

**FINAL SETTLEMENT AGREEMENT AND RELEASE IN FULL OF CLAIMS  
("AGREEMENT")**

**By and Between**

**Mark S. and Rosa T., by and through their guardians ad litem, Michell Redfoot, Nefertari Royston, and Jessica Black as taxpayer plaintiffs (collectively "Plaintiffs")**

**and**

**The State of California, State Board of Education, California Department of Education ("CDE"), and Tony Thurmond in his official capacity as State Superintendent of Public Instruction (collectively "State Defendants"),**

**In the Matter of**

**Mark S. et al. v. State of California, et al., Case No. MSN21-1755\*\* (Super. Ct. Contra Costa 2021).**

**Effective Date:** June 21, 2024

**I. RECITALS**

**A. Overview**

1. On September 13, 2021, Plaintiffs Mark S. and Rosa T., by and through their guardians ad litem, Michell Redfoot, Nefertari Royston, and Jessica Black as taxpayer plaintiffs (collectively "Plaintiffs") filed their complaint for declaratory and injunctive relief and petition for writ of mandate in Contra Costa County Superior Court against the State of California, State Board of Education, California Department of Education ("CDE"), and Tony Thurmond in his official capacity as State Superintendent of Public Instruction (collectively "State Defendants"), and the Pittsburg Unified School District ("District") alleging failure to provide students with their fundamental right to education under the California Constitution and other claims ("Action"); and
2. On or around February 2, 2023, Plaintiffs' filed a Third Amended Complaint and Petition for Writ of Mandate ("TAC") against State Defendants and District, alleging violation of the California Constitution right to equal protection.
3. WHEREAS State Defendants monitor implementation of categorical programs operated by local educational agencies ("LEAs") in part through the Federal Program Monitoring ("FPM") process;

4. WHEREAS the FPM process is comprised of an onsite or an online review that consists of data and document review, stakeholders' interviews, and classroom observations of categorical programs administered by LEAs;
- B.** State Defendants and Plaintiffs (together, the "Parties") enter into this Final Settlement Agreement ("Agreement") to resolve all disputes related to the allegations in the TAC between them to date and to avoid further litigation in the Action. This Agreement is limited to the resolution of claims asserted by Plaintiffs against State Defendants in this Action and does not resolve any claims asserted against the District.

## **II. TERMS AND CONDITIONS**

### **A. Substantive Relief**

1. The Parties agree that commencing with the 2025-26 academic year, discipline monitoring pursuant to the Compensatory Education instrument conducted under the FPM process will be expanded to include student file level review of LEAs' chosen for monitoring;
2. The Parties agree that the State Defendants will place Pittsburg Unified School District into the FPM process for the 2024-25 academic year, which will include onsite review;
3. The Parties agree that the State Defendants will continue monitoring Pittsburg Unified School District's ("PUSD") special education programs through the 2027-2028 academic year under the Compliance and Improvement Monitoring ("CIM") process. The Parties acknowledge that monitoring conducted under the CIM is comprehensive and meaningful, and agree that the State Defendants monitoring of PUSD under the CIM is sufficient under the terms of this Agreement;
4. Within 15 days after the Effective Date of this Agreement, or within 15 days after payment of the attorneys' fees identified in Section V of this Agreement, whichever is later, Plaintiffs shall request dismissal of the Action with prejudice as to the State Defendants. However, nothing in this Agreement is a waiver of the Parties' rights to enforce this Agreement in court prior to or subsequent to dismissal.

## **III. RELEASE OF CLAIMS**

- A.** Subject to the terms of this Agreement, Plaintiffs hereby waive, release, and forever discharge State Defendants, including State Defendants' officers, employees, agents, or successors, either in their official or individual capacities, from any and all claims, demands, and causes of action of every kind, nature, or

description, whether known or unknown, related to the allegations in the TAC between them to date Nothing in this release shall impact any or all of Plaintiffs' claims against the District or any of their officers, employees, agents, or successors, either in their official or individual capacities.

- B.** Subject to the terms of this Agreement, State Defendants hereby waive and release any right to appeal any part of the Action, including but not limited to the judgment that will be entered pursuant to the terms of the Agreement in accordance with Cal. Civ. Proc. Code § 664.6(a), see Section (V)(A), *infra*.

#### **IV. NO RELEASE OF FUTURE CLAIMS**

- A.** Nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by Plaintiffs related to or arising out of acts or omissions by State Defendants after the Effective Date of this Agreement.

#### **V. ATTORNEYS' FEES AND COSTS**

- A.** Subject to appropriation by the Legislature, approval by the necessary control agencies, and within 75 days after the operative date of the 2024-25 budget on July 1, 2024, State Defendants shall pay attorneys' fees and/or costs incurred by the ACLU Foundation of Northern California, the ACLU Foundation of Southern California, the Disability Rights Education and Defense Fund, and Steptoe and Johnson LLP, in the amount of ninety thousand dollars (\$90,000) payable to the ACLU Foundation of Northern California. ACLU Foundation of Northern California will be responsible for disbursement of the respective attorneys' fees and/or costs. Such payment will be in full and final settlement of any and all attorneys' fees and/or costs claims that have been, could have been, or could be made in this Action. If Plaintiffs dismiss this Action with prejudice and payment is not made pursuant to this section, either Plaintiffs or their counsel shall have the right to recover the ninety thousand dollars (\$90,000) in an action directly against State Defendants. Once received, this payment shall constitute full resolution of any and all claims for attorneys' fees and/or costs by Plaintiffs arising from and related to the Action, including any costs or fees for implementation, monitoring, and/or oversight of this Agreement. Upon receipt of the payment, Plaintiffs and their counsel waive and release State Defendants and any and all State entities and officials from any and all claims for attorneys' fees and/or costs in this Action, past, present, and future, including any fees or costs incurred by any counsel working on Plaintiffs' behalf in monitoring the activities contemplated by the Agreement. State Defendants and their counsel agree to waive and release Plaintiffs from any and all claims for attorneys' fees and/or costs in this Action. This mutual release is binding on the Parties' heirs, representatives, successors, assigns, agents, and attorneys. Aside from the payment set forth above by State Defendants to Plaintiffs, the Parties shall bear their own respective expenses and costs arising out of this Action.

**VI. EXECUTION OF AGREEMENT AND EFFECTIVE DATE**

- A. The Agreement's "Effective Date" and the date when the Agreement shall be operable shall be when it is fully executed.

**VII. DUTY OF COOPERATION**

- A. Each Party covenants to take, and to cause its related parties to take, all such actions and to execute all such documents as may be reasonable and necessary or desirable to implement the provisions of this Agreement fully and effectively.

**VIII. VOLUNTARY AGREEMENT**

- A. The Parties represent that they have read this Agreement in full and understand and voluntarily agree to all the provisions herein, free from fraud, coercion, or duress.
- B. The Parties further represent that they have the legal capacity to understand, agree to, and sign this Agreement.
- C. Each of the Parties has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as it deems necessary.
- D. Each of the Parties hereto acknowledges that no other Party or any representative or attorney of any of the Parties has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce any Party to execute this Agreement in reliance upon any such promise, representation, or warranty not contained herein.

**IX. NON-ADMISSION OF LIABILITY**

- A. It is understood and agreed by the Parties that this Agreement is a compromise of disputed claims, and that the terms of this Agreement provided herein are not to be construed as an admission of any liability, wrongdoing, or violation of rights by either State Defendants or Plaintiffs, nor shall this Agreement be admissible as evidence of any liability, wrongdoing, or violation of rights as alleged arising prior to the Effective Date of this Agreement.

**X. WAIVER**

- A. No delay or failure by any Party to exercise its rights under this Agreement shall be construed to be a waiver thereof, unless memorialized by written instrument signed by the Parties. The agreed waiver of any covenant, condition, or agreement to be performed under this Agreement shall not be construed to be a continuing waiver of the same covenant, condition, or agreement, or the waiver of a different

covenant, condition, or agreement. Furthermore, the agreed waiver of any breach of this Agreement shall not be considered to be the agreed waiver of a different or subsequent such breach.

**XI. ENTIRE AGREEMENT**

- A. This Agreement is the entire agreement and understanding of the Parties. There are no oral understandings, terms, or conditions. All prior understandings, terms, or conditions, written, oral, express, or implied, are superseded by this Agreement. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by a written instrument executed by the Parties.

**XII. BINDING EFFECT**

- A. This Agreement is for the benefit of and shall be binding on all Parties, and their respective successors, heirs, and assigns upon the Effective Date of this Agreement.

**XIII. SEVERABILITY**

- A. All individual provisions in this Agreement shall be severable. If any one or more such provision of this Agreement is held to be void, voidable, or unenforceable, that part shall nevertheless be enforced to the extent permissible to effect the intent of the Parties, and the remaining parts shall remain in full force and effect.

**XIV. GOVERNING LAW**

- A. This Agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California without giving effect to principles of conflicts of laws that would require application of the laws of any other jurisdiction.

**XV. ENFORCEMENT AND INTERPRETATION**

- A. This Agreement is to be construed fairly, and not in favor of or against any Party, regardless of which Party or Parties drafted or participated in the drafting of its terms. Any rule of construction that a document is to be construed against the drafting party shall not be applicable in this Agreement.

**XVI. EXECUTION IN COUNTERPARTS**

- A. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy of an original, with all signatures appended together, shall be deemed a fully executed Agreement. A facsimile,

PDF, or scanned version of any Party's signature shall be deemed an original and the same document for all purposes.

**XVII. BINDING AUTHORITY**

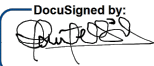
A. All counsel and any other person executing this Agreement warrant and represent that they have full authority to bind the Party they represent to the terms of this Agreement and to take appropriate action required or permitted to be taken under the Agreement to effectuate its terms.

**XVIII. HEADINGS**

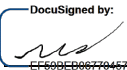
A. The section headings appearing in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to give substantive meaning or significance to the terms of this Agreement or limit, characterize, or in any way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no heading had been used in this Agreement.

***Signed in Agreement***

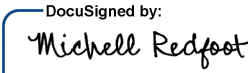
Dated: June 03, 2024

By:   
Mark S., by and through his guardian ad litem,  
Anna S., Plaintiff and Petitioner

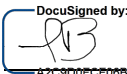
Dated: June 06/03/2024, 2024

By:   
Rosa T., by and through her guardian ad litem, Sofia  
L., Plaintiff and Petitioner

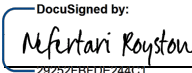
Dated: June 3, 2024

By:   
Michelle Redfoot  
Plaintiff and Petitioner

Dated: June 06/03/2024, 2024

By:   
Jessica Black  
Plaintiff and Petitioner

Dated: June 3, 2024


By:   
Dr. Nefertari Royston  
Plaintiff and Petitioner

Dated: June     , 2024

By:   
Mary Nicely, Chief Deputy Superintendent  
*On behalf of*

CALIFORNIA DEPARTMENT OF EDUCATION  
and STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION, TONY THURMOND

Dated: June 21, 2024

By:   
Linda Darling-Hammond, State Board President  
*On behalf of*  
CALIFORNIA STATE BOARD OF EDUCATION

Dated: June \_\_\_\_, 2024

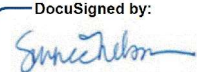
By: \_\_\_\_\_  
David Sapp, Legal Affairs Secretary  
Office of Governor Gavin Newsom  
*On behalf of*  
STATE OF CALIFORNIA

***Approved as to Form***

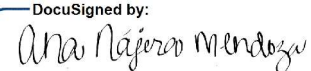
Dated: June 3, 2024

By:   
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Malhar Shah  
Claudia Center  
DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND

Dated: June 4, 2024

By:   
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Linnea Nelson  
Grayce Zelphin  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA

Dated: June 4, 2024

By:   
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Ana G. Najera Mendoza  
Victor Leung  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF SOUTHERN CALIFORNIA

Dated: June \_\_\_\_, 2024


By: Virginia Cale Digitally signed by Virginia Cale  
Date: 2024.06.21 12:46:23 -07'00'  
Virginia Cale  
Paul Gant  
Len Garfinkel  
*Attorneys for Defendants*

CALIFORNIA DEPARTMENT OF EDUCATION  
and STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION, TONY THURMOND

Dated: June \_\_\_, 2024

By: \_\_\_\_\_  
Linda Darling-Hammond, State Board President  
*On behalf of*  
CALIFORNIA STATE BOARD OF EDUCATION

Dated: June 3, 2024

By:   
\_\_\_\_\_  
David Sapp, Legal Affairs Secretary  
Office of Governor Gavin Newsom  
*On behalf of*  
STATE OF CALIFORNIA

***Approved as to Form***

Dated: June \_\_\_, 2024

By: \_\_\_\_\_  
Malhar Shah  
Claudia Center  
DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND

Dated: June \_\_\_, 2024

By: \_\_\_\_\_  
Linnea Nelson  
Grayce Zelphin  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA

Dated: June \_\_\_, 2024

By: \_\_\_\_\_  
Ana G. Nájera Mendoza  
Victor Leung  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF SOUTHERN CALIFORNIA

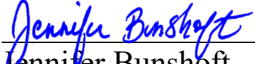
Dated: June \_\_\_, 2024

By: \_\_\_\_\_  
Virginia Cale  
Paul Gant  
Len Garfinkel  
*Attorneys for Defendants*



CALIFORNIA DEPARTMENT OF EDUCATION,  
STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION, and CALIFORNIA STATE  
BOARD OF EDUCATION

Dated: June 6, 2024

By:   
Jennifer Bunshoft  
Jennifer Perkell  
Rob Bonta  
*Attorneys for Defendant*  
STATE OF CALIFORNIA

Dated: June \_\_, 2024

By: \_\_\_\_\_  
Nicoleña Fariás-Eisner  
STEPTOE LLP  
Attorney for Plaintiffs

CALIFORNIA DEPARTMENT OF EDUCATION,  
STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION, and CALIFORNIA STATE  
BOARD OF EDUCATION

Dated: June \_\_\_\_, 2024

By: \_\_\_\_\_  
Jennifer Bunshoft  
Jennifer Perkell  
Rob Bonta  
*Attorneys for Defendant*  
STATE OF CALIFORNIA

Dated: June 4, 2024

By: \_\_\_\_\_  
*Nicolena Farias-Eisner*  
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Nicolena Farias-Eisner  
STEPTOE LLP  
Attorney for Plaintiffs