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12 Attorneys for Respondents/Defendants

13  
 14 **SUPERIOR COURT OF CALIFORNIA**  
 15 **COUNTY OF SAN FRANCISCO**

16  
 17 **BETTY PAZMIÑO et al.,**

CPF 03-502554

18 Petitioners,

**SETTLEMENT AGREEMENT**

19 v.

20 **CALIFORNIA BOARD OF EDUCATION et al.,**

21 Respondents.

22  
 23 This Settlement Agreement (Agreement) is entered into by and between petitioners Betty  
 24 Pazmiño, Maria Lucia Escoto, Cipriana Sanchez Meza, Christina Padilla, Francisca Garcia,  
 25 Denis O'Leary, Mujeres Unidas y Activas, Comité Pro Educación, Excellence and Justice in  
 26 Education, Parents for Unity, Frente Indígena, Oaxaqueño Binacional, California Latino Civil  
 27 Rights Network, Californians Together, and California Association for Bilingual Education  
 28 (collectively, Petitioners); and respondents California Board of Education; its members, Reed

1 Hastings, Joe Nunez, Robert J. Abernathy, Don Fisher, Nancy Ichinaga, Carol S. Katzman,  
2 Stephanie H. Lee, Suzanne Tacheny, and Curtis Washington in their official capacities (SBE);  
3 Jack O'Connell in his official capacity as State Superintendent of Public Instruction (SSPI); and  
4 the California Department of Education (CDE) (collectively, Respondents), together, the Parties.

5       **WHEREAS**, on or about March 5, 2003, Petitioners filed a petition for writ of mandate  
6 and complaint for declaratory and injunctive relief in the Superior Court of the State of California  
7 in and for the City and County of San Francisco, Case Number CPF 03-502554 (Action),  
8 challenging certain criteria implemented by Respondents for participation in California's  
9 Reading First Program; and

10       **WHEREAS**, on or about March 27, 2003, a preliminary injunction and writ of mandate  
11 were entered against Respondents enjoining them from implementing the challenged criteria  
12 absent compliance with the notice, filing and comment provisions of the California  
13 Administrative Procedure Act (APA) regarding the promulgation of regulations; and

14       **WHEREAS**, on April 9, 2003, Respondent SBE approved an emergency regulation  
15 (Emergency Regulation) at its regularly scheduled meeting incorporating the challenged criteria;  
16 and

17       **WHEREAS**, on April 25, 2003, Respondent SBE published notice of a permanent  
18 regulation (Permanent Regulation) incorporating the challenged criteria; and

19       **WHEREAS**, on May 8, 2003, Petitioners filed a first amended petition for writ of  
20 mandate and complaint for declaratory and injunctive relief in the Action challenging the  
21 Emergency Regulation; and

22       **WHEREAS**, Respondent SBE deferred acting on the Permanent Regulation pending  
23 legislative action contemplated in AB 1485 as set forth in part below; and

24       **WHEREAS**, the Emergency Regulation was repealed by operation of law on August 20,  
25 2003; and

26       **WHEREAS**, AB 1485 (Chap. 773, Stats. 2003) was enrolled on September 24, 2003,  
27 approved by the Governor on October 10, 2003, and chaptered by the Secretary of State on  
28 October 11, 2003, with an effective date of January 1, 2004; and

1           **WHEREAS**, AB 1485 addresses in pertinent part the administration of California's  
2 Reading First Plan from moneys allocated pursuant to Title I, Part B of the federal No Child Left  
3 Behind Act; and

4           **WHEREAS**, AB 1485 provides in Section 1, in pertinent part, that "a class operating  
5 pursuant to [Education Code] Section 310 may use primary language materials in alternate  
6 formats adopted by the State Board of Education for purposes of participating in a program  
7 funded pursuant to this article." (Education Code section 51700, subdivision (c)(1)(B), as  
8 amended); and

9           **WHEREAS**, AB 1485 further provides in Section 1, in pertinent part, that the "State  
10 Department of Education and the State Board of Education may not develop or implement  
11 requirements or criteria that make a local educational agency ineligible for funding pursuant to  
12 this section because the local educational agency provides primary language instruction and  
13 comprehensive English language development instruction to English learners in alternative  
14 classrooms, as authorized pursuant to Sections 310 and 311." (Education Code section 51700,  
15 subdivision (d), as amended); and

16           **WHEREAS**, AB 1485 further requires, in Section 2, in pertinent part, that Respondent  
17 SBE amend California's Approved Reading First Plan; and

18           **WHEREAS**, AB 1485 further specifies, in Section 8, that funds appropriated pursuant to  
19 Provision 2 of Item 6110-126-0890 of Section 2.00 of the Budget Act of 2003 "may not be  
20 allocated unless the State Board of Education amends the Reading First Plan pursuant to Section  
21 2 of this act and submits the plan to federal authorities by February 1, 2004, and the federal  
22 Secretary of Education approves the plan"; and

23           **WHEREAS**, the United States Department of Education and its Secretary (USDE) are  
24 not parties to this Action; and

25           **WHEREAS**, pursuant to AB 1485, on November 14, 2003, Respondent SBE submitted  
26 to USDE for approval, as required, amendments to California's Reading First Plan  
27 (Amendments), a true and correct copy of which are attached for reference; and

28           **WHEREAS**, pending before the San Francisco Superior Court in the Action are: (1)

1 Petitioners' motion for summary adjudication, filed on August 29, 2003, which, among other  
2 things, seeks a writ of mandate prohibiting Respondents from denying Reading First funding to  
3 classrooms that provide primary language instruction pursuant to Education Code Section 310 in  
4 waived classrooms using approved alternate formats; and (2) Petitioners' motion to compel  
5 further discovery, filed on October 3, 2003; and

6 WHEREAS, all Parties wish to avoid the costs and uncertainties of further litigation, and  
7 to fully and finally settle and discharge all claims asserted by any Party in the Action;

8 NOW, THEREFORE, the Parties have reached this Agreement as a full and complete  
9 settlement of all disputes and claims stated in the Action. For and in consideration of the  
10 valuable covenants and considerations described herein, receipt of which is hereby  
11 acknowledged, the Parties agree as follows:

12 1. Respondents will send a supplemental application form by January 15, 2004 or within  
13 10 business days of receiving USDE approval of the Amendments referenced above, whichever  
14 is later, to all currently funded Reading First local educational agencies (LEAs) that will allow  
15 the LEA to: (1) identify the number of Education Code Section 310 waived classrooms using  
16 the approved alternate format instructional materials in their Reading First program; and (2)  
17 receive an increased grant amount based on the number of additional classrooms in their Reading  
18 First program identified pursuant to subdivision (1) above, if applicable. Respondents agree to  
19 permit current Reading First grantees for the 2003-04 school year to add Education Code section  
20 310 waived classrooms using approved alternate format materials to their Reading First  
21 Program whether or not they are petitioning for an increased 2003-04 program grant.

22 2. The Sacramento County Office of Education (Sacramento County), a non-party, is the  
23 designated California Reading Development Center (known as the California Technical  
24 Assistance Center or C-TAC) under California's Reading First Program. Provided that USDE  
25 has approved the Amendments referenced above, Respondents will include in their contract with  
26 Sacramento County a clause requiring it to subcontract with a Reading Implementation Center  
27 (known as a Regional Technical Assistance Center or R-TAC) to provide technical assistance,  
28 translate State-provided end-of-year assessments (i.e., not STAR assessments), and develop

1 materials for professional development under the direction and supervision of C-TAC for  
2 alternate format materials in Education Code section 310 waived classrooms as contemplated  
3 by the Reading First Plan as amended. Petitioners agree to meet and confer with Respondents to  
4 explore possible alternate methods of providing the expertise to C-TAC prior to taking any action  
5 to enforce this provision of the Agreement.

6 3. Respondent SSPI will appoint a representative from a Reading First eligible LEA with  
7 expertise in educating English learners in Education Code section 310 waived classrooms to  
8 the Reading and Literacy Partnership Team, an entity whose composition, structure and function  
9 are set forth in California's Reading First Plan. Respondent SSPI further agrees to consider  
10 recommendations from a list supplied by Petitioners in making the appointment, but shall have  
11 no obligation to appoint from such list.

12 4. Petitioners will continue their pending motion to compel, currently scheduled for  
13 hearing on January 9, 2004, to January 30, 2004 or thereafter and their pending motion for  
14 summary adjudication, currently scheduled for hearing on January 20, 2004, to February 10, 2004  
15 or thereafter.

16 5. Upon notification that USDE has approved the Amendments referenced above,  
17 Petitioners will take their pending motion to compel and their pending motion for summary  
18 adjudication off calendar. If USDE has not approved the Amendments by January 12, 2004, the  
19 Parties will meet and confer to discuss all pending motions. Should Petitioners elect to litigate  
20 the pending motions as scheduled, then this Agreement shall be null and void.

21 6. Petitioners agree to dismiss this entire Action, with prejudice, within 30 calendar days  
22 after USDE approves the AB 1485 Amendments and Respondents provide written verification to  
23 Petitioners that they have complied with the obligations set forth in numbered paragraphs 1, 2  
24 and 3 above.

25 7. This Agreement and all the terms and conditions set forth herein are contingent upon  
26 and subject to an action by USDE to approve the Amendments. The Agreement will become null  
27 and void if USDE does not approve the Amendments.

28 8. Nothing in this Agreement shall impair the ability of the Legislature to independently

1 enact legislation governing matters affecting education. In the event that the statutes cited in this  
2 Agreement are modified or repealed, nothing in this Agreement shall be construed to require  
3 Respondents to comply with obligations set forth in the Agreement that arise out of or are based  
4 on obligations that no longer exist in the statutes cited, and the Parties agree that this Agreement  
5 will not provide an independent basis to enforce any such obligations as against Respondents.  
6 The Parties further agree that if Respondents invoke this provision as a bar to enforcement of a  
7 particular provision, Petitioners shall not be barred from otherwise independently seeking relief  
8 for violations of the State's obligations as a recipient of federal funds under the NCLB or  
9 other federal programs.

10 9. The Parties will attempt to settle the issue of attorneys' fees and costs through  
11 negotiation. If negotiation fails, the Parties stipulate that Judge Ronald E. Quidachay of the  
12 Superior Court for the City and County of San Francisco shall retain jurisdiction over the Action  
13 for the purpose of determining what amount of attorney's fees and costs, if any, Petitioners may  
14 recover from Respondents in this Action pursuant to noticed motion and a mutually agreed-upon  
15 briefing and hearing schedule.

16 10. The Parties agree that neither the existence of this Agreement nor any of its terms nor  
17 compliance with this Agreement shall be taken or construed as an admission of any sort on the  
18 part of any Party.

19 11. This Agreement is in lieu of, supersedes and extinguishes all other agreements,  
20 negotiations, understandings and representations which may have been made or entered into by  
21 and between the Parties and constitutes the entire Agreement between the Parties. It is expressly  
22 understood and agreed that this Agreement may not be altered, amended, modified or otherwise  
23 changed in any respect or particular whatsoever except by a writing duly executed by an  
24 authorized representative of the Parties.

25 12. This Agreement shall be governed by California law.

26 13. This Agreement shall be interpreted and construed neutrally in accordance with the  
27 plain meaning of the language contained herein and shall not be presumptively construed against  
28 the drafters.



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STATE BOARD OF EDUCATION

Dated: 1/21/04

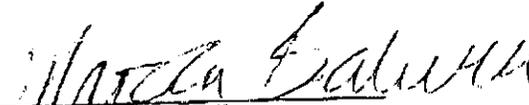
By:   
REED HASTINGS, President

CALIFORNIA DEPARTMENT OF EDUCATION

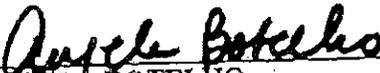
Dated: 1/22/04

By:   
GAVIN PAYNE  
Chief Deputy Superintendent  
California Department of Education

Dated: 1/22/04

By:   
MARSHA BEDWELL  
General Counsel  
California Department of Education

Dated: 1/26/04

By:   
ANGELA BOTELHO  
Deputy Attorney General  
Counsel for Respondents/Defendants

STATE OF CALIFORNIA

## CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street, Suite 5111; P.O. Box 944272  
Sacramento, CA 94244-2720

GRAY DAVIS Governor



November 14, 2003

Christopher J. Doherty  
Director, Reading First  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-6201

Dear Mr. Doherty,

This letter is to request approval of an amendment to California's Approved Reading First Plan (Approved Plan) to allow the use of Spanish translations of the scientifically research-based instructional materials currently included in the Approved Plan. This request results from the enactment of Chapter 773, Statutes of 2003 (Assembly Bill 1485) by the California Legislature that required this amendment to California's Reading First Plan. The State Board of Education, as the State Education Agency, approved this amendment at its November 2003 meeting on the recommendation of the Reading and Literacy Partnership Team. Since California's Reading First Plan was approved in late August 2002, the two adopted instructional materials, Houghton Mifflin Reading, *The Legacy for Literacy 2003* and SRA/McGraw-Hill, *Open Court Reading 2002*, which are the scientifically research-based cornerstone of California's Approved Plan, have been translated into Spanish. These translations, *Houghton Mifflin Reading/Houghton Mifflin Lectura*, grades K-6, and *SRA/McGraw Hill Open Court Reading/Foro abierto para la lectura*, grades K-6, have been approved by the California Department of Education as alternate format instructional materials. Approximately 10 percent of California's English learners are educated in classrooms that use a language other than English for instruction pursuant to a waiver provision in Education Code Section 310 (added by Proposition 227, passed by the voters in 1998). These Education Code Section 310 classrooms that serve Spanish-speaking students can now use these approved alternative format instructional materials to teach reading.

As specified in Chapter 773, Statutes of 2003 (Assembly Bill 1485), California now wishes to amend its Reading First Plan to allow the use of these alternate format instructional materials in Education Code Section 310 classrooms to allow those students who are being taught to read in Spanish to continue to do so and still participate in the Reading First Program. California's amended Plan will continue to require that the goal of Reading First – that all students meet state grade-level standards as demonstrated through state assessments by the end of the third grade – be met by students using the alternate format materials. As in our original approved Reading First Plan, all California students in Reading First will be required to meet grade level English-language arts standards by the end of third grade, as demonstrated through the California STAR test.

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The amended Plan is attached. A description of each amendment, by section, follows.

#### **D. Criteria for Awarding Subgrants (page 8 of Approved Plan)**

##### **Criterion ii: Instructional Assessments (page 10 of Approved Plan)**

California's Approved Plan utilizes assessments for screening, diagnosis, progress monitoring, and outcome. Reading First LEA's are guided to conduct assessments for all of the key technical skills of reading as specified in California's *Framework*. Assessment Schedule for Grades K-3—Assessment of Proficiency in the Language Arts.

Like their non-Education Code Section 310 classroom counterparts, Education Code Section 310 classrooms in the Reading First Program will utilize the extensive assessment materials included in the instructional materials. They will also have the State provided end-of-year assessments associated with the two approved instructional programs once they are translated into Spanish. These assessments will be augmented by nationally recognized scientifically research-based assessments in Spanish chosen by the Reading First LEA from a State Approved list.

As with all K-3 students in California, all Reading First students, including those in Education Code Section 310 classrooms, will take the California Standards Test in English-Language Arts to determine if the students are reading at grade level by the end of the third grade.

##### **Criterion iii: Instructional Strategies and Programs (page 11 of Approved Plan)**

Because *Houghton Mifflin Reading/Houghton Mifflin Lectura*, grades K-6, and *SRA/McGraw Hill Open Court Reading/Foro abierto para la lectura*, grades K-6, programs are translations of the two State-adopted comprehensive K-3 reading/language arts programs discussed in this section, they provide the same instructional strategies and programs discussed in this section of the Approved Plan.

##### **Criterion iv: Instructional Materials (page 12 of Approved Plan)**

Because the *Houghton Mifflin Reading/Houghton Mifflin Lectura*, grades K-6, and *SRA/McGraw Hill Open Court Reading/Foro abierto para la lectura*, grades K-6, programs are translations of the two State-adopted comprehensive K-3 reading/language arts instructional materials discussed in this section, they provide a comprehensive reading/language arts program in Spanish with English language development instruction. Of course since the required outcome is to have the students meet grade level English-language arts standards by the end of third grade, as demonstrated through the California STAR test, students using *Houghton Mifflin Reading/Houghton Mifflin Lectura*, grades K-6, and *SRA/McGraw Hill Open Court Reading/Foro abierto para la lectura*, grades K-6, may want to use the English version of the adopted materials prior to the third grade assessment.

The Approved Plan requires that LEAs already have the required instructional materials as a prerequisite for entering the program. Therefore under the Approved Plan, LEAs are not allowed to purchase classroom sets of the instructional materials. Because the Education Code Section 310 classrooms may desire to have both the Spanish and English version of the instructional materials, Reading First LEAs will be allowed to use

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their Reading First funds to purchase the second set of instructional materials, whether it be English or Spanish for the Education Code Section 310 classrooms.

**Criterion v: Instructional Leadership (page 13 of Approved Plan)**

In addition to the leadership responsibilities outlined in the Approved Plan, both the LEA and site level instructional leadership will need to support Education Code Section 310 classroom teachers in the use of the instructional materials in Spanish with the substantial English language development component and preparing students so that they can score at or above the proficient level on the third grade California Standards Test in English-Language Arts. The amendments also make clear that schoolwide focus on improving student achievement in reading must include all teachers and students whether they are in Education Code Section 310 classrooms or non-Education Code Section 310 classrooms.

Another amendment to this section is to suggest the LEAs consider including an Education Code Section 310 classroom teacher on the districtwide Reading First Leadership Team.

**Criterion vi: LEA and School Based Professional Development (page 16 of Approved Plan)**

The AB 466 Professional Development program, which is instructional materials specific, is the program required for the first year of Reading First professional development. It is our understanding that many existing Reading First schools have already included their Education Code Section 310 classroom teachers in their Reading First Professional Development to support the whole school reform that a successful Reading First Program requires. We will continue to encourage this team approach to professional development for the same reason.

Additionally, the State Board of Education, the California Department of Education (CDE) and the California Technical Assistance Center (C-TAC) will work to encourage an LEA or private vendor to become an approved AB 466 Professional Development Provider for the approved alternate format instructional materials, as required under AB 1485.

**Criterion vii: LEA Based Technical Assistance (page 17 of Approved Plan)**

C-TAC (California Technical Assistance Center) and the R-TACs (Regional Technical Assistance Centers) will assist Reading First LEAs to build capacity to assist Education Code Section 310 classroom teachers use the alternate format instructional materials and with their implementation of the Reading First Program.

**Criterion viii: Evaluation Strategies (page 18 of Approved Plan)**

Successful LEAs must include an evaluation strategy in their Reading First program that provides a means for the LEA to monitor program implementation and utilize assessments to assist in student learning. Of course this evaluation strategy must include data from every participating classroom. In addition to including the Education Code Section 310 classrooms in their overall evaluation, LEAs must review the data from Education Code Section 310 classrooms as a subgroup since program monitoring and technical assistance will be important to ensure that the students can be successful on the California Standards Test in English-Language Arts by the spring of third grade.

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**Criterion xi: Competitive Priorities (page 19 of Approved Plan)**

Because California's Approved Reading First Plan did not allow the funding of K-3 classrooms that utilized the approved alternate format instructional materials, those classrooms have not been funded in previous rounds of subgrants. Chapter 773, Statutes of 2003, (AB 1485) seeks to compensate for this lack of past funding by giving these classrooms priority in the allocation of the \$13.6 million increased funding provided to California in FY 2003. Thus, additional points will be awarded to passing applications that include Education Code Section 310 classrooms utilizing the alternate format instructional materials.

**Section II State Leadership and Management (page 22 of Approved Plan)**

**A. Professional Development Plan**

The existing State structure for professional development under AB 466 that is described in the Approved Plan allows for professional development providers to be approved for any adopted instructional materials. Because *Houghton Mifflin Reading/Houghton Mifflin Lectura*, grades K-6, and *SRA/McGraw Hill Open Court Reading/Foro abierto para la lectura*, grades K-6, are approved alternate format instructional materials, providers can be approved under AB 466 to conduct 40-hour teacher institutes on these instructional materials. Currently there are no AB 466 providers for the alternate format. The State Board of Education, the California Department of Education (CDE) and the California Technical Assistance Center (C-TAC) will work to encourage an LEA or private vendor to become an approved AB 466 Professional Development Provider for the alternate format instructional materials. Alternatively, because the alternate format is a translation of the adopted instructional materials in English, the 40-hour teacher institutes on the instructional materials in English is of benefit to teachers using the translated instructional materials.

**B. Technical Assistance Plan**

C-TAC (California Technical Assistance Center) and the R-TACs (Regional Technical Assistance Centers) will assist Reading First LEAs to build capacity to assist Education Code Section 310 classroom teachers use the alternate format instructional materials and implement the Reading First Program.

**Section III Evaluation and Reporting Plan (page 27 of Approved Plan)**

California's Approved Plan includes an evaluation plan comprised of five components. Each of these five components will report on all the funded Reading First classrooms as a whole, as well as the Education Code Section 310 classrooms as a subgroup.

Sincerely,



REED HASTINGS, President  
California State Board of Education