

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the "Agreement") is entered into by and through Student A, by and through Parent A, her guardian; Student B, by and through Parent B, his guardian; Student C, by and through Parent C, his guardian; and Student D, by and through Parent D, her guardian, each one individually and on behalf of themselves (collectively, "Named Plaintiffs") and a class of all other similarly situated students (collectively with Named Plaintiffs referred to hereinafter as "Plaintiffs") on the one hand, and The Berkeley Unified School District ("BUSD") and the Board of Education of the Berkeley Unified School District (the "Board"; BUSD and the Board collectively referred to hereinafter as "Defendants") on the other hand. Plaintiffs and Defendants shall be referred to jointly as the "Parties."

WHEREAS, on May 2, 2017, the Named Plaintiffs filed a Class Action Civil Rights Complaint for Declaratory and Injunctive Relief ("the Complaint") against Defendants in the United States District Court for the Northern District of California ("this Court"), Case No. 3:17-cv-02510 ("the Action"); and

WHEREAS, the Complaint alleges *inter alia* that, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 ("Section 504"), Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA"), the Individuals with Disabilities Education Act, 20 U.S.C. § 14W, *et seq.* (amended by Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108446, Title I) ("IDEA"), California Education Code Section 56000 *et seq.* ("Section 56000") and applicable federal regulations, Defendants maintain policies and practices that discriminate against students with and suspected to have reading disorders and deprive them of a Free Appropriate Education ("FAPE") in the Least Restrictive Environment ("LRE"), and that Defendants routinely fail to comply with the requirements of IDEA, 20 U.S.C. §§ 1400 *et seq.*, and its implementing regulations; Section 504, 29 U.S.C. § 794, and its implementing regulations; Title II of the ADA, 42 U.S.C. §§ 12132 *et seq.*, and its implementing regulations; and California Education Code Sections 56000 *et seq.* and its implementing regulations.

WHEREAS, Defendants deny that there is any factual or legal basis for Plaintiffs' claims and affirm that nothing in this Agreement constitutes an admission by Defendants of any such wrongdoing, or liability, or otherwise constitutes a violation of the IDEA, Section 504, the ADA, Section 56000 and/or other related federal and state laws and regulations;

WHEREAS, the Parties collaborated on the creation of the "Literacy Improvement Program," which is attached as Exhibit A to, and is incorporated in its entirety in, this Agreement. Having collaborated on the creation of Exhibit A, the Parties believe Exhibit A, which functions as the crux of non-monetary relief to be provided through this Agreement and provides for the development, approval and implementation of a Literacy Improvement Program by Defendants, reflects a reasonable compromise between the Parties considering the expense, delay and uncertainty of further litigation; and

WHEREAS, in order to avoid the expense and uncertainties associated with continuing the claims in the Action, the Parties desire to resolve the Action as detailed in this Agreement, subject to approval by the Court. The Parties agree that the settlement embodied in this Agreement is a fair, reasonable, and adequate resolution of the Action.

NOW, THEREFORE, for and in consideration of the mutual understandings contained in this Agreement and Exhibit A and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. As used in this Agreement, as well as in any notices and other documents contemplated by this Agreement, and any amendments thereto, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural and vice versa.

a. "Class Counsel" means Disability Rights Education and Defense Fund, Inc. ("DREDF"), including but not limited to Claudia Center of DREDF; Deborah Jacobson of Jacobson Education Law, Inc. ("JEL"); Goodwin Procter LLP ("Goodwin"), including but not limited to Brendan Radke of Goodwin; and King & Spalding ("King & Spalding"), including but not limited to Shane Brun of King & Spalding.

b. "Effective Date" means five (5) days¹ after: (1) the date of entry of the Court's Final Order and Judgment approving this Agreement if no objections are submitted; (2) the expiration date of the time for filing a notice of appeal from the Final Order and Judgment if objections are filed but no appeal is filed; or (3) if an appeal from the Final Order and Judgment is filed, the later of (i) the date of final affirmance of the Final Order and Judgment, or (ii) the expiration of the time for seeking further appellate review following denial or dismissal of the appeal without a further appeal being filed.

c. "Monitoring Reports" means reports issued by the Monitor to Defendants as required by Section II.C.1 of the Literacy Improvement Program.

d. The "Released Injunctive Claims" are any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for any and all claims for injunctive, equitable, or declaratory relief that are the subject of, included within, and/or arise from the Action, including such claims which could have been brought as educationally-based claims under the IDEA, Section 504, ADA, and/or Section 56000, arising from May 2, 2017, through the Term of the Agreement. Notwithstanding, the releases encompassed by this Agreement are not intended to bar any Named Plaintiff or Settlement Class Member from pursuing an administrative or judicial action claiming that, as to that Named Plaintiff or Settlement Class Member alone, the individual is not

¹ Unless otherwise specified, all references to "days" within this Agreement refer to calendar days.

receiving a FAPE in the LRE to which the individual is entitled under IDEA, Section 504, the ADA or California law.

e. "Released Parties" means Defendants and their respective past, present and future superintendents, associate superintendents, officers, directors, board members, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, insurers, reinsurers, predecessors and successors in interest.

f. "Settlement Class Member" shall mean any individual who meets the definition of the Settlement Class as defined in Section 3, or if the individual is under 18 and/or does not hold his/her own education rights, means the education rights holder of such individual.

g. "Settlement Term" shall refer to a three (3) year period from the Effective Date of the Agreement.

2. Settlement Purpose and Scope; Literacy Improvement Program.

a. The Parties incorporate by reference as if fully set forth herein the Literacy Improvement Program, a true and correct copy of which is attached hereto as Exhibit A. Having collaborated on the creation of Exhibit A, the Parties believe that Exhibit A reflects a reasonable compromise between the Parties considering the expense, delay and uncertainty of further litigation.

b. The Parties acknowledge and agree that the Literacy Improvement Program is designed to be implemented over a three (3) year period beginning with the 2020-2021 school year, with an understanding that additional time may be necessary to achieve the overall goal to increase general education reading achievement within BUSD schools. Plaintiffs further understand and acknowledge that annual spending by Defendants to implement the Literacy Improvement Program, including but not limited to costs for retaining expert consultants, monitor(s), and/or for professional development, is subject to constraints imposed on Defendants due to, among other things, federal and state public education funding, review and approval by federal, state and/or local regulatory authorities, and annual review by the Superintendent's Budget Advisory Committee ("SBAC"). As of the date of this Settlement Agreement, Defendants are unaware of any budgetary constraints that would prevent the performance of the terms of this Settlement Agreement or the Literacy Improvement Program.

c. In developing and implementing the Literacy Improvement Program, Defendants will engage Outside Consultants and an impartial Monitor, cooperate with such Outside Consultants and Monitor in good faith, and provide periodic reporting as set forth in Exhibit A and this Agreement.

3. Settlement Class. The Parties hereby stipulate to certification of a Settlement Class, for purposes of this settlement only, as follows: All current and future BUSD students who have, may have or are suspected of having a reading disability, such as dyslexia, within the meaning of IDEA, Section 504, the ADA and/or Section 56000.

4. Retention of Monitor and Outside Consultants

a. Monitor.

i. Defendants agree to retain the services of an impartial outside monitor (the "Monitor") to monitor and report on BUSD's compliance with the Literacy Improvement Program as described at Section II.C.1.a. of Exhibit A. The Parties agree that selection of the Monitor shall be by mutual agreement of the Parties as set forth below, with approval not to be unreasonably withheld by Plaintiffs or Defendants.

ii. Defendants shall provide Plaintiffs with a list of proposed monitors no later than 30 days after the Effective Date of this Agreement. The Parties will meet and confer within a period not to exceed 14 days from the date Defendants provide the list of proposed monitors to Plaintiffs to determine whether the Parties can reach agreement on a mutually acceptable Monitor. In the event the Parties cannot agree on a mutually acceptable Monitor, the Parties agree that each Party will select one expert to serve as the Party's "Selection Expert." The Selection Experts will meet and confer to select a Monitor. The Selection Experts shall have 30 days from the date of their appointment to agree to a Monitor. If the Selection Experts are unable to agree to a Monitor, the Parties' shall within ten (10) days submit their dispute over the Monitor to the Court in a joint letter not exceeding five (5) pages, and the Court will appoint a Monitor.

iii. The Monitor will submit Monitoring Reports to the Board and to Plaintiffs regarding Defendants' progress toward implementation of the Literacy Improvement Program, as set forth in Exhibit A. The agreement retaining the Monitor shall provide a process for the Monitor to notify BUSD at any time the Monitor has reason to believe that BUSD, any BUSD school, or any BUSD instructor or personnel is not in compliance with the Literacy Improvement Program.

iv. If the Monitoring Report indicates or suggests that Defendants may not be in compliance with this Agreement or the Literacy Improvement Program, or if Plaintiffs otherwise receive information or have reason to believe that Defendants may not be in compliance with this Agreement or the Literacy Improvement Program, Plaintiffs shall provide written notice to Defendants of such suspected non-compliance within 30 days of Plaintiffs' receipt of the Monitoring Report or such other information causing Plaintiffs to believe that Defendants may not be in compliance. Such notice shall include details supporting Plaintiffs' basis for disputing Defendants' compliance with this Agreement and/or the Literacy Improvement Program. Defendants will respond in writing to such notice within 14 days of such notice, and Defendants' response shall include a detailed explanation why Defendants believe they are in compliance with the Agreement and/or the Literacy Improvement

Program. The Parties shall then follow the Dispute Resolution process set out in Section 5.

b. Outside Consultants

i. Defendants agree to retain the services of Outside Consultant(s) as described at Section II.C.1.a. of Exhibit A. The Parties agree that selection of the Outside Consultants shall be subject to approval by Plaintiffs, with approval not to be unreasonably withheld. Defendants shall provide Plaintiffs with a list of proposed Outside Consultants no later than 30 days after the Effective Date of this Agreement.

ii. The Parties will meet and confer for a period not to exceed 14 days from the date Defendants provide the list of proposed Outside Consultants to Plaintiffs to determine whether the Parties can reach agreement on mutually acceptable consultant(s). In the event the Parties cannot agree on mutually acceptable Outside Consultants, the Parties' shall within ten (10) days submit their dispute regarding selection of the Outside Consultant(s) to the Court in a joint letter not exceeding five (5) pages.

c. Access to Records

i. The person(s) selected to fill the role of Monitor and/or Outside Consultant (jointly referred to as "Retained Consultants") must enter into an agreement with BUSD, which shall be no more restrictive than comparable agreements BUSD enters into with other such consultants, that allows the Retained Consultants to have access to student records in keeping with the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and similar state laws, and also sign an agreement acknowledging that he or she will comply with relevant privacy and confidentiality laws. The Retained Consultants shall not be given access to the private personnel files of BUSD employees.

ii. In the event any Retained Consultant becomes unavailable for any reason, the Parties will meet and confer to determine whether a mutually acceptable replacement can be agreed upon. If the Parties are unable to select a mutually acceptable replacement within 30 days of the Retained Consultant becoming unavailable, the Parties will utilize the process as set forth in subsections a and b above to select a replacement.

5. Dispute Resolution.

a. Plaintiffs' Counsel, as counsel for the Named Plaintiffs and the Class, shall have standing to enforce the terms of this Agreement during the Term of the Agreement.

b. All disputes concerning the interpretation, implementation, modification pursuant to Section 14, monitoring, and compliance with this Agreement, shall be resolved as follows:

- i. Notification in Writing: Any Party's dispute concerning the interpretation, implementation, monitoring, modification pursuant to Section 14, and compliance with this Agreement shall be brought in writing to the attention of the other Party.
- ii. Meet and Confer: Unless otherwise agreed to by the Parties, with respect to any particular dispute concerning the interpretation, implementation, modification pursuant to Section 14, monitoring, and compliance with this Agreement, the Parties agree to meet and confer in good faith, within ten (10) business days after a dispute is raised in writing by one of the Parties to discuss and try to resolve such dispute.
- iii. Submission to Court: Failing resolution of a dispute via meet and confer, any Party may, submit the issue to the District Court for decision. Any court order issuing as a result of such a submission may be subject to appeal in accordance with applicable law.

6. Court Approval and Class Notice

a. Following approval of the Settlement by the Board and execution of this Agreement by the Parties, the Parties agree that they will take all reasonable steps to request and obtain Court approval of this Agreement. The Parties shall: (1) file the Agreement, including the attached Exhibits, with the Court; (2) Plaintiffs shall move for, and Defendants shall not oppose, Preliminary Approval of this Agreement in the District Court; and (3) request entry by the Court on the earliest date acceptable to the Court, of the Proposed Order Granting Motion for Preliminary Approval of Class Settlement; Certifying Settlement Class; Directing Issuance of Settlement Notice; and Scheduling of Hearing on Final Approval attached as Exhibit B.

b. The Parties shall request that the Court approve the Notice of Proposed Settlement of Class Action Lawsuit ("Class Notice") which is attached as Exhibit C, which includes: (1) a brief statement of the terms of the settlement and claims released by the Class; (2) the date of the hearing on the Final Approval of the Agreement with a clear statement that the date may change without further notice to the class; (3) a summary of rights, including the right to comment upon, or object to the Settlement and the deadline for submitting objections; and (4) contact information for class counsel. The Notice shall be published as follows:

- i. DREDF and Defendants shall each post on their respective websites a copy of the Class Notice until the deadline for submitting objections has passed.
- ii. Defendants shall provide a copy of the Class Notice to all enrolled students and/or their parents or guardians through email or its

online portal(s), and shall post the Class Notice on the BUSD website including in District News and on the Special Education page.

- iii. Within 14 days after the Court's Preliminary Approval of the Class Settlement and the Class Notice, the Parties, through their respective counsel of record, shall provide a declaration to the Court attesting that they each disseminated the Notice consistent with this Agreement.

c. Any Settlement Class Member shall be entitled to submit an objection and/or comments regarding certification of the Settlement Class and/or approval of the Settlement embodied in this Agreement or any terms thereof, including the proposed Attorneys' Fees Award. Each objection must be submitted in accordance with the following procedure:

- i. The objection must be in writing and post-marked in accordance with the deadline specified in the Preliminary Approval Order.
- ii. To be valid, an objection must include (i) the full name and current address of the Settlement Class Member; (ii) any and all objections asserted by the Settlement Class Member, the reasons therefor, and any and all supporting papers, if the Settlement Class Member intends on relying upon supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iii) the Settlement Class Member's signature, and if represented by counsel, the signature of the attorney representing the Settlement Class Member.
- iii. The objection must be mailed to Class Counsel, who shall promptly distribute it to Defendants' Counsel.

d. This Agreement is conditioned upon Final Approval by the District Court. Upon Final Approval, Plaintiffs shall file with the Court the Proposed Order of dismissal attached as Exhibit D. The Court shall retain jurisdiction over this matter during the Settlement Term, for enforcement and dispute resolution pursuant to Section 5.

7. General Terms and Conditions

a. Except in an action to enforce the terms of this Agreement and the performance contemplated hereunder, neither the fact of, nor any provision contained in this Agreement or its exhibits, or any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in the Action or in any other pending action or of any wrongdoing, fault, violation of law, unfair or unlawful business practice or any other type of liability of any kind on the part of Defendants or admission by Defendants of any claim or allegation made in this Action or in any other action, or as an admission

by any of the Plaintiffs or Settlement Class Members of the validity of any fact or defense asserted against them in this Action or in any other action.

b. This Agreement is without prejudice to the rights of Defendants to oppose class certification in this Action (should this Agreement not be approved or implemented for any reason) or any other lawsuit. In the event that this Agreement is not approved or is terminated as provided herein, no Party will argue that class certification is proper because Defendants agreed to the settlement embodied in this Agreement. Defendants do not admit that the classes alleged in the Action are susceptible to certification on a litigated basis. The Parties agree that certification of the Settlement Class is proper for settlement purposes only.

c. The Court will retain jurisdiction over the litigation only as set forth in Sections 5(b)(iii) and 6(d) of this Agreement.

8. Released Injunctive Claims; General Release by Named Plaintiffs.

a. Subject to the District Court's retention of jurisdiction, Named Plaintiffs and the Settlement Class Members, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, do fully and finally release, acquit, and discharge the Released Parties from the Released Injunctive Claims as defined in this Agreement.

b. Named Plaintiffs, on behalf of themselves and their guardians ad litem, parents, heirs, predecessors, successors, agents, affiliates, parent and/or subsidiary entities, successors and assigns, servants, employees, officers, directors, and assigns, hereby release and forever discharge Released Parties from any and all claims, including but not limited to any claims for losses, damages, causes of action, and/or liabilities, known or unknown, asserted or unasserted, liquidated or unliquidated, in any manner which arise from the allegations of the Action, occurring up until the Effective Date of this Agreement. This release does not apply to actions concerning the resolution of future and pending individual due process complaints filed by individual Plaintiffs. This release does not apply to actions or events occurring after the Effective Date, or any actions alleging breaches of this Agreement.

9. Obligations Under Agreement Survive Releases. Notwithstanding any other provision in the Agreement to the contrary, the obligations arising under this Agreement are not affected by and shall survive the releases granted in this Agreement.

10. Attorneys' Fees/Costs. Defendants agree to pay Class Counsel the maximum total sum of \$350,000 for attorneys' fees and costs as follows:

a. The total sum of \$175,000.00 shall be paid to the "Disability Rights Education and Defense Fund," co-counsel for Plaintiffs, to be paid in three (3) installments as follows:

i. First installment in the amount of \$50,000 shall be due within 45 days of the Effective Date;

- ii. Second installment in the amount of \$62,500 shall be due within 180 of the Effective Date; and
- iii. Third installment in the amount of \$62,500 shall be due within one (1) year of the Effective Date.

b. The total sum of \$175,000.00 shall be paid to "Jacobson Education Law," co-counsel for Plaintiffs, to be paid in three (3) installments as follows:

- i. First installment in the amount of \$50,000 shall be due within 45 days of the Effective Date;
- ii. Second installment in the amount of \$62,500 shall be due within 180 of the Effective Date; and
- iii. Third installment in the amount of \$62,500 shall be due within one (1) year of the Effective Date.

c. The Parties acknowledge that King & Spalding and Goodwin Procter LLP have acted in a pro bono capacity in this Action and have agreed to waive any and all claims for attorneys' fees in order to obtain this Agreement. This provision for the payment of legal fees and costs is subject to the customary state approval processes, including approval by the Department of Finance. Plaintiffs hereby release any further claims to fees or costs incurred in the prosecution of this Action.

11. No Admission. The Parties acknowledge that the purpose of this Agreement is to avoid the delay of protracted litigation and the expenses associated therewith. This Agreement is the result of a compromise of disputed claims. Throughout this Action, Defendants have denied any liability and/or fault. In executing the Agreement, no party to this Agreement shall be deemed to have admitted any fault or liability in connection with any matter or thing. Likewise, by entering this Agreement Plaintiffs do not waive any claims not expressly settled herein, nor do they concede that additional relief would not be available in the event that this Agreement is not approved or is later terminated.

12. Other Documents. The Parties agree to execute such other documents and to take such other and further action as may be necessary to finalize and perform this Agreement.

13. Successors in Interest. This Agreement is binding upon, and inures to the benefit of the Parties, their successors, agents, conservators, trustees, servants, employees, officers, attorneys and assigns.

14. No Oral Modifications. In no event will any waiver, release, alteration or modification of any of the terms of this Agreement be valid unless it is in writing and signed by all Parties. This Agreement cannot be modified or terminated orally. Following Final Approval of the Agreement by the Court, no modification of this Agreement shall be effective unless it is made pursuant to Court order.

15. Force Majeure Delays/COVID-19. Defendants shall not be chargeable with, liable for, or responsible for anything or in any amount for any delay in the execution of the terms of this Agreement, caused by fire or other casualty, earthquake, flood, inclement weather, explosion, pandemic, acts of God or the public enemy, any action, inaction, delay or interference by governmental authorities (including, without limitation, delays in reopening campuses, limitations in methods of delivery of instruction or other impediments imposed by global pandemic e.g., COVID-19), war, invasion, insurrection, rebellion, terrorism, riots, strikes or lockouts, acts or omissions of contractors or any other cause, whether similar or dissimilar to the foregoing, which is beyond the reasonable control of Defendants (collectively, "Force Majeure Delays"). Any delay in Defendants' performance under this Agreement arising out of or in connection with Force Majeure Delays shall not be deemed to be a breach by Defendants under this Agreement and any time period within which Defendants are obligated to perform under the Agreement shall be extended for a period of time which is reasonable in light of such Force Majeure Delays (which extension shall in no event be less than the duration of the events causing such delay). The Parties agree to work cooperatively to effectuate the terms of the Agreement under any such circumstances.

16. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the validity of the remaining terms shall not be affected, and the Parties shall negotiate in good faith to replace or reform any invalidated or unenforceable provision in a manner that effectuates the Parties' intent.

17. Counterparts. This Agreement may be signed in one or more counterparts, each copy having the same force and effect as an original and shall be effective upon its execution by the Parties.

18. Captions and Interpretation. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. This Agreement is mutually drafted, as a result of arm's length negotiations among the Parties, and no provision in this Agreement is to be interpreted for or against either Party because that Party or its legal representative drafted such provision.

19. Number and Gender. Whenever required by the context hereof, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, and the masculine, feminine and neutral genders shall each be deemed to include the other.

20. Exhibits. The terms of all Exhibits attached hereto are fully incorporated into this Agreement and are an integral part thereof. The terms of this Agreement, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. To the extent that there are any conflicts or inconsistencies between the terms of this Agreement and any of the Exhibits, the terms of this Agreement shall control

21. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes any and all prior understandings, representations, warranties and agreements between the Parties pertaining to the subject matter hereof. The consideration recited herein is the sole, complete and entire consideration for the releases, and there is no agreement, oral or written, express or implied, whereby the undersigned are to receive at any time or in any event or upon the happening of any contingency or upon the development or the discovery of any fact, circumstance or condition, any further consideration of any kind whatsoever from any party.

22. Voluntary Agreement. Each of the Parties further represents and declares that it has carefully read this Agreement and knows its contents and that each Party signs the same freely and voluntarily.

23. Facsimile Signatures. This Agreement may be executed by facsimile signatures, and any such signature should have the same force and effect as an original signature.

24. Statutory References. The reference to each statute or regulation in this Settlement Agreement is to that statute or regulation in effect as of the Effective Date of this Agreement.

25. Notices. Any written notice under this Agreement shall be delivered as follows:

If to the Defendants:

Mark Posard, mposard@gordonrees.com
Gordon Rees Scully Mansukhani LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
Telephone: 916.565.2900
Facsimile: 916.920.4402

If to the Plaintiffs:

Claudia Center
Disability Rights Education and Defense Fund, Inc.
2212 Sixth Street
Berkeley, CA 94710
Telephone: 510.644.2555
Facsimile: 510.841.8645
Email: ccenter@dredf.org

Deborah Jacobson
Jacobson Education Law
1919 Addison St. Ste. 105
Berkeley, CA 94702
Telephone: 510.647.8125
Email: djacobson@jacobsoneducationlaw.com

SHANE BRUN (SBN 179079)
sbrun@kslaw.com
King & Spalding LLP
601 S. California Ave.
Suite 100
Palo Alto, CA 94304
Telephone: (415) 318-1245
Fax: (415) 318-1200

Brendan E. Radke
Goodwin Procter LLP
3 Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: 415.733.6046
Facsimile: 415.634.1556
Email: bradke@goodwinlaw.com

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) set forth below.

FOR PLAINTIFFS:

Dated: Student A, by and through Parent A, her guardian
12/11/2020 /s/ Parent A

Dated: Student B, by and through Parent B, his guardian
12/11/2020 /s/ Parent B

Dated: Student C, by and through Parent C, his guardian
12/11/2020 /s/ Parent C

Dated: Student D, by and through Parent D, her guardian
12/11/2020 /s/ Parent D

FOR DEFENDANTS:

Dated: Berkeley Unified School District
12/11/2020 By: /s/ Berkeley Unified School District

Its:

Dated: Board of Education of the Berkeley Unified School District
12/11/2020 By: /s/ Board of Education of the Berkeley Unified School District

Its:

EXHIBIT A

Berkeley Unified School District
Final Proposal to Develop Literacy Improvement Program
Fall 2020

I. STATEMENT OF PROGRAM GOALS

The Mission of the Berkeley Unified School District (“**BUSD**” or “**the District**”) is to enable and inspire its diverse student body to achieve academic excellence and make positive contributions to the community. In support of this mission, BUSD aims to provide effective and appropriate reading programs to its students to enable them to become successful readers. BUSD also aims to reduce the achievement gap in student performance for students with or at risk for reading disabilities.

Many students identified with reading disabilities or at risk for reading disabilities may not require special education if provided early and appropriately intensive, research-based reading instruction. BUSD is committed to promoting early and wide successful reading. The long-term goal is to significantly reduce the proportion of students at risk for reading failure. With this in mind, BUSD will set goals for reductions of the number of students at risk for reading failure in each grade and for implementation of a nationally standardized screening and benchmark assessment system for the purposes of measuring early reading achievement in Grades K-2. As further set forth below, BUSD will develop and implement a detailed literacy improvement program (the “**Literacy Improvement Program**”) aimed at reducing the achievement gap, improving BUSD’s use of research-based, appropriately intensive reading instruction, implementing policies and procedures to increase early identification of students with reading disabilities, including dyslexia, and enhancing BUSD policies and procedures with regard to Individualized Education Program (“**IEP**”) goal setting and progress monitoring. The Literacy Improvement Program is based on BUSD’s commitment to improve general education reading instruction for all students and prevent and remediate reading disabilities through enhancements in the District’s Multi-Tier System of Supports (“**MTSS**”).

BUSD, like districts across the country, continues to face extreme challenges and uncertainty amidst the global COVID-19 pandemic and its impact on “in-person” classroom instruction. Beginning in March 2020, BUSD was forced to unexpectedly and immediately convert to “distance learning” platforms for all schools. Distance learning is expected to continue within BUSD for the foreseeable future and potentially throughout the 2020-21 academic year. As a result, on-campus and other “in-person” activity, including but not limited to in-person student instruction and assessments, professional development, and other similar activities continue to be severely impacted by state and local stay-at-home orders and other COVID-related mitigation measures.

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

BUSD continues to closely monitor guidance and mandates issued by the California Department of Education, federal, state and local public health officials, and other governing authorities to work to safely reopen its schools. However, BUSD expects the global pandemic will continue to severely impact BUSD's staffing and other resources. For example, BUSD faces severe budget cuts in 2021, and anticipates staffing shortages as school's reopen due to personnel who may be unable to return to campus as a result of underlying conditions.

BUSD remains committed to development and implementation of the Literacy Improvement Program. However, challenges posed by the ongoing COVID-19 pandemic and the necessary mitigation measures aimed to reduce the risk of transmission of COVID to its students, faculty, and all BUSD families within the community, will necessarily impact BUSD's implementation of the Literacy Improvement Program for the foreseeable future. As such, BUSD anticipates that its development and implementation of the Literacy Improvement Program will need to allow for and adapt to challenges the District and its families will certainly continue to face as a result of the ongoing global pandemic. With this in mind, the Literacy Improvement Program will be predicated on an understanding of, and the commitment to use of a common vocabulary, research-based practices, and goals regarding reading acquisition and literacy intervention for students with reading disabilities, including dyslexia. The District will support and ensure that general and special education teachers and related-services personnel engage in meaningful professional development related to assessment, curriculum, and instructional practices. Explicit, observable leadership roles will be specified in the Literacy Improvement Program, to help achieve the following program outcomes and reduce the achievement gap in student performance for students at risk for, or with, reading disabilities:

i. BUSD will provide appropriately intensive and early research-based reading intervention services, related services, supplementary aids and services, accommodations, and modifications, including, but not limited to, assistive technology and accessible materials, to students with reading disabilities, including dyslexia;

ii. BUSD will implement policies and procedures aimed at promoting early and successful District-wide reading;

iii. BUSD will maintain systematic, equitable, and verifiable policies and practices to provide a range of early, appropriately intensive, research-based general education interventions for students at risk for reading disabilities, facilitated by universal screening and progress monitoring of reading growth and development (i.e., Benchmark Assessments for reading), to promote timely evaluation and identification of students at risk for reading disabilities;

iv. BUSD will maintain routine implementation of a practical method to carry out Child Find duties to identify students with suspected reading disabilities for

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

evaluation in compliance with the Individuals with Disabilities Education Act (“**IDEA**”), Section 504 of the Rehabilitation Act (“**Section 504**”), the Americans with Disabilities Act (“**ADA**”), and California Education Code Section 56000 et seq. (“**Section 56000**”), that affords procedural safeguards to students with disabilities and their parents/guardians, and provides a free appropriate public education (“**FAPE**”) in the least restrictive environment to all students found eligible in accordance with these laws;

v. BUSD staff responsible for implementing the Literacy Improvement Program will be fully knowledgeable of all of the relevant legal requirements;

vi. BUSD leadership will support and ensure teachers and related-services personnel participate in professional development and relevant decision-making that supports the Literacy Improvement Program’s adoption and implementation; and

vii. BUSD will ensure that ongoing program evaluation and progress monitoring of the Literacy Improvement Program occurs.

II. CREATION AND ADOPTION OF AN IMPLEMENTATION PROGRAM TO ACHIEVE PROGRAM GOALS

A. Implementation Team

1. ACTION: Form District Implementation Team and Select Outside Consultants

- a. Within the timeframe provided for this action in Appendix A to this document, BUSD will form a District Implementation Team. The Implementation Team will include the BUSD Director of Schools, Director of Special Education and Section 504 Plan Coordinator, who will work collaboratively to include school site principals, general education and special education teachers, resource specialists, school psychologists, related services providers and staff to the Implementation Team. The District Implementation Team will support implementation of the Literacy Improvement Program by:
 - i. Communicating Literacy Improvement Program goals and implementation schedules to school site personnel;
 - ii. Assigning Literacy Improvement Program tasks to appropriate BUSD personnel;
 - iii. Monitoring that tasks are completed within the Literacy Improvement Program’s specified timelines; and

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

- iv. Reporting to the School Board at least quarterly regarding progress implementing the Literacy Improvement Program in accordance with stated goals.
- b. BUSD will work collaboratively with nationally, recognized outside consultants (the “**Outside Consultants**”) to develop and implement the Literacy Improvement Program. Specifically, within the timeframes provided for these actions in Appendix A to this document, BUSD will consult with the Outside Consultants to:
- i. Review proposed changes to District-wide reading intervention and special education policies, procedures and practices as outlined in the Literacy Improvement Program before presentation by the Implementation Team to the School Board for approval;
 - ii. Review and develop a targeted professional development plan (the “**Targeted PDP**”) to support Literacy Improvement Program implementation. The Targeted PDP will:
 - Address knowledge in the nature of early reading acquisition, including but not limited to the essential components of reading acquisition, the importance of each component, and how to teach each component of reading consistent with standards in the California State Board of Education English Language Arts/English Language Development Framework (“curriculum framework”);
 - Outline recommended professional development for BUSD personnel (by position/responsibility), including administrators, site principals, general education teachers, special education teachers and related services personnel; and
 - Include modeling criteria, and identify teacher leaders who can provide classroom demonstrations and modeling for their peers, understanding and taking into account BUSD’s current distance learning model and other restrictions to in-person activities during the COVID pandemic.

- iii. Review and develop appropriate and measurable literacy goals;
- iv. Review and develop guidelines and criteria used to place at-risk students into Tier 2 and Tier 3 interventions;
- v. Develop and implement progress monitoring guidelines for Tier 2 and Tier 3 students; and
- vi. Review and assess feedback (from the Implementation Team, Outside Consultants, school sites, teachers, etc.) to refine the Literacy Improvement Program as needed to accomplish stated goals. This review and assessment will consider information that may be obtained from student assessments and parent feedback during the implementation process.

B. Summary of Actions and Implementation Timelines

1. ACTION: Policy Review and Literacy Improvement Program Development

a. Within the timeframe provided for this action in Appendix A to this document, BUSD will review and implement reforms to District policies, procedures and practices as needed to fulfill the goals of the Literacy Improvement Program, including the District's Response to Intervention ("**RTI**") program (hereinafter referred to as MTSS-RDS as defined on page 7 of this document).

2. ACTION: BUSD will develop the Literacy Improvement Plan to accomplish Four Goals

a. **Goal 1**: **Develop Programs to Improve General Education Reading and Language Arts achievement for all Students, especially those Students with or at risk for Reading Disabilities, including Dyslexia.**

i. Reading Data System to Support Tier 1 Benchmark Assessment:

Within the timeframe provided for this action in Appendix A to this document, and with input from the Outside Consultants, BUSD will select a reading data system that uses a single, time and cost efficient, and research-based authentic reading testing system (e.g, *AIMSWebPLUS*, *FastBridge*, *DIBELS Next*, *Renaissance Star*) for use in Grades K-8. This system will be used for Benchmark Assessments and will be supplemented as

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

necessary with an oral reading test and test of letter sound correspondence, diagnostic surveys of print knowledge, phoneme awareness, phonics, word reading, spelling, written expression, and reading fluency that are designed to inform literacy instruction for Grades K-8. This system will inform MTSS and the data obtained will be considered, among other things, when determining eligibility for special education under the category of specific learning disability (“SLD”).

Within the timeframe provided for this action in Appendix A to this document, BUSD will conduct Benchmark Assessments in the fall, winter, and spring to ensure reading growth for all students and support early intervention through universal screening. At risk students in all grades will be triaged to appropriately intensive Tier 2 or 3 interventions. Students in Tiers 2 and 3 will have their progress monitored more frequently to ensure growth and development toward grade-level reading goals demonstrating that students are reducing the achievement gap.

Within the timeframe provided for this action in Appendix A to this document, BUSD will provide K-5 general education teachers, Grades 6-8 Reading and Language Arts teachers, and K-8 special education teachers professional development in how to use the Benchmark Assessments system for screening and progress monitoring, and for reports to parents/guardians.

Within the timeframe provided for this action in Appendix A to this document, as part of the Literacy Improvement Program, BUSD, in conjunction with school site principals, teachers, school personnel and bargaining units, will conduct a review and assessment of its core reading program. BUSD will consult with Outside Consultants during this process, and will consider alternative core reading programs. BUSD’s core reading program will be aligned with the curriculum framework adopted by the California Department of Education. Curriculum adoption is subject to review and approval by the School Board.

ii. Research-Based Reading Instructional Practices in MTSS Tier 1:

Within the timeframe provided for this action in Appendix A to this document, as set forth in the Targeted PDP, BUSD will provide K-5 general education teachers and Grades 6-8 Reading and Language Arts teachers professional development in research and practice of Reading and Language Arts instruction consistent with the curriculum framework. Professional development will

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

include general information sessions (e.g., webinars, lectures), instructional observations and feedback on implementation of research-based practices.

iii. Appropriately Intensive Research-Based General Education Reading and Language Arts Programs in MTSS Tier 1:

BUSD has selected FastTrack as a supplement to its core language arts program (Tier 1). Within the timeframe provided for this action in Appendix A to this document, BUSD will assess and monitor the success of this program along with K-3 benchmark data to ensure FastTrack is an appropriately intensive, research-based phonics program, aligned with the needs of BUSD students and reading science. According to the scope and sequence for the adopted program, BUSD will provide appropriately intensive research-based phonics instruction at a frequency estimated to be at least 115 minutes per five-day week, including time spent conducting assessments.

BUSD's core reading program will be supplemented to be of appropriate intensity in terms of academic English (e.g., *Language for Learning* in Grade K, *Language for Thinking* in Grades K-5) and explicit phonics and phoneme awareness instruction (e.g., *Wilson Foundations* in Grades K-3, or *Systematic Instruction in Phonological Awareness and Phonics SIPPS* in Grades K-8, BUSD is using *Fast Track* in Grades K-3). Within the timeframe provided for this action in Appendix A to this document, BUSD, in consultation with the Outside Consultants, will identify supports to Tier 1 curriculum for Grades 4-8.

Within the timeframe provided for this action in Appendix A to this document, BUSD will begin implementation of the Targeted PDP to provide Grades K-5 general education teachers and Grades 6-8 Reading and Language Arts teachers professional development in how to use their chosen Reading and Language Arts Tier 1 curriculum through coaching and observations to provide feedback on implementation fidelity.

b. Goal 2: Increase the Systematicity and Intensity of Tier 2 and 3 Reading and Language Arts Intervention of the MTSS Framework to Reduce the Achievement Gap for Students at risk for Reading Disabilities.

i. Assessment Practices in MTSS Tiers 2 and 3:

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

Within the timeframe provided for this action in Appendix A to this document, BUSD will provide professional development to school-based teams to use the MTSS-Reading Data System (“MTSS-RDS”) to triage students into appropriately intensive Tier 2 or Tier 3 reading interventions, write reading goals that meaningfully reduce the reading achievement gap, and monitor progress frequently to ensure growth and development.

Within the timeframe provided for this action in Appendix A to this document, and with input from the Outside Consultants, BUSD will develop and implement progress monitoring guidelines for Tier 2 and Tier 3 students. Tier 2 interventionists will begin to monitor progress of students no less than every six weeks by repeating the Benchmark Assessment tests, or other research-based Tier 2 reading assessment. Tier 3 interventionists will monitor students in Tier 3 by administering ongoing curriculum-based assessments, or other measures as they may be described in a student’s IEP or 504 Plan.

Within the timeframe provided for this action in Appendix A to this document, to ensure timely compliance with Child Find obligations, grade-level teams and Tier 2 and Tier 3 service providers will be trained to use their screening and progress monitoring data that may lead them to suspect disability and that may lead to special education assessment to support attainment of Goal 4.

ii. Appropriately Intensive Research-Based Remedial Reading and Language Arts Programs for Use in MTSS Tiers 2 and 3:

Within the timeframe provided for this action in Appendix A to this document, and with input from the Outside Consultants, BUSD will select appropriately intensive research-based Reading and Language Arts intervention programs for use in Tiers 2 and 3. The selected Tier 2 and Tier 3 program(s) will be aligned with the International Dyslexia Association’s Knowledge and Practice Standards for Teachers of Reading (“IDA”) (e.g., *Wilson Reading System*, *SIPPS*, *Reading Mastery*, *Corrective Reading*, *Rewards*, *Language Live!*, or *FLEX Literacy*). BUSD has selected the *Wilson Reading System* for this purpose. LLI and Reading Recovery may be used to support some students who require Tier 2 or 3 support, but in cases involving students with suspected reading disabilities, such use should be limited except in documented exceptional learning circumstances, e.g., failure of selected programs aligned with the IDA.

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

Ongoing professional development in the selected intervention programs will be provided as set forth in the Targeted PDP, with observations and feedback on fidelity of the reading program intervention.

iii. Research-Based Reading Instructional Practices for MTSS in Tiers 2 and 3:

Within the timeframe provided for this action in Appendix A to this document, and with input from the Outside Consultants, BUSD will develop and implement an MTSS staffing plan that supports Tier 2 service delivery model by coordinating available remedial programs such as Title 1, English Learner, and reading specialists. Tier 2 interventions will be based on regular, consistent and effective individual or small group reading instruction (e.g., 4-6, 3-5) of similarly skilled students (at a duration and frequency to be determined based on level of need and considering Outside Consultant recommendations and best practices), and will be *supplemental* to general education classroom instruction.

Within the timeframe provided for this action in Appendix A to this document, and with input from the Outside Consultants, BUSD will develop and implement an MTSS staffing plan that supports Tier 3 service delivery by special education personnel. Tier 3 interventions will be based on individual students' educational needs; be regular (at a duration and frequency to be determined based on level of need and considering Outside Consultant recommendations and best practices); may be individual or smaller group reading instruction (e.g., 3-5) of similarly skilled students; and will be supplemental to general education classroom instruction. In some circumstances, Tier 3 may supplant core instruction.

During Literacy Improvement Program implementation, BUSD will seek recommendations from the Outside Consultants, and will work with site principals, teachers, school personnel and/or bargaining units, to review and set further guidelines with regard to the appropriate frequency and duration of Tier 2 and Tier 3 interventions.

c. Goal 3: Ensure Fidelity of Literacy Improvement Program Implementation through District Monitoring of Literacy Improvement Program and Staff Engagement.

i. Monitoring Literacy Improvement Program Plan Implementation and Staff Engagement:

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

Within the timeframe provided for this action in Appendix A to this document, BUSD will develop and implement a monitoring component to the Literacy Improvement Program that will facilitate ongoing progress through monitoring of Literacy Improvement Program compliance. The District will provide periodic advisory reports to the Implementation Team, the School Board and the outside Literacy Improvement Program monitor (the “**Monitor**”).

BUSD recognizes that implementation of the Literacy Improvement Program with a research-based approach to reading instruction in general and special education programs may be seen by some BUSD staff members as a radical shift in their thinking, training, and practices. Additionally, the ongoing global COVID-19 pandemic presents additional challenges as teachers are faced with increasing limitations on instructional time and unconventional, alternative delivery methods (e.g., distance learning). Therefore, the Literacy Improvement Program will include regular monitoring of staff engagement with careful attention to stages of staff concern.

Within the timeframe provided for this action in Appendix A to this document, BUSD will evaluate staff perceptions about changes in general and special education research-based reading practices and MTSS-RDS. The District Implementation Team will consult with the Outside Consultants, and work with K-12 administrators, including principals, teachers, school personnel and bargaining units to outline staff perceptions and impediments, if any, to the proposed Literacy Improvement Program.

The Implementation Team will evaluate and report accomplishments toward the Literacy Improvement Program goals to the Monitor and the School Board at least quarterly to ensure implementation success. BUSD will develop a standard instrument for staff to evaluate all professional development activities aligned to the Literacy Improvement Program. Similarly, BUSD will develop a standard instrument for each professional development professional to evaluate the engagement of attendees, taking into account alternative methods of delivery of professional development due to the ongoing COVID-19 pandemic. BUSD will review data from both instruments regularly and remedy identified deficiencies.

d. Goal 4: Special Education Programs: Increase Reading Achievement by Improving the Quality of IEP Goals and Section 504 Plan Development, Progress Monitoring, and use of appropriately intensive, Research-based Interventions.

i. Assessment Practices, IEP and Section 504 Plan Development, and IEP Goals and Progress Monitoring:

BUSD, as a member of North Region SELPA, has worked with NR SELPA to pilot a Pattern of Strengths and Weaknesses model (“PSW”) for specific learning disability eligibility (“SLD”). BUSD will transition from using the severe discrepancy model and adopt the PSW model recommended by NR SELPA to assess SLD eligibility as outlined in the NR SELPA PSW Procedure Manual.

Within the timeframe provided for this action in Appendix A to this document, BUSD will work with the Outside Consultants to develop a plan to increase use of the MTSS as part of the comprehensive evaluation to identify students with SLD, including dyslexia.

Appropriate personnel will be identified and trained to organize and timely report MTSS data to IEP teams, including parents/guardians.

BUSD will assure that its policies and practices provide procedural safeguards with respect to Child Find, assessment, IEP and Section 504 plan development, individual progress monitoring to students with disabilities and their parents/guardians, and a free appropriate public education in the least restrictive environment as appropriate to all students with reading disabilities found eligible in accordance with IDEA, and/or Section 504, ADA and Section 56000.

ii. Appropriately Intensive Research-Based Reading Intervention Programs for Students with IEPs and Section 504 Plans:

Within the timeframe provided for this action in Appendix A to this document, BUSD will implement the *Wilson Reading System*.

iii. Quality IEP Goals and Scientifically Sound Progress Monitoring using MTSS-RDS:

Consistent with the Targeted PDP Implementation, BUSD will:

- In Year 1, provide IEP and Section 504 teams training on how to use the MTSS-RDS (e.g., *AIMSWebPLUS*,

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

FastBridge, DIBELS Next or Renaissance Star) and other relevant information, including diagnostic surveys of academic skills, to write meaningful, observable, measurable, and scientifically sound student goal-setting practices that reduce the achievement gap and are clearly understood by all parties, especially parents/guardians;

- By Year 2, implement policies, procedures, and practices to ensure that when current students with disabilities' IEPs are subject to review, new goals will be written on a case-by case basis using the MTSS-RDS or an alternative reading assessment that is aligned with the IDA. Special education teachers will monitor progress according to the students' stated IEP goals;
- In Year 1, develop corollary Section 504 goal development and progress monitoring standards; and.
- By Year 2, implement policies, procedures, and practices to ensure that all students with IEP reading goals will have their progress monitored appropriately according to the student's stated IEP goals, which will include individualized goals based on the selected reading data system or an alternative reading assessment that is aligned with the IDA.

3. Overall Literacy Improvement Program Implementation Timeline:

This Literacy Improvement Program is designed to be implemented over a three-to-five year period beginning with the 2020-2021 school year, with an expectation that additional time may be necessary to achieve the overall goal to substantially increase general education reading achievement.

C. Implementation Monitoring by Outside Monitor

1. ACTION: Ensure Program Implementation and Program Success:

- a. Within the timeframe provided for this action in Appendix A to this document, the BUSD Implementation Team will identify and secure the services of an impartial outside Monitor to monitor and report on BUSD's compliance with the Literacy Improvement Program, having preferred qualifications in:

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

- Monitoring progress towards specific goals and performance measures; and
- Previous demonstrative experience with diverse school districts and practical experience in the educational fields at issue.

b. Consistent with the timeframe in Appendix A, the BUSD Implementation Team will consult with the Monitor to discuss Literacy Improvement Program implementation and monitoring expectations, consistent with the foregoing outcomes and goals.

c. The Monitor will provide a Monitoring Plan to the School Board, and BUSD Implementation Team, within 60 days of its acceptance of assignment as Monitor.

d. The BUSD Implementation Team will provide the Monitor with implementation reports on a quarterly basis in Years 1 through 3 based on the requirements of the Monitoring Plan, with copies to the School Board.

e. In Years 1 through 3, the Monitor will issue Monitoring Reports on a semi-annual basis addressing progress on Literacy Improvement Program implementation to the School Board and BUSD Implementation Team.

2. Overall Implementation Monitoring Timeline:

The services of the Monitor will be required through Year 3. As BUSD demonstrates increasingly adequate progress in Literacy Improvement Program implementation, the Monitor may recommend less frequent monitoring. The Monitor will provide a report at the end of Year 3 recommending whether further monitoring is necessary and specifying all bases for an extended monitoring period.

Appendix A

Task and Implementation Schedule

Ref.	Task	Due Date
II.A.1.a	BUSD will form a District Implementation Team.	45 days after Effective Date
II.A.1.b.i	BUSD will consult with the Outside Consultants regarding proposed changes to District-wide reading intervention and special education policies, procedures and practices as outlined in the Literacy Improvement Program before presentation by the Implementation Team to the School Board for approval.	Beginning no more than 15 days from retention of Outside Consultants, through Year 3
II.A.1.b.ii	BUSD will consult with the Outside Consultants with regard to development of the Targeted PDP.	Beginning no more than 15 days from retention of Outside Consultants, through completion of Targeted PDP
II.A.1.b.iii	BUSD will consult with the Outside Consultants will regard to development of appropriate and measurable literacy goals.	Beginning no more than 15 days from retention of Outside Consultants, through Year 3
II.A.1.b.iv	BUSD will consult with the Outside Consultant with regard to development of guidelines and criteria used to place at-risk students into Tier 2 and Tier 3 interventions.	Beginning no more than 15 days from retention of Outside Consultants, through Year 3
II.A.1.b.v	BUSD will consult with the Outside Consultants with regard to development and implementation of progress monitoring guidelines for Tier 2 and Tier 3 students.	Beginning no more than 15 days from retention of Outside Consultants, through Year 3
II.A.1.b.vi	BUSD will consult with the Outside Consultants to review and assess feedback to refine the Literacy Improvement Program as needed to accomplish stated goals.	Years 1 through 3
II.B.1.a	BUSD will review and implement reforms to District policies, procedures and practices as needed to fulfill the goals of the Literacy Improvement Program, including the District's RTI program.	Years 1 through 3
II.B.2.a.i	BUSD will select a reading data system that uses a single, time and cost efficient, and research-based authentic reading testing system (e.g.,	Six months after Effective Date

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

	AIMSWebPLUS, FastBridge, DIBELS Next, Renaissance Star) for use in Grades K-8.	
II.B.2.a.i	BUSD will conduct Benchmark Assessments in the fall, winter, and spring to ensure reading growth for all students and support early intervention through universal screening.	Year 1, subject to instructional time and other restrictions during periods of distance learning during COVID pandemic
II.B.2.a.i	BUSD will provide K-5 general education teachers, Grades 6-8 Reading and Language Arts teachers, and K-8 special education teachers professional development in how to use the Benchmark Assessments system for screening and progress monitoring, and for reports to parents/guardians.	Per Targeted PDP
II.B.2.a.i	As part of the Literacy Improvement Program, BUSD, in conjunction with school site principals, teachers, school personnel and bargaining units, will conduct a review and assessment of its core reading program.	Years 1 through 3
II.B.2.a.ii	As set forth in the Targeted PDP, BUSD will provide K-5 general education teachers and Grades 6-8 Reading and Language Arts teachers professional development in research and practice of Reading and Language Arts instruction consistent with the curriculum framework.	Per Targeted PDP
II.B.2.a.iii	BUSD will assess and monitor the success of the FastTrack phonics program along with K-3 benchmark data to ensure FastTrack is an appropriately intensive, research-based phonics program, aligned with the needs of BUSD students and reading science.	Years 1 through 3
II.B.2.a.iii	BUSD, in consultation with the Outside Consultants, will identify supports to Tier 1 curriculum for Grades 4-8.	Year 1
II.B.2.a.iii	BUSD will begin implementation of the Targeted PDP to provide Grades K-5 general education teachers and Grades 6-8 Reading and Language Arts teachers professional development in how to use their chosen Reading and Language Arts Tier 1 curriculum through coaching and observations to provide feedback on implementation.	Per Targeted PDP
II.B.2.b.i	BUSD will provide professional development to school-based teams to use of Benchmark Assessment data the MTSS-Reading Data	Per Targeted PDP

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

	System (“MTSS-RDS”) to triage students into appropriately intensive Tier 2 or Tier 3 reading interventions, write reading goals that meaningfully reduce the reading achievement gap, and monitor progress and report progress to parents/guardians to ensure growth and development.	
II.B.2.b.i	BUSD, with input from the Outside Consultants, will develop and implement progress monitoring guidelines for Tier 2 and Tier 3 students.	Year 1
II.B.2.b.i	Train grade-level teams and Tier 2 and Tier 3 service providers to use their screening and progress monitoring data.	Beginning Year 1
II.B.2.b.ii	BUSD, with input from the Outside Consultants, will select appropriately intensive research-based Reading and Language Arts intervention programs for use in Tiers 2 and 3.	Year 1
II.B.2.b.iii	With input from the Outside Consultants, BUSD will develop and implement an MTSS staffing plan that supports Tier 2 service delivery model by coordinating available remedial programs such as Title 1, English Learner, and reading specialists.	Beginning Year 1
II.B.2.b.iii	With input from the Outside Consultants, BUSD will develop and implement an MTSS staffing plan that supports Tier 3 service delivery by special education personnel.	Beginning Year 1
II.B.2.c.i	BUSD will develop and implement a monitoring component to the Literacy Improvement Program.	Year 1
II.B.2.c.i	BUSD will evaluate staff perceptions about changes in general and special education research-based reading practices and MTSS-RDS.	Years 1 through 3
II.B.2.d.i	BUSD will work with the Outside Consultants to develop a plan to increase use of the MTSS as part of the comprehensive evaluation to identify students with SLD, including dyslexia.	Year 1
II.B.2.d.ii	BUSD will implement the Wilson Reading System.	Year 1
II.B.2.d.iii	BUSD will provide IEP and Section 504 teams training on use of the MTSS-RDS (e.g., AIMSWebPLUS, FastBridge, DIBELS Next or Renaissance Star), and other relevant information, including diagnostic surveys of academic skills, and student goal-setting practices.	Year 1

Student A, et al. v. Berkeley Unified School District, et al., Case 4:17-cv-02510-JST

II.B.2.d.iii	BUSD will implement policies, procedures, and practices to ensure that when current students with disabilities' IEPs are subject to review, new goals will be written on a case-by case basis using the MTSS-RDS. Special education teachers will monitor progress according to the students' stated IEP goals	Year 2
II.B.2.d.iii	BUSD will develop corollary Section 504 goal development and progress monitoring standards.	Year 1
II.B.2.d.iii	Implement policies, procedures, and practices to ensure that all students with IEP reading goals will have their progress monitored appropriately according to the student's stated IEP goals. .	Year 2
II.C.1.a	The BUSD Implementation Team will identify and secure the services of an impartial outside Monitor to monitor and report on BUSD's compliance with the Literacy Improvement Program.	Within 60 days after Effective Date
II.C.1.b	The BUSD Implementation Team will provide the Literacy Improvement Program to the Monitor, Outside Consultants, and Plaintiffs' Counsel.	Years 1 through 3
II.C.1.c	The Monitor will provide a Monitoring Plan to the School Board, and BUSD Implementation Team.	Within 60 days of its acceptance of assignment as Monitor
II.C.1.d	The BUSD Implementation Team will provide the Monitor with implementation reports.	On a quarterly basis in Years 1 through 3 based on the requirements of the Monitoring Plan
II.C.1.e	The Monitor will issue Monitoring Reports on a semi-annual basis addressing progress on Literacy Improvement Program implementation to the School Board and BUSD Implementation Team.	Ongoing Years 1 through 3

EXHIBIT B

1 CLAUDIA CENTER (SBN 158255)
ccenter@dredf.org
2 MALHAR SHAH (SBN 318588)
mshah@dredf.org
3 **DISABILITY RIGHTS EDUCATION
AND DEFENSE FUND, INC.**
4 Ed Roberts Campus
3075 Adeline Street, Suite 210
5 Berkeley, CA 94703
Tel: +1.510.644.2555
6 Fax: +1.510.841.8645

7 [ADDITIONAL COUNSEL AND PARTIES LISTED ON NEXT PAGE]

8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. 4:17-cv-02510-JST

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION ORDER**

1 DEBORAH JACOBSON (SBN 278104)
2 *djacobson@jacobsoneducationlaw.com*
3 **JACOBSON EDUCATION LAW, INC.**
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Tel: +1.510.647.8125
7 Fax: +1.510.280.9340

8 BRENDAN E. RADKE (SBN 275284)
9 *bradke@goodwinlaw.com*
10 **GOODWIN PROCTER LLP**
11 Three Embarcadero Center
12 San Francisco, CA 94111
13 Tel: +1.415.733.6000
14 Fax: +1.415.677.9041

15 SHANE BRUN (SBN 179079)
16 *sbrun@kslaw.com*
17 **KING & SPALDING LLP**
18 601 S. California Ave.
19 Suite 100
20 Palo Alto, CA 94304
21 Telephone: (415) 318-1245
22 Fax: (415) 318-1200

23 *Attorneys for Plaintiffs*

24 MARK POSARD (SBN: 208790)
25 *mposard@grsm.com*
26 ANNETTE ROSE (SBN 311274)
27 *arose@grsm.com*
28 **GORDON REES SCULLY MANSUKHANI LLP**
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
Telephone: (916) 565-2900
Facsimile: (916) 920-4402

Attorneys for Defendants

22
23
24
25
26
27
28

1 WHEREAS, the Plaintiffs having applied unopposed to this Court for an Order preliminarily
2 approving the settlement and provisionally certifying the class, for settlement purposes only, in the
3 above-captioned class action (“Action”), in accordance with the Parties’ Settlement Agreement
4 dated December 9, 2020, which together with the exhibits annexed thereto, sets forth the terms and
5 conditions for a proposed settlement of the Action (the “Settlement Agreement”); and

6 WHEREAS, the Court having received, read and considered the Settlement Agreement and
7 the exhibits annexed thereto, which have been filed with the Court; and

8 WHEREAS, it appearing that the parties entered into the Settlement Agreement after
9 lengthy, arm’s-length negotiations, including multiple settlement conference sessions with the
10 Honorable Magistrate Judge Laurel Beeler; and

11 WHEREAS, the Court has reviewed Plaintiffs’ Unopposed Motion for Preliminary
12 Approval, and finds good cause for the same,

13 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

14 1. The Settlement Agreement and the exhibits thereto are hereby incorporated by
15 reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless
16 otherwise defined herein, have the same meaning as in the Agreement.

17 2. The Court preliminarily finds: (a) that Plaintiffs have investigated the facts and law
18 relating to the matters alleged in the Action and evaluated the risks associated with continued
19 litigation, trial, and/or appeal; (b) that the Settlement Agreement was reached as a result of arm’s-
20 length negotiations between the Parties; (c) that the Settlement Agreement confers substantial
21 benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks
22 associated with continued litigation, trial, and/or appeal; and (d) the Settlement Agreement falls
23 within the range of reasonableness meriting possible final approval.

24 3. The Court finds that the method of providing notice to the Settlement Class proposed
25 in the Settlement Agreement constitutes the best method for providing such notice that is practicable
26 under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class
27 Members of their rights and obligations, complying fully with the requirements of Rule 23 of the
28 Federal Rules of Civil Procedure, due process, and any other applicable law.

1 4. The Notice of Proposed Settlement of Class Action Lawsuit (“Class Notice”)
2 (attached to the Settlement Agreement as Exhibit C) complies with due process and Rule 23 because
3 it is reasonably calculated to adequately apprise Settlement Class Members of (i) the pending
4 lawsuit, (ii) the proposed Settlement, and (iii) their rights, including the right to either participate in
5 the Settlement, exclude themselves from the Settlement, or object to the Settlement.

6 5. It is appropriate to provisionally certify the Class, for settlement purposes only,
7 pursuant to Federal Rule of Civil Procedure 23(b)(3) for the following reasons:

- 8 a. In the context of the Settlement Agreement, the Class is so numerous that joinder
9 of all Class Members is impracticable. Fed. R. Civ. P. 23(a)(1).
- 10 b. In the context of the Settlement Agreement, there are questions of law and fact
11 common to the Class. Fed. R. Civ. P. 23(a)(2).
- 12 c. In the context of the Settlement Agreement, Plaintiffs’ claims are typical of the
13 Settlement Class. Fed. R. Civ. P. 23(a)(3).
- 14 d. In the context of the Settlement Agreement, Plaintiffs and Class Counsel can
15 adequately represent the Settlement Class. Fed. R. Civ. P. 23(a)(4).
- 16 e. In the context of the Settlement Agreement, there are questions of law and fact
17 which predominate over any questions affecting only individual Class Members.
18 Fed. R. Civ. P. 23(b)(3).
- 19 f. In the context of the Settlement Agreement, class certification is superior to other
20 available methods for the fair and efficient adjudication of the controversy. Fed.
21 R. Civ. P. 23(b)(3).

22 6. **Settlement Preliminary Approval.** The Settlement Agreement is preliminarily
23 approved.

24 7. **Provisional Certification.** The Class is provisionally certified as a class of all
25 current and future Berkley Unified School District (“BUSD”) students who have, may have, or are
26 suspected of having a reading disability, such as dyslexia, within the meaning of the Individuals
27 with Disabilities Education Act, 20 U.S.C. § 14W, *et seq.* (amended by Individuals with Disabilities
28 Education Improvement Act of 2004, Pub. L. No. 108-446, Title I) (“IDEA”), Section 504 of the

1 Rehabilitation Act of 1973, 29 U.S.C. § 791 ("Section 504"), Title II of the Americans with
2 Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA"), or the California Education Code Section
3 56000 *et seq.* ("Section 56000").

4 8. **Appointment of Class Representatives and Class Counsel.** Student A, by and
5 through Parent A, her guardian; Student B, by and through Parent B, his guardian; Student C, by
6 and through Parent C, his guardian; and Student D, by and through Parent D, her guardian, each one
7 individually and on behalf of themselves (collectively, "Plaintiffs"), are conditionally certified as
8 the class representatives to implement the Parties' Settlement in accordance with the Settlement
9 Agreement. The law firms of Jacobson Education Law, Inc. and the Disability Rights Education
10 and Defense Fund are appointed as Class Counsel.

11 9. **Provision of Class Notice.** The Court hereby approves, as to form and content, the
12 proposed Class Notice. Defendants will notify Settlement Class Members of the Settlement in the
13 manner specified under Section 6.b of the Settlement Agreement. Within 14 days after the Court's
14 Preliminary Approval of the Settlement, the Parties, through their respective counsel of record, shall
15 provide a declaration to the Court attesting that they each disseminated the Class Notice consistent
16 with the Settlement Agreement.

17 10. **Objection to Settlement.** Settlement Class Members who want to object to the
18 Settlement Agreement must deliver written objections to Class Counsel at the addresses set forth
19 below, and must file such objection with the Court no later than sixty (60) calendar days after entry
20 of this Preliminary Approval Order. The delivery date is deemed to be the date the objection is
21 deposited in the U.S. Mail as evidenced by the postmark. The objection must be verified by a
22 declaration signed under the penalty of perjury or a sworn affidavit and must:

- 23 a. Identify the name and case number of the Action, *Student A v. Berkeley*
24 *Unified School District.*, Case No. 3:17-cv-02510-JST;
- 25 b. Include the full name, address, and phone number of the person objecting;
- 26 c. Include a statement of each objection;
- 27 d. Include a written brief detailing the reasons for each objection, any legal and
28 factual support, and facts demonstrating the objector is a Settlement Class Member

1 e. Be submitted to the Court either by mailing them to the Class Action Clerk,
2 United States District Court for the Northern District of California, 450 Golden Gate
3 Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United
4 States District Court for the Northern District of California (check COVID-19 orders before
5 visiting); and

6 f. Be filed or postmarked on or before [DATE].

7 Class Counsel

8 Claudia Center
9 DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC.
10 Ed Roberts Campus
11 3075 Adeline Street, Suite 210
12 Berkeley, CA 94703

13 Defendants' Counsel

14 Mark S. Posard
15 GORDON REES SCULLY MANSUKHANI LLP
16 3 Parkcenter, Suite 200
17 Sacramento, CA 95825

18 Any Settlement Class Member who files and serves a written objection, as described in this
19 paragraph, may appear at the Fairness Hearing, either in person or through personal counsel hired
20 at the Settlement Class Member's expense, to object to the Settlement Agreement. All Settlement
21 Class Members who do not enter an appearance at the Fairness Hearing will be represented by Class
22 Counsel.

23 Settlement Class Members (with or without their attorneys) intending to make an appearance
24 at the Fairness Hearing must also deliver to Class Counsel and Defendants' Counsel and file with
25 the Court a "Notice of Intention to Appear" no later than sixty (60) calendar days after entry of this
26 Preliminary Approval Order. If the objecting Settlement Class Member intends to appear at the
27 Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the
28 objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone
number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Settlement
Class Member intends to request the Court allow the Settlement Class Member to call witnesses at

1 the Fairness Hearing, such request must be made in the Settlement Class Member's written brief,
2 which must also contain a list of any such witnesses and a summary of each witness' expected
3 testimony. Only Settlement Class Members who file and serve timely Notices of Intention to
4 Appear may speak at the Fairness Hearing. The objection will not be valid if it only objects to the
5 lawsuit's appropriateness or merits.

6 11. **Failure to Object to Settlement.** Settlement Class Members who fail to object to
7 the Settlement Agreement in the manner specified above will: (1) be deemed to have waived their
8 right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a
9 subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and
10 (3) not be entitled to speak at the Fairness Hearing. No Settlement Class Member shall be entitled
11 to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object
12 to the Settlement, and no written objections or briefs submitted by any Settlement Class Member
13 shall be received or considered by the Court at the Fairness Hearing, unless written notice of the
14 objecting Settlement Class Member's intention to appear at the Fairness Hearing and copies of any
15 written objections and/or briefs shall have been filed with the Court and served on Class Counsel
16 and Defendants' Counsel in the manner specified above.

17 12. Upon the Effective Date, as defined in the Settlement Agreement, all Settlement
18 Class Members of who have not opted out of the settlement shall be enjoined and barred from
19 asserting any of the Released Injunctive Claims against Defendants as these terms are defined in the
20 Settlement Agreement, and each Settlement Class Member shall be deemed to release any and all
21 such released claims as against Defendants.

22 13. **Termination.** In the event the Settlement Agreement and Settlement are not finally
23 approved by the Court, or for any reason the Parties fail to obtain entry of the Final Order and
24 Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement terminates or
25 the Effective Date does not occur for any reason, then the following will occur: (a) all orders and
26 findings entered in connection with the Settlement Agreement, including but not limited to this
27 Order, shall become null and void and have no force and effect whatsoever; (b) class certification
28 will be automatically vacated; (b) Plaintiffs will stop functioning as Class representatives; and (c)

1 this Action will revert to its previous status in all respects as it existed immediately before the Parties
2 executed the Settlement Agreement. This Order will not waive or otherwise impact the Parties'
3 rights or arguments.

4 14. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or
5 concession on any point of fact or law by or against any Party.

6 15. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines
7 are stayed and suspended until further notice from the Court, except for such actions as are necessary
8 to implement the Settlement Agreement and this Order.

9 16. **Miscellaneous.** Class Counsel and Defendants' Counsel are hereby authorized to use
10 all reasonable procedures in connection with approval and administration of the Settlement that are
11 not materially inconsistent with this Preliminary Approval Order or the Settlement Agreement,
12 including making, without further approval of the Court, minor changes to the form or content of
13 the Class Notice and other exhibits that they jointly agree are reasonable or necessary to effectuate
14 the Settlement and the purposes of this Preliminary Approval Order.

15 17. **Fairness Hearing.** On _____, at _____, this Court will hold a
16 Fairness Hearing to determine whether the Settlement Agreement should be finally approved as fair,
17 reasonable, and adequate. Plaintiffs' papers supporting Final Approval of the Settlement Agreement
18 must be filed no later than fourteen (14) calendar days before the Fairness Hearing. This Court may
19 order the Fairness Hearing to be postponed, adjourned, or continued without further notice to the
20 Settlement Class. As stated in the Class Notice, Settlement Class Members who wish to be on the
21 electronic service list to be informed of any changes to the schedule may file with the Court a notice
22 of appearance which includes an e-mail address.

23 **IT IS SO ORDERED**

24
25 DATED: _____, 2020

HON. JON S. TIGAR
United States District Court Judge

EXHIBIT C

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND
HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT**

TO: all current and future Berkeley Unified School District (“BUSD”) students who have, may have, or are suspected of having a reading disability within the meaning of IDEA, Section 504, the ADA and/or California Education Code Section 56000.

**PLEASE READ THIS NOTICE. YOUR RIGHTS MAY BE AFFECTED
BY A COURT HEARING IN THIS CASE.**

This is about a proposed settlement in a class action case filed on May 2, 2017, by four current and former BUSD students with reading disorders, including dyslexia. The case is called *Student A. et al. v. Berkeley Unified School District*, and was filed in the federal court for the Northern District of California, Case No. 3:17-cv-02510 (“Action”).

The students who brought the case claim that BUSD discriminates against and fails to provide students with reading disabilities a Free Appropriate Public Education (“FAPE”), to which they are entitled to under federal and state law. BUSD denies that there is any factual or legal basis for the plaintiffs’ claims.

The Action has been actively litigated. The students and BUSD (“the Parties”) have also participated in extensive settlement negotiations. Based on the negotiations, the Parties have reached a class-wide settlement and have entered into a Class Action Settlement Agreement (“Settlement”). The Court has preliminarily approved the Settlement. The Court has not ruled on who should prevail in his case. The Parties have entered into the Settlement to avoid the burden, expense, and uncertainties of continued litigation.

THE SETTLEMENT CLASS

If you are a student or will be a student at BUSD (or the education rights holder of any such student) who has, may have, or are suspected of having a reading disability within the meaning of IDEA, Section 504, the ADA and/or Section 56000, you may be a member of the proposed settlement class. Your rights may be affected by the Settlement.

SUMMARY OF THE PROPOSED SETTLEMENT

Literacy Improvement Plan:

BUSD will work collaboratively with nationally recognized outside consultants to develop and implement a Literacy Improvement Plan (“Plan”) to improve reading and language arts achievement for all students, especially those with or at risk for reading disabilities. The Plan will be implemented over three to five years and includes the following:

- BUSD will provide appropriately intensive and early research-based reading intervention services, related services, supplementary aids and services,

accommodations, and modifications, including, but not limited to, assistive technology and accessible materials, to students with reading disabilities.

- BUSD will implement policies to promote early and successful reading.
- BUSD will maintain systematic, equitable, and verifiable policies and practices to provide early, intensive, research-based general education interventions for students at risk for reading disabilities. These will be facilitated by universal screening and progress monitoring of reading growth to promote timely evaluation and identification of students at risk for reading disabilities.
- BUSD will conduct a review and assessment of its core reading program.
- BUSD will choose and implement a “reading data system” and “reading testing system” for use in Grades K-8 to measure students’ reading fluency, and their progress toward “benchmarks” or academic goals.
- BUSD will maintain a routine and practical method to carry out Child Find duties to identify students with suspected reading disabilities.
- BUSD will implement policies and procedures to improve IEP goal and Section 504 plan development, progress monitoring, and use of appropriately intensive, research-based interventions. BUSD will transition to the Pattern of Strengths and Weaknesses (“PSW”) for specific learning disability eligibility (“SLD”). BUSD has also selected the Wilson Reading System for use with struggling readers.
- BUSD will create an Implementation Team including the BUSD Director of Schools, Director of Special Education, and Section 504 Plan Coordinator. This team will report to the School Board at least quarterly on progress on the Plan.
- BUSD leadership will support the Plan through targeted professional development for teachers and related-services personnel, and ongoing monitoring of staff engagement and perceptions about the Plan.

Monitoring by Outside Monitor

BUSD will retain an impartial outside Monitor to provide a Monitoring Plan to the School Board and Implementation Team, receive progress reports on compliance from BUSD, and submit semi-annual progress reports to the School Board and Implementation Team.

Term of Settlement

The Settlement lasts for three years after its Effective Date, which depends on whether there are objections to the Settlement and, if so, whether any objector files any appeal.

Release of Claims

The Settlement resolves and releases any and all claims for injunctive, equitable, or declaratory relief that are the subject of, included within, and/or arise from the Action, including such claims which could have been brought as educationally-based claims under the IDEA, Section 504, ADA, and/or Section 56000, arising from May 2, 2017, through the Term of the Agreement. The Settlement does not bar any administrative or judicial action by a student Plaintiff or Settlement Class Member alone, claiming that the individual student is not receiving a free and appropriate public education in the least restrictive environment to which the individual is entitled under IDEA, Section 504, the ADA or California law.

Attorneys' Fees

The class was represented by Disability Rights, Education & Defense Fund ("DREDF"), Jacobson Education Law ("JEL"), King & Spalding, and Goodwin Proctor LLP (together "Class Counsel"). BUSD has agreed to pay \$350,000 for attorneys' fees and costs, with this amount to be split equally by DREDF and JEL. BUSD is represented by Gordon Rees Scully Mansukhani LLP.

Fairness of Agreement

The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing, finally approving the Settlement as fair, reasonable and in the best interests of the Class Members.

The class representatives and Class Counsel have decided that the Settlement is fair, reasonable, and in the best interests of the class. In reaching this decision, the class representatives and Class Counsel have worked with and consulted with nationally recognized literacy experts, thought about the pros and cons of the settlement, the possible outcomes, costs, and length of more litigation and appeals of these issues.

OBJECTIONS TO THE SETTLEMENT

The Court has given preliminary approval of the Settlement, and has scheduled a hearing for [DATE/TIME] in the Courtroom of the Honorable Magistrate Judge Jon S. Tigar, United States District Court for the Northern District of California, 450 Golden Gate Avenue San Francisco, CA 94102, to determine whether the proposed Settlement Agreement is fair and reasonable and should be finally approved.

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to change the settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

All written objections and supporting papers must (a) identify the case name and number (Student A. et al. v. Berkeley Unified School District, N. D. Cal. Case No. 4:17-cv-02510), (b) include the full name, address, and phone number of the objector, (c) include a statement of each objection, (d) include a written brief detailing the reasons for each

objection, any legal and factual support, and facts demonstrating the objector is a Settlement Class Member, (e) be submitted in writing to Class Counsel by mailing them to Claudia Center, Disability Rights Education and Defense Fund, Inc., Ed Roberts Campus, 3075 Adeline Street, Suite 210, Berkeley, CA 94703, be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California (check COVID-19 orders before visiting), (g) be filed or postmarked on or before [DATE].

If you are a Class Member and you have filed a timely written objection that includes a statement of your intention to participate in this hearing, you may participate in, and be heard at, this hearing. You are not required to appear. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. This hearing date may be changed by the Court without further notice to the entire class. If you wish to be on the electronic service list to be informed of any changes to the schedule, please file a notice of appearance with the Court which includes a valid e-mail address at which you can receive notice.

IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL WAIVE YOUR OBJECTION AND BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT. IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT APPEAR OR FILE ANYTHING IN WRITING.

BINDING EFFECT

The Settlement, if given final approval by the Court, will bind all members of the Settlement Class. This will prevent any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement for the term of the Settlement.

FURTHER INFORMATION

This notice summarizes the proposed Settlement. Complete copies of the Settlement Agreement are available through class counsel at Disability Rights, Education, and Defense Fund, Attn: Malhar Shah, Telephone (510) 644-2555, ext. 5230, mshah@dredf.org, www.dredf.org, or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave. San Francisco, CA 94102 (call 415-522-2000 to seek authorization during COVID-19).

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

EXHIBIT D

1 CLAUDIA CENTER (SBN 158255)
ccenter@dredf.org
2 MALHAR SHAH (SBN 318588)
mshah@dredf.org
3 **DISABILITY RIGHTS EDUCATION
AND DEFENSE FUND, INC.**
4 Ed Roberts Campus
3075 Adeline Street, Suite 210
5 Berkeley, CA 94703
Tel: +1.510.644.2555
6 Fax: +1.510.841.8645

7 [ADDITIONAL COUNSEL AND PARTIES LISTED ON NEXT PAGE]

8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. 4:17-cv-02510-JST

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT; ORDERING FINAL
JUDGMENT OF DISMISSAL WITH
PREJUDICE; AND ORDERING AWARD
OF ATTORNEYS' FEES AND COSTS**

1 DEBORAH JACOBSON (SBN 278104)
2 *djacobson@jacobsoneducationlaw.com*
3 **JACOBSON EDUCATION LAW, INC.**
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Tel: +1.510.647.8125
7 Fax: +1.510.280.9340

8 BRENDAN E. RADKE (SBN 275284)
9 *bradke@goodwinlaw.com*
10 **GOODWIN PROCTER LLP**
11 Three Embarcadero Center
12 San Francisco, CA 94111
13 Tel: +1.415.733.6000
14 Fax: +1.415.677.9041

15 SHANE BRUN (SBN 179079)
16 *sbrun@kslaw.com*
17 **KING & SPALDING LLP**
18 601 S. California Ave.
19 Suite 100
20 Palo Alto, CA 94304
21 Telephone: (415) 318-1245
22 Fax: (415) 318-1200

23 *Attorneys for Plaintiffs*

24 MARK POSARD (SBN: 208790)
25 *mposard@grsm.com*
26 ANNETTE ROSE (SBN 311274)
27 *arose@grsm.com*
28 **GORDON REES SCULLY MANSUKHANI LLP**
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
Telephone: (916) 565-2900
Facsimile: (916) 920-4402

Attorneys for Defendants

1 On _____, 2021 this Court heard Plaintiffs’ Motion for Final Approval of Class
2 Settlement (the “Motion”). This Court has reviewed the Motion, the Settlement Agreement (the
3 “Settlement Agreement” or “Agreement,”), the exhibits to the Settlement Agreement, the evidence
4 and argument of counsel presented at the Fairness Hearing, and other submissions filed with this
5 Court in connection with the Fairness Hearing. Based on this review and the findings below, the
6 Court finds good cause to grant the Motion.

7 **FINDINGS:**

8 1. The Settlement Agreement and the exhibits thereto are hereby incorporated by
9 reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless
10 otherwise defined herein, have the same meaning as in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this Action, all Parties to the
12 Action, and all Settlement Class Members.

13 3. Notice was provided to Settlement Class Members in compliance with Section 6.b
14 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure
15 (“Rule 23”). The notice: (i) fully and accurately informed Settlement Class Members about the
16 lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members were
17 able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or
18 object to the proposed settlement; (iii) provided procedures for Settlement Class Members to file
19 written objections to the proposed settlement, to appear at the hearing, and to state objections to the
20 proposed settlement; and (iv) provided the time, date and place of the Fairness Hearing.

21 4. For the reasons stated in the Order Granting Preliminary Approval of Class
22 Settlement and Provisional Class Certification (Dkt. No. __), and having found nothing that would
23 disturb these previous findings, this Court finds and determines that the proposed Class, as defined
24 below, meets all of the legal requirements for class certification, for settlement purposes only, under
25 Federal Rule of Civil Procedure 23(a) and (b)(3).

26 5. The Parties adequately preformed their obligations under the Settlement Agreement.

27 6. After due consideration of Representative Plaintiffs’ likelihood of success at trial;
28 the range of Representative Plaintiffs’ possible recovery; the complexity, expense, and duration of

1 the litigation; [the limited number of objections to the Settlement; the small number of Successful
2 Opt-Outs from the Settlement as compared to the size of the Class; the responses of Settlement Class
3 Members to the Settlement;] the state of proceedings at which the Settlement was achieved; the
4 nature of the negotiations leading to the Settlement; the litigation risks to Representative Plaintiffs
5 and the Settlement Class Members; all written submissions, affidavits, and arguments of counsel;
6 and after notice and a hearing, this Court finds that the terms of the Settlement Agreement, including
7 all exhibits thereto are fair, adequate, and reasonable, and are in the best interest of the Class.
8 Accordingly, the Settlement Agreement should be and is finally approved and shall govern all issues
9 regarding the Settlement and all rights of the Parties, including the Settlement Class Members, and
10 all objections to the Settlement are overruled.

11 7. An award of \$350,000.00 in attorneys' fees and costs to Class Counsel is fair and
12 reasonable in light of the nature of this case, Class Counsel's experience and efforts in prosecuting
13 this Action, and the benefits obtained for the Class.

14 **IT IS ORDERED THAT:**

15 8. **Settlement Class Members.** The Settlement Class Members are defined as: All
16 current and future Berkley Unified School District ("BUSD") students who have, may have, or are
17 suspected of having a reading disability, such as dyslexia, within the meaning of the Individuals
18 with Disabilities Education Act, 20 U.S.C. § 14W, *et seq.* (amended by Individuals with Disabilities
19 Education Improvement Act of 2004, Pub. L. No. 108-446, Title I) ("IDEA"), Section 504 of the
20 Rehabilitation Act of 1973, 29 U.S.C. § 791 ("Section 504"), Title II of the Americans with
21 Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA"), or the California Education Code Section
22 56000 *et seq.* ("Section 56000").

23 9. **Binding Effect of Order.** This Order applies to all claims or causes of action settled
24 under the Settlement Agreement, and binds all Settlement Class Members.

25 10. **Release.** Plaintiffs and all Settlement Class Members are: (1) deemed to have
26 released and discharged Defendants from any and all claims arising out of or asserted in this Action
27 and/or released pursuant to the Settlement Agreement; and (2) barred and permanently enjoined
28 from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The scope of

1 the claims released are set forth in Sections 1(d) and 8 of the Settlement Agreement and are
2 specifically incorporated herein by this reference.

3 11. **Class Injunctive Relief.** In accordance with the Settlement Agreement, and to
4 effectuate the Settlement, Defendants shall develop and implement the “Literacy Improvement
5 Program” as set forth in Exhibit A to the Settlement Agreement, to improve reading and language
6 arts achievement for all students, especially those with or at risk for reading disabilities. The
7 Program will be implemented over a three (3) to five (5) year period beginning with the 2020-2021
8 school year, and compliance will be monitored by an impartial outside monitor.

9 12. **Dismissal.** This Action and all claims against The Berkeley Unified School District
10 (“BUSD”) and the Board of Education of the Berkeley Unified School District (the “Board”; BUSD
11 and the Board collectively referred to hereinafter as “Defendants”) are hereby dismissed on the
12 merits and with prejudice, and the Clerk is directed to enter this judgment in favor of Defendants in
13 the Action.

14 13. **Plaintiffs’ Attorneys’ Fees and Costs.** Class Counsel is awarded \$350,000.00 in
15 attorney’s fees and costs, consistent with Section 10 of the Settlement Agreement. This aggregate
16 award covers, without limitation, any and all claims for attorney’s fees and litigation costs incurred
17 by (a) Plaintiffs’ Counsel, (b) any other counsel representing (or purporting to represent)
18 Representative Plaintiffs or Class Members (or any of them) with respect to all matters within the
19 scope of the Release, and (c) Representative Plaintiffs or the Class Members (or any of them) in
20 connection with or related to any matter in the Action, the Settlement, the administration of the
21 Settlement, and any of the matters or claims within the scope of the Release. Payment shall be made
22 pursuant to the timeline described in Section 10 of the Settlement Agreement.

23 14. **Amendment or Termination.** The Parties may, by mutual agreement, amend,
24 modify or expand the provisions of the Settlement Agreement, including all exhibits thereto, subject
25 to the conditions and limitations as set forth in the Agreement.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. **Court's Jurisdiction.** Pursuant to the Parties' request, the Court will retain jurisdiction over this Action and the Parties until final performance of the Settlement Agreement.

DATED: _____, 2020

HON. JON S. TIGAR
United States District Court Judge