALPADS report in which the LEA reported English Learner students not assigned to any course providing English Learner instructional services. CDE will acknowledge the addition of the criteria on the Compliance Monitoring Selection Criteria page on its website.

CDE will conduct onsite and online monitoring, using the FPM process, of LEAs' English Learner programs and services in proportion to the number of LEAs that fail to assign one or more English Learner students to at least one course that provides English Learner instructional services. *(For example, if CALPADS data indicate that, in a given year, 10% of LEAs have failed to assign one or more English Learner students to at least one course that provides English Learner instructional services, then 10% of the LEAs selected for onsite monitoring and 10% of the LEAs selected for online monitoring by CDE in the following year will be LEAs that reported the failure to*

assign at least one course with English Learner instructional services to every English Learner student). CDE will identify a maximum of ten percent of the onsite and online reviews in this manner. CDE may in its discretion review additional LEAs that have failed to assign English Learner students to at least one course that provides English Learner instructional services. These reviews will be reasonably calculated to ensure the appropriate delivery of English Learner instructional services to English Learner students.

Nothing in this **Agreement** shall be deemed to require CDE to increase the number of reviews it performs. The intent of this paragraph is to identify how the data collected at issue in this **Agreement** will be used as a selection criteria for FPM reviews.

12. Additional Funding and Positions: CDE agrees to seek additional ongoing funding and positions for three full-time consultants. CDE represents that it sought such funding and positions during the normal budget process for the 2015-2016 budget year and that CDE will seek such funding and positions as an amendment to the 2015-2016 budget. If CDE fails to procure such funding and positions for the 2015-2016 budget year, CDE will continue to seek such funding and positions for at least two additional budget years (2016-2017 and 2017-2018).

13. Uses of Additional Funding and Positions: If CDE obtains the funding and positions described in paragraph 12, CDE will use this funding to hire three full-time consultants. CDE will use the consultants to request responses to the written notice described in paragraph 9 from LEAs that fail to assign English Learner students to at least one course that provides English Learner instructional services, review and respond to those responses, seek evidence from these LEAs that all English Learner students are receiving appropriate instructional services, and provide technical assistance to LEAs. CDE may also utilize these consultants to increase English Learner reviews and for any other purpose that will specifically benefit English Learner students.

14. Compton Unified School District: CDE will perform an onsite FPM review of Compton Unified School District in the 2015-2016 school year. The FPM will review services

provided to English Learner students using the English Learner monitoring instrument. The English Learner monitoring instrument currently includes items that fall under the following categories: Involvement; Governance and Administration; Funding; Standards, Assessment and Accountability; Staffing and Professional Development; Opportunity and Equal Access; and Teaching and Learning.

15. Letter to United States Department of Justice: **Petitioners** will send written correspondence to the United States Department of Justice, Civil Rights Division, Educational Opportunities Section (“USDOJ”) within 15 days of the execution of this **Agreement** and send a courtesy copy to counsel for **Respondents**. The correspondence will confirm that the **Parties** settled the **Action** and that **Petitioners** are satisfied with the compromise agreed to by the **Parties**. The correspondence will include copies of (1) this **Agreement** and (2) the request for dismissal described in paragraph 4 above.

16. Attorneys’ Fees and Costs: Within 60 days of the execution of this **Agreement**, **Respondents** shall pay \$800,000.00 in attorneys’ fees to the ACLU Foundation of Southern California to be distributed among counsel for **Petitioners**—ACLU of Southern California; Asian Americans Advancing Justice-Los Angeles; Latham & Watkins, LLP; and Public Counsel. CDE will issue a 1099 form to the ACLU of Southern California. This payment shall constitute full resolution of any and all claims for attorneys’ fees and/or costs by **Petitioners** arising from and related to the **Action**, including the implementation, monitoring, and/or oversight of this **Agreement**. The **Parties** shall bear their own respective expenses and costs of litigating the **Action**. In the event that further legal fees and costs are incurred as the result of a dispute arising from this **Agreement**, enforcement thereof and/or the terms herein, each **Party** shall bear its own future attorneys’ fees and costs, unless the Court determines there is a material breach of a term of this **Agreement**, in which case the successful **Party** shall be awarded reasonable attorneys’ fees and costs as determined by the Court.

17. Cooperation: Each of the **Parties** will cooperate with each and every other **Party** to carry out, effectuate and accomplish the terms of this **Agreement**. Accordingly, where appropriate,

and in furtherance of carrying out the terms and conditions of this **Agreement**, each **Party** will sign any and all additional papers and obtain and convey any and all necessary documentation to any other **Party**. However, if any **Party** fails to perform in a timely manner any act required by this **Agreement**, or otherwise acts in violation of any provision of this **Agreement**, the aggrieved **Party** may, after failure of good faith efforts to resolve the matter as set forth in paragraph 18 below, move the Court to issue any relief the Court deems proper. The prevailing **Party** may seek fees and costs for the motion for relief from the offending **Party**.

18. Jurisdiction over Disputes: In the event that a **Party** believes that any other **Party** is not in compliance with the terms of this **Agreement**, the complaining **Party** will notify the allegedly noncompliant **Party** of such noncompliance within 30 days of becoming aware of any issues of noncompliance. Notification will be in writing and will be provided to counsel for the **Party** alleged to be in noncompliance.

- a. The **Party** alleged to be in noncompliance will have 30 days following receipt of the notification concerning the alleged noncompliance to respond to the notification.
- b. Following the complaining **Party**'s receipt of the response from the allegedly noncompliant **Party**, the **Parties** agree to negotiate in good faith to resolve any remaining disputes regarding the alleged noncompliance. The complaining **Party** agrees not to file any motion to enforce this **Agreement** until this dispute resolution process has been completed, and then only if the alleged noncompliance has not been corrected or deemed by the **Parties** to be unfounded. If the allegedly noncompliant **Party** fails to respond to the notification as set forth in subdivision (a) of paragraph 18, above, the complaining **Party** may file a motion to enforce this **Agreement** after the expiration of the 30 day period identified in that subdivision. Any motion to enforce this **Agreement** shall be filed in the Court in which this **Action** was filed.

c. The trial court in which this case was filed, Department 85 of the Los Angeles County Superior Court, will maintain jurisdiction for purposes of monitoring and enforcing of this **Agreement** for three years from the date this **Agreement** is fully executed.

19. Severability: In the event any of the terms or provisions of this **Agreement** are found to be legally unenforceable, then the remaining terms and conditions shall nevertheless be enforceable without regard to any such provisions or terms that are found to be legally unenforceable.

20. Sole Agreement: The **Parties** understand and agree that this **Agreement** constitutes the sole agreement among them as to the subject matter of this **Agreement**, and that in signing this **Agreement** they have not relied on any other promises, inducement or representations other than as expressly set forth herein in deciding to sign this **Agreement**. Any modifications must be made in writing and signed by all **Parties** to this **Agreement**.

21. Execution: Having read the foregoing and understood and agreed to the terms of this **Agreement**, consisting of a total of nine typewritten pages (not including counterpart signature pages) and having been advised by counsel, the **Parties** hereby voluntarily affix their signatures. This **Agreement** may be executed in counterparts and a copy shall be as valid and admissible into evidence as the original in any subsequent proceeding among the **Parties**.

22. Applicable Law: This **Agreement** shall be interpreted under the laws of the State of California.

IT IS SO AGREED:

Dated: September 4, 2015

E. A.
E.A. FOR HERSELF AND AS GUARDIAN AD LITEM FOR
D.J.
Petitioners

Dated: September 11, 2015

M R
M.R. FOR HERSELF AND AS GUARDIAN AD LITEM FOR
S.M. AND A.M.
Petitioners

Dated: September 8, 2015

Walt Dunlop
WALT DUNLOP
Petitioner

Dated: September 8, 2015

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

Jessica G. Price, Esq. / David B. Sapp, Esq.
JESSICA G. PRICE, ESQ.
DAVID B. SAPP, ESQ.
Attorneys for Petitioners

Dated: September 9, 2015

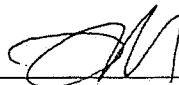
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Dated: September 9, 2015

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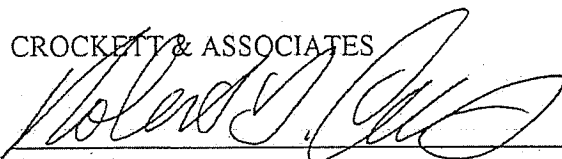
Dated: September 1, 2015

ASIAN AMERICANS ADVANCING JUSTICE


LABONI A. HOQ, ESQ.
NICOLE K. OCHI, ESQ.
Attorneys for Petitioners

Dated: September 2, 2015

CROCKETT & ASSOCIATES


ROBERT D. CROCKETT, ESQ.
Attorneys for Petitioners

Dated: September __, 2015

GLEN PRICE, CHIEF DEPUTY SUPERINTENDENT
CALIFORNIA DEPARTMENT OF EDUCATION
Respondent

Dated: September __, 2015

MICHAEL KIRST, PRESIDENT
CALIFORNIA STATE BOARD OF EDUCATION
Respondent

Dated: September __, 2015

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
Respondent

Dated: September __, 2015

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Dated: September __, 2015

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Dated: September __, 2015

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Dated: September 2, 2015



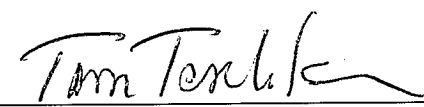
GLEN PRICE, CHIEF DEPUTY SUPERINTENDENT
CALIFORNIA DEPARTMENT OF EDUCATION
Respondent

Dated: September 2, 2015



MICHAEL KIRST, PRESIDENT
CALIFORNIA STATE BOARD OF EDUCATION
Respondent

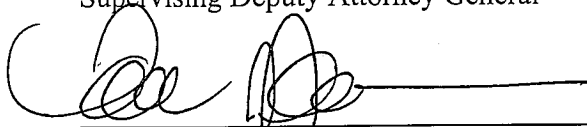
Dated: September 2, 2015



TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
Respondent

Dated: September 2, 2015

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