

RESOLUTION NO. 0809-0080

**GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT and of the
OAKLAND UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION LOCAL PLAN AREA
(Single District SELPA)**

**APPROVAL OF BEHAVIORAL INTERVENTION PLANS [HUGHES BILL]
MANDATED COST CLAIM SETTLEMENT AND AGREEMENT
TO WAIVE FUTURE CLAIMS**

WHEREAS, the Commission on State Mandates (“the Commission”), in a test claim known as the Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim, has determined that, since 1993, there are unfunded state mandates exceeding the federal requirements in the following seven (7) components of the Hughes Bill Statute and Regulations (California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052): special education local plan area (“SELPA”) plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings;

WHEREAS, these state mandates remain required components of the Hughes Bill Statute and Regulations;

WHEREAS, final claiming instructions for the Behavioral Intervention Plans Mandated Cost Claim were never adopted by the Commission due to various disputes that arose with the State;

WHEREAS, the State’s Department of Finance disputes that any of the identified Behavioral Intervention Plans Mandated Cost Claim mandates qualify for state reimbursement because it contends they are required by federal law, and therefore the State has filed a lawsuit with the Sacramento Superior Court, case No. 03CS01432, to contest the Commission’s decision in the Behavioral Intervention Plans Mandated Cost Claim;

WHEREAS, the Test Claimants believe that the identified mandates require new programs and increased levels of service in excess of federal law, and are therefore unfunded state mandates, and therefore the Test Claimants oppose the court action filed by the State challenging the Commission’s decision;

WHEREAS, this litigation could thwart resolution of these matters for a number of years;

WHEREAS, to avoid the cost and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill Statute and Regulations funding, and to expedite the resolution of this long-pending mandate claim, the State and the Test Claimants (“Parties”) have determined to compromise and settle the claims set forth in the Behavioral Intervention Plans Mandated Cost Claim;

WHEREAS, the Parties have negotiated a settlement agreement (“Agreement”), which provides \$520 million as general fund reimbursement for past costs associated with the Hughes Bill Statute and Regulations, allocated as follows:

- \$510 million to school districts based on 2007-08 P-2 average daily attendance (“ADA”) (about \$14.85 per ADA annually for six years, beginning in 2011-12, or for a lesser period at the State’s discretion should the State choose to accelerate payment of such reimbursement);
- \$1.5 million to county offices of education in 2009-10 based on December 2007 county special education pupil count, about \$35.06 per pupil, with no county office of education receiving less than \$5,000;
- \$6 million to SELPAs in 2009-10 based on December 2007 special education pupil count, about \$8.85 per pupil, with no SELPA receiving less than \$10,000; and
- \$2.5 million in 2009-10 for administrative costs incurred in pursuing the Claim;

WHEREAS, the settlement further provides \$65 million as a permanent increase to the AB 602 funding base for special education programs and services beginning in 2009-10, resulting in each SELPA’s funding rate increasing by about \$10.92 per ADA, with this amount increasing by the cost of living adjustment and ADA growth in subsequent years;

WHEREAS, by approving this settlement the Oakland Unified School District will receive approximately \$3,317,178.54 total in discretionary funding for retroactive reimbursement, \$552,863.09 amount of installment over six-years in equal installments districts only, unless the State, in its discretion, accelerates payment of such reimbursement, and the Oakland Unified SELPA will receive approximately \$3,317,178.54 total in discretionary funding for retroactive reimbursement;

WHEREAS, the Oakland Unified School District and SELPA, in exchange for the foregoing financial settlement, must waive rights to file any further mandate claims arising from the Hughes Bill Statute and Regulations, or to benefit from any new Hughes Bill Statute and Regulations claims filed, unless the Hughes Bill Statute and Regulations change;

WHEREAS, if for some reason the settlement process is not completed, the Waiver will not take effect;

WHEREAS, the Governing Board of the Oakland Unified School District also serves as the Governing Board of the Oakland Unified School District SELPA;

WHEREAS, the Governing Board of the Oakland Unified School District and SELPA has reviewed the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim and the required Waiver; and

WHEREAS, the District and SELPA administrative staff, having reviewed the terms of the pending settlement, recommends that the Governing Board approve the settlement and agree to waive rights to file mandated cost claims arising from the Hughes Bill Statute and Regulations in the future or to benefit from such claims unless the Hughes Bill Statute and Regulations change;

NOW THEREFORE, BE IT RESOLVED, the Governing Board of the Oakland Unified School District, sitting also as the Governing Board of the SELPA, approves the terms of the pending settlement of the Behavioral Intervention Plans Mandated Cost Claim, agrees to waive its rights regarding claims as set forth in the attached Waiver both with respect to the school district and with respect to the SELPA, and authorizes the Superintendent [or Associate/Assistant Superintendent (as appropriate)] to sign the required Waiver on behalf of both entities and to deliver it as requested by no later than February 28, 2009, and to complete any other administrative task necessary to effectuate this decision.

Passed and adopted by the Governing Board (State Administrator) of the Oakland Unified School District and of the Oakland Unified School District SELPA on January 14, 2009 by the following vote:

Aye: Vincent Matthews

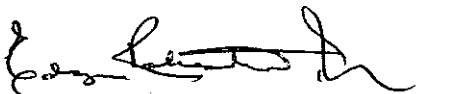


Vincent Matthews

State Administrator

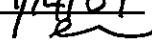
OAKLAND UNIFIED SCHOOL DISTRICT AND OAKLAND UNIFIED SCHOOL DISTRICT
SELPA
COUNTY OF ALAMEDA, CALIFORNIA

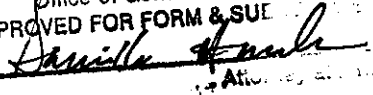
Attested by:



Edgar Rakestraw, Jr.
Secretary of the Governing Board
and of the State Administrator

00334.00100/110940.1

File ID Number: 09-0068
Introduction Date: 1/14/09
Enactment Number: 09-0059
Enactment Date: 1/14/09
By: 

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUE
By: 
Attorney at Law

SETTLEMENT AND RELEASE AGREEMENT
BEHAVIORAL INTERVENTION PLANS [HUGHES BILL] MANDATED COST CLAIM

This settlement and release agreement ("Agreement") is entered into this ____ day of 2008 by and between the State of California ("the STATE") on the one hand, and San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (collectively "CLAIMANTS") on the other, who, in consideration of the promises made herein, agree as follows:

I. Nature and Status of the Dispute

Effective January 1, 1991, Education Code section 56523 was added to the Education Code. That section required the development and adoption of regulations governing positive behavioral interventions for special education students by the State Board of Education ("the SBE"). In 1993, the SBE promulgated California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 to implement Education Code section 56523. The Education Code section and its implementing regulations are referred to cumulatively as "the Hughes Bill."

The Behavioral Intervention Plans Mandated Cost Claim was initiated on September 28, 1994, when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 with the Commission on State Mandates ("the Commission"). The Behavioral Intervention Plans Mandated Cost Claim asked the STATE to reimburse local educational agencies ("LEAs"), including school districts, county offices of education, special education local plan areas ("SELPA"), and joint agencies composed of such organizations for the costs of implementing the Hughes Bill.

On September 28, 2000, the Commission adopted a Statement of Decision on CSM-4464 finding that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring the following seven activities: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-2001 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim (Ed. Code § 56836.156(g)).

Subsequently CLAIMANTS proposed parameters and guidelines for the CSM-4464 claiming process but various disputes arose with the STATE and a final draft was never adopted by the Commission. The parties attempted settlement without success and the matter reached a stalemate.

On September 26, 2003, the STATE's Department of Finance filed a Petition for Administrative Mandamus in the Sacramento Superior Court challenging the Commission's decision in CSM-4464. It named the Commission as Respondent, and CLAIMANTS as Real Parties in Interest (*Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 03CS01432). The Petition maintained that the Hughes Bill was not a reimbursable state mandate because 1) it was required by federal law, 2) it merely implemented federal requirements, and

3) it did not exceed those requirements. The matter is still pending. CLAIMANTS have filed no responsive pleadings as yet.

On October 4, 2007, the Deputy Attorney General representing the STATE's Department of Finance in the above case wrote to CLAIMANTS stating that pending reforms in the mandate process could present a timely opportunity to continue negotiations. The Deputy Attorney General noted that the mandate reform legislation, AB 1222, included the option of the joint development of a reasonable reimbursement methodology and cost estimate. The Deputy Attorney General suggested a meeting if CLAIMANTS were interested in resolving the matter and noted that, absent successful settlement, she planned to schedule a hearing in Sacramento Superior Court in April 2008. In response, CLAIMANTS contacted the Deputy Attorney General and the parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Ultimately CLAIMANTS completed surveys of more than 20 SELPAs representing more than 10% of public school students statewide. The STATE's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the STATE that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years ("the five-year rule"). Ultimately, the parties filed a stipulation with the court agreeing to extend the five-year period to March 27, 2009, in the hopes that agreement could be reached.

The STATE's Department of Finance continues to dispute the Commission's decision in CSM-4464 that the Hughes Bill is a reimbursable mandate. CLAIMANTS believe the Commission's decision was correct and that the Hughes Bill imposes requirements on school districts that are not mandated by federal law.

To avoid the costs and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill funding, and to expedite the resolution of this long-pending mandate claim in the spirit of AB 1222, the parties have determined to compromise and settle the claims raised in Sacramento Superior Court Case No. 03CS01432 and the underlying administrative decision of the Commission on State Mandates in CSM-4464 on the terms and conditions set forth below.

II. Actions to Resolve Dispute

- A. The mutual obligations and duties of the parties set forth herein are contingent upon all of the following events occurring:
 - 1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education, and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices signing Exhibit A must have served student populations accounting

for no less than 92% of the second principal apportionment (P-2) average daily attendance in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.
 3. Prior to or concurrent with the enactment of the Budget Act for the 2009-10 fiscal year, legislation is enacted that contains provisions identical to or substantially similar to the language contained in Exhibit B. It is the intent of the parties that, on or before January 10, 2009, the Legislature shall be requested to enact such legislation on an urgency basis. Any modifications to the proposed legislation shall be made only with agreement of all the signatories to this settlement document.
 - a. The proposed legislation shall appropriate the amount of ten million dollars (\$10,000,000) payable upon enactment and allocated in accord with Section II.B. of this Agreement.
 - b. The proposed legislation shall require additional funding of five-hundred and ten million dollars (\$510,000,000) in total payable over a six-year period, or lesser period at the STATE's discretion, commencing July 1, 2011, and allocated in accord with Section II.B. of this Agreement.
 - c. The proposed legislation shall include statutory language to revise the existing special education funding model established by Assembly Bill 602 (Chapter 854, Statutes of 1997) to provide an ongoing increase of sixty-five million dollars (\$65,000,000) annually to special education programs. The proposed legislation shall appropriate the first year of funding.
 - d. The combination of the above appropriations is to be considered in full satisfaction of, and is in lieu of, any reimbursable mandate claims that would have been filed as a result of CSM-4464. By providing this funding for CSM-4464, the STATE in no way concedes the existence of an unfunded reimbursable mandate for that claim.
- B. For the purposes of this settlement only, to resolve any and all retrospective mandated cost claims from 1993-94 to 2008-09 arising from CSM-4464 and the Statement of Decision adopted by the Commission on State Mandates on September 28, 2000, the STATE agrees that:

1. Upon enactment of legislation prior to or concurrent with the 2009-10 Budget Act, payment in the amount of ten million dollars (\$10,000,000) will be allocated to LEAs as follows:
 - a. One million five hundred thousand dollars (\$1,500,000) shall be allocated to county offices of education on an equal per-pupil basis. The amount of each agency's allocation shall be determined by dividing one million five hundred thousand dollars (\$1,500,000) by the total statewide county special education pupil count only, as reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each county office of education is at least five thousand dollars (\$5,000).
 - b. Six million dollars (\$6,000,000) shall be allocated to SELPAs that existed for the 2007-08 fiscal year. The amount of each agency's allocation shall be determined by dividing six million dollars (\$6,000,000) by the total statewide special education pupil count as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each SELPA is at least ten thousand dollars (\$10,000).
 - c. Two million five hundred thousand dollars (\$2,500,000) shall be paid to San Joaquin County Office of Education.
2. In accord with legislation enacted prior to or concurrent with the 2009-10 Budget Act, the State will pay an additional five hundred and ten million dollars (\$510,000,000) to school districts. This amount shall be allocated in installment payments of eighty-five million dollars (\$85,000,000) commencing July 1, 2011, and annually thereafter for a period of six years unless the STATE in its discretion enlarges the installment amount from time to time, thereby discharging the obligation in advance of the six year period. These payments shall be allocated to school districts on a per-pupil basis as follows:
 - a. The appropriation shall be divided by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent for the second principal apportionment for the

2007-08 fiscal year. Each school district shall receive an allocation equal to the per-pupil amount times the district's reported average daily attendance for the second principal apportionment for the 2007-08 fiscal year, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year unless the State enlarges the appropriation as specified in II.B.2. above.

- b. In any fiscal year after 2011-12 in which the provisions of paragraph (b)(3) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made. If an appropriation is not made for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately succeeding the final payment pursuant to Section II.B.2 of this Agreement.

- C. To effectuate a stay of the five-year rule and to seek court approval of the settlement which makes it final and binding on LEAs, the parties agree to the following:

1. Within ten court days after execution of this Agreement, CLAIMANTS will file a response to the Petition for Administrative Mandamus, Sacramento Superior Court Case No. 03CS01432. Concurrently or as soon thereafter as the parties deem appropriate, the STATE and CLAIMANTS shall jointly stipulate to a stay of the five-year rule, and shall file such stipulation with the court. The stipulation shall provide for and ask the court to order the following:
 - a. A stay of the five-year rule for the purposes of this settlement, with the understanding that the five-year rule shall be in effect within ninety (90) days if the settlement terms cannot be effectuated.
 - b. Notice of the stay and of the settlement terms to all LEAs.
 - c. A court hearing, if necessary, to consider any objections to the settlement made by LEAs or other parties of standing.
 - d. Entry of judgment that the settlement is the final resolution of CSM-4464 assuming implementing legislation is enacted, and that after appropriate consideration of objections, if any, it is final and binding on all LEAs.

- D. In the absence of any entry of judgment as specified in Section II.C.1.d. of this Agreement, the parties shall seek an alternative mutually agreeable final and formal resolution of the dispute.
- E. If the events listed in Section II.A. as preconditions to the parties' obligations do not take place, the STATE or the CLAIMANTS may request the Superior Court to lift the stay issued pursuant to Section II.C.1.a., above, and to order that the five-year rule shall take effect in ninety (90) days.

III. Known Claims

With respect to section 56523 of the California Education Code and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008, ("the Hughes Bill Statute and Regulations"), CLAIMANTS hereby knowingly and voluntarily waive the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Agreement, CLAIMANTS hereby acknowledge that CLAIMANTS forever relinquish their right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and further forever relinquish their right to receive any benefit(s) from any claim(s) so filed. CLAIMANTS may file mandated cost claims concerning such statutes and regulations only to the extent that state or federal statutes or regulations are amended or added or changed in any other way after July 1, 2008. CLAIMANTS further acknowledge and concede that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to school districts pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the amounts set forth in Sections II.B.1 and II.B.2 of this agreement.

IV. Unknown Claims

- A. CLAIMANTS expressly waive the application of California Civil Code section 1542 regarding mandated cost claims based on Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

B. CLAIMANTS certify that they have read the following provisions of California Civil Code section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

C. CLAIMANTS understand and acknowledge that the significance and consequence of the waiver of California Civil Code section 1542 is that:

1. They may have additional claims arising or occurring up to the date of this Agreement of which they are not now aware;
2. They may not make a further demand for any such claims;
3. They may not receive any benefit(s) from any such claims; and
4. They extend their waiver to include now unknown or later discovered claims.

V. Advice of Attorney

CLAIMANTS warrant and represent that they have been advised to seek legal advice from the attorney of their choice regarding the risks, complications, and costs of the Agreement. CLAIMANTS acknowledge and represent either that they relied upon legal advice from their attorney in executing this Agreement or that they chose not to rely upon legal advice from their attorney in executing this Agreement. They further acknowledge and represent that, in executing this Agreement, they have not relied on any inducements, promises, or representations other than those stated in this Agreement.

VI. Conditions of Execution

Each party acknowledges and warrants that the party's execution of this Agreement is free and voluntary.

VII. Execution of Other Documents

Each party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

VIII. Nonadmission

Nothing contained in the Agreement constitutes an admission or concession, by any party, as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464, and no party hereto shall deem or construe this Agreement, or any part thereof, to be any such admission or concession. Further, nothing in this Agreement may be deemed or construed to be, by any entity or person not a party hereto, as against any party hereto, or any agency thereof, any admission or concession as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464.

IX. Entire Agreement

This Agreement and Exhibits A and B attached hereto contain the entire Agreement between the parties. A breach of any portion of this Agreement shall be considered a breach of the whole Agreement.

X. Effective Date

This Agreement shall be effective immediately upon execution by the parties. This Agreement has retroactive effect to the extent specified herein.

XII. Governing Law

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California and the United States.

00334.00100/105941.1

XIII. Counterparts

This Agreement may be signed in counterparts, such that signatures appear on separate pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

For the State of California:

Michael C. Genest
Director, Department of Finance

Dated: _____

Stephen P. Acquisto
Supervising Deputy Attorney General

Dated: _____

San Diego Unified School District

By _____
Terry Grier, Superintendent

Dated: _____

Butte County Office of Education

By _____
Roy L. Applegate, Ed.D., SELPA Director

Dated: _____

San Joaquin County Office of Education

By _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Dated: _____

Approved as to form:

Fagen Friedman & Fulfrost

Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

Dated: _____

00334.00100/105941

Exhibit A to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

WAIVER

This Waiver is entered into on 19th day of January, 2008 by Oakland Unified School District, hereinafter "LEA," to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;
2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;
3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;
4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;
5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and
7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:

- a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;
- b. LEA may not make a further demand for any such claims;
- c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and
- d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

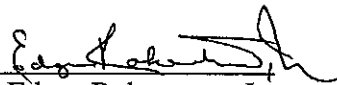
LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: February 17, 2009



Vincent Matthews, State Administrator
Oakland Unified School District

Attested by:



Edgar Rakestraw, Jr.
Secretary of the Governing Board
and of the State Administrator

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE

By: 
Attorney at Law

00334.00100/107130.1

DRAFT LEGISLATION

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that it is in the State's interest that legislation be enacted immediately to provide funding for positive behavioral intervention plans for special education students (Hughes Bill) and resolve a contested state mandate issue of fourteen-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2009-10 Budget Act.

SECTION 2. Section _____ is added to the Education Code to read:

[section number]

- (a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of section 56836.08 for the 2008-09 fiscal year. For the purposes of this calculation, the 2008-09 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of section 56836.08.
- (b) The Superintendent shall divide sixty-five million dollars (\$65,000,000), by the amount determined pursuant to subdivision (a).
- (c) For each special education local plan area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 for the 2009-10 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective, beginning in the 2009-10 fiscal year.
- (d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2008-09 fiscal year. This increase shall be effective beginning in the 2009-10 fiscal year.

- (e) The Superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2009-10 fiscal year by the amount determined pursuant to subdivision (b).
- (f) The funds provided in subdivisions (a)-(e) above are to be considered in full satisfaction of, and are in lieu of, any reimbursable mandate claims for the Behavioral Intervention Plans Mandated Cost Claim. By providing this funding, the State in no way concedes the existence of any unfunded reimbursable mandate with regard to Section 56523 and its regulations in California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. These funds shall be used exclusively for programs operated under this part and, as a first priority, for the programs and services required under Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. By virtue of these funds, Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008 shall be deemed to be fully funded within the meaning of Government Code Section 17556(e).
- (g) Within the meaning of Government Code section 17556(e), the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from amendments enacted after July 1, 2008, to any of the following statutes and regulations:
 - (1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if such amendments result in circumstances where state law exceeds federal law;
 - (2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if such amendments result in circumstances where state law exceeds federal law;
 - (3) Part 30 (commencing with section 56000); and
 - (4) Sections 3000 through 4671, inclusive, of Title 5 of the California Code of Regulations.
- (h) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds. These funds shall be in addition to the level of COLA provided for this program in the annual Budget Act.

SECTION 3. Section XXXXX is added to the Education Code, to read:

(a) Commencing with the 2011-12 fiscal year and each fiscal year through the 2016-17 fiscal year, the amount of eighty-five million dollars (\$85,000,000), shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per-pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing eighty-five million dollars (\$85,000,000), by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. Each school district's allocation shall equal the per-pupil amount times the district's average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) Notwithstanding the provisions of subdivision (a) above, the State, in its discretion, may cause to be appropriated and allocated amounts in excess of eighty-five million dollars (\$85,000,000) annually in the period 2011-12 through 2016-17 for the purpose of discharging the obligation in advance of the six year period, so long as the total amount appropriated and allocated under this section is five hundred ten million dollars (\$510,000,000).

(2) In any fiscal year after 2011-12 in which the provisions of Article XVI, section 8, paragraph (b)(3), of the California constitution are operative, the annual appropriation shall not be required to be made.

(3) The Director of Finance shall notify, in writing, the fiscal committees of both Houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14, that the appropriation for the following fiscal year is not required, pursuant to paragraph (c). If any appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to paragraph (a).

(4) These funds shall be in addition to the level of COLA provided to school districts in the annual Budget Act.

- (b) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(1) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of one million five hundred thousand dollars (\$1,500,000) shall be allocated by the Superintendent to county offices of education on an equal per-pupil amount. The Superintendent shall determine the per-pupil amount by dividing one million five hundred thousand dollars (\$1,500,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each county office of education is at least five thousand dollars (\$5,000).

(2) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars (\$6,000,000) shall be allocated by the Superintendent to SELPAs that existed for the 2007-08 fiscal year. The Superintendent shall determine the amount of each agency's allotment by dividing the six million dollars (\$6,000,000) by the statewide special education pupil count reported as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars (\$10,000).

(3) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million five hundred thousand dollars (\$2,500,000) shall be allocated by the Superintendent to the San Joaquin County Office of Education.

- (c) The amounts appropriated by subdivisions (a), (b), and (c) of Section 4 of the act adding this section are in full satisfaction and in lieu of mandate claims resulting from the Commission on State Mandates' Statement of Decision CSM 4464, "Behavioral Intervention Plans."

SECTION 4.

- (a) The amount of sixty-five million dollars (\$65,000,000), is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of 2009-10 Budget Act to the Superintendent of Public Instruction

for the purposes of Section 56836.08 of the Education Code. It is the intent of the Legislature that such funding be included in the annual budget act in subsequent fiscal years.

(b)

(1) The amount of ten million dollars (\$10,000,000), is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education, and special education local plan areas (SELPAs), as specified in subdivision (b) of section _____ of the Education Code. These funds shall be in addition to the level of COLA provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by article XVI, section 8, of the California Constitution, this appropriation shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (a) of section 41202 of the Education Code, for the 2007-08 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of section 41202 of the Education Code, for the 2007-08 fiscal year.

SECTION 5. This Act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety with the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting this necessity are: In order to alleviate the fiscal hardship to local educational agencies caused by the persistent shortfalls in federal funding for special education; to increase state funding for the special education program, thereby reducing encroachment; to facilitate the settlement of current litigation regarding those programs and the funding thereof; to obviate new litigation; and to resolve related school finance issues, it is necessary for this Act to take effect immediately.

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