

Settlement Agreement

Cruz, et al. v. State of California, et al.,
Alameda County Superior Court Case No. RG14727139

This is a final Agreement entered into by and between (1) all Plaintiffs, Jessy Cruz; Brian Cruz, a minor, by Jonathan Cruz, guardian ad litem; Briana Lamb, a minor, by Ronald Lamb, guardian ad litem; Cristian Gaspar, a minor, by Guadalupe Gaspar, guardian ad litem; Lee Simons, a minor, by Rhae Ray Eason, guardian ad litem; Myriam Giselle Gonzalez; Samaria Hudson, a minor, by Chawmein Hudson, guardian ad litem; Taliyah Jacobs, a minor, by Katherine Jacobs, guardian ad litem; Jumante Smith, by Katherine Jacobs, guardian ad litem; Arnold Gutierrez, a minor, by Norma Gutierrez, guardian ad litem; Eric Flood, a minor, by Nicole King, guardian ad litem; Edith Quintero; Daisy Romo, a minor by Elizabeth Rodriguez, guardian ad litem; Riana Brown, a minor, by Victoria Williams, guardian ad litem; Emmanuel Enriquez, a minor, by Olga Enriquez, guardian ad litem; Nathan Saucedo, a minor, by Olga Enriquez, guardian ad litem; Ignacia Barajas, a minor, by Genoveva Barajas, guardian ad litem; Lucia Barajas, a minor, by Genoveva Barajas, guardian ad litem, Jason Magaña, a minor, by Ofredo Magaña, guardian ad litem; Jesus Tamayo, a minor, by Natividad Rangel, guardian ad litem; Eduardo Tamayo, a minor, by Natividad Rangel, guardian ad litem; and Jordan Parx, a minor, by Tara Sexton, guardian ad litem; and (2) Defendants the California State Board of Education, the California Department of Education, and the California Superintendent of Public Instruction (hereinafter “State Education Defendants”) in the matter of *Cruz., et al. v. State of California, et al.*, pending in Department 17 of the Alameda County Superior Court (the “Court”), Case No. RG14727139 (hereinafter “the Action”). The parties specified above who are entering into this agreement may be referred to herein collectively as the Parties or individually as a Party.

On May 20, 2014, Plaintiffs filed a Class Action Complaint in the Alameda County Superior Court, Case No. RG14727139, against Defendants the State of California, the California State Board of Education, the California Department of Education, the California Superintendent of Public Instruction, and Does 1-100, alleging statutory and constitutional violations. Plaintiffs filed a Supplemental Class Action Complaint on October 7, 2014, which is the operative pleading. Plaintiffs have not moved for class certification. The case is set for a bench trial beginning on March 25, 2016.

Assembly Bill 1012 (hereinafter “AB 1012”) was passed by the California Legislature, enrolled on September 11, 2015, signed into law by the Governor, and chaptered by the Secretary of State on October 9, 2015 as Chapter 703, Statutes of 2015. AB 1012 addresses the issues which will be the subject of the trial set to commence in March 2016.

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

1. Statement of Intent. The Parties have entered into this Agreement to resolve the Action in the manner prescribed below and for the purpose of compromising and settling all claims and issues related to the subject matter of this Action. This Agreement does not constitute, nor shall it be construed as, an admission of liability by Defendants.

2. Contingent Nature of Agreement. This Agreement is subject to and conditioned upon: (a) the final approval of the Court of this Agreement; and (b) the approval/ratification of the State Board of Education. Pending such approval and/or ratification, the Parties agree to commence implementation of the terms of the Agreement beginning with execution of this Agreement, regardless of the status of proceedings related to obtaining Court approval of the settlement.

3. Definitions. The Parties intend that the following terms will have the specified meaning when used throughout this Agreement:

- a. "Focus High Schools" means Castlemont High School and Fremont High School in Oakland Unified School District, John C. Fremont High, Thomas B. Jefferson High School, and Susan Miller Dorsey High School in Los Angeles Unified School District, and Compton High School in Compton Unified School District.
- b. "Three Districts" means Oakland Unified School District, Los Angeles Unified School District, and Compton Unified School District.
- c. "Course period without educational content" is defined in Section 1 of Assembly Bill 1012.
- d. "Repeated course" has the same meaning and scope of application as the course periods described in Section 2 of Assembly Bill 1012.
- e. "CALPADS" means the California Longitudinal Pupil Achievement Data System.
- f. "CDE" means the California Department of Education, which is one of the Defendants.
- g. "SBE" means the California State Board of Education, which is one of the Defendants.
- h. "SPI" means the California Superintendent of Public Instruction, who is one of the Defendants.

4. Notification to school districts about Assembly Bill 1012. Prior to May 15, 2016, State Education Defendants will draft and CDE will issue a policy notice to all school districts summarizing the requirements of Assembly Bill 1012 for assigning students to "courses without educational content" and "repeated courses". State Education Defendants will provide a draft of the policy notice to counsel for Plaintiffs at least 30 days prior to its issuance. State Education Defendants will consider in good faith any suggestions proposed by counsel for Plaintiffs, but will be under no obligation to incorporate any such suggestions.

5. Offer of Assistance and Support to Three Districts. Within six weeks following the enactment of AB 1012 into law, a representative of Defendant CDE designated for this purpose by the SPI, after consultation with a representative of Defendant SBE designated for this purpose by the SBE, shall contact the Superintendent of each of the Three Districts in writing or verbally to convey the following:

- a. The fact that AB 1012 will be in effect during the 2016-17 school year;
- b. A summary of the requirements of AB 1012;

- c. An offer to discuss that District's existing policies and practices regarding assignment of pupils in the Focus High Schools to "course periods without educational content" and "repeated courses." Nothing in this provision requires State Education Defendants to conduct any independent investigation or evaluation of the District's policies or practices.

6. CALPADS Course Codes. Beginning in the 2016-2017 school year, to the extent feasible within the existing structure of CALPADS system, CDE will add to the existing "Course Group State Code" set two numeric codes designed to correspond to the definition of "course periods without educational content" in Section 1 of AB 1012. CDE will update the CALPADS user manual and other CALPADS system documentation to reflect these changes, as necessary, and provide notice to districts of this change in a manner consistent with its current practice of advising districts of changes to CALPADS. Nothing in this agreement mandates districts to take any action beyond what is required in AB 1012. The Parties understand that while the State Education Defendants have agreed to add data collection elements to CALPADS, use of those course codes by districts is voluntary.

7. CALPADS Course Code Data for the Focus High Schools. For the 2016-2017 and 2017-18 school years, within 45 days after school districts certify their data submission through CALPADS relevant to course enrollment and course completion (Fall 2 and End of Year 1, respectively), State Education Defendants will provide counsel for Plaintiffs with a summary of the number of students at the Focus High Schools who are reported as having enrolled in or completed, as appropriate, a course period(s) corresponding to the new course codes created pursuant to Paragraph 6 for the Focus High Schools.

8. Response to Specified Circumstances at Any of the Focus High Schools. During the 2015-16 and 2016-17 school years, should defendant CDE or defendant SBE learn, from counsel for Plaintiffs, through the provision of assistance and support described in Paragraph 5, or any other means, of widespread problems affecting a significant number of students regarding (1) an incomplete master schedule, (2) systemic errors in individual student schedules, or (3) assignment of students to "courses without educational content" or to "repeated courses" at any of the Focus High Schools in a manner that is inconsistent with the requirements of AB 1012, a representative of defendant CDE designated for this purpose by the SPI, after consultation with a representative of defendant SBE designated for this purpose by the SBE, shall promptly contact the Superintendent of the district to convey a good faith offer to assist the district by identifying and coordinating with local assistance from the County Superintendent with oversight over that district, the community college(s) located within or near the district's boundaries, and such other local resources as may be identified, and a good faith offer to assist the district by identifying and providing such technical assistance that CDE and SBE currently has available in-house. State Education Defendants will promptly notify counsel for Plaintiffs when they make an offer of review and support pursuant to this Paragraph and shall advise counsel for Plaintiffs whether or not the district has accepted the offer.

If the district does not respond to CDE's offer of assistance within 10 school days, CDE will renew the offer in a letter to the governing board of the district, with a copy to Plaintiffs' counsel. If the district responds to CDE's offer of assistance that it is aware of the problem and

describes specific steps that the district is taking or will take to rectify the problem without needing assistance from State Education Defendants, then State Education Defendants will so notify Plaintiffs' counsel.

9. No Limitation on Collaboration with Non-Parties. The Parties acknowledge and agree that open communication between the Parties and with Non-Parties will assist each Party in fulfilling its obligations under this Agreement. The Parties further acknowledge and agree that it may be expedient for them to communicate jointly with Non-Parties and that open dialogue will assist the Parties in determining when such collaborative action is warranted. Accordingly, nothing in this Agreement is intended to limit the ability of State Education Defendants or counsel for Plaintiffs to communicate, individually or jointly, with the governing boards or staff from the three schools districts in which the Focus High Schools are located. Further, nothing in this Agreement is intended to proscribe a particular mode or form for any such communication. Further, nothing in this Agreement is intended to limit State Education Defendants' ability to consult with or work in collaboration with other public entities, including but not limited to county offices of education, the California Collaborative for Educational Excellence, the Fiscal Crisis & Management Assistance Team, or non-governmental entities, including associations or technical assistance providers, to effectuate the purposes of the Agreement or to assist State Education Defendants in completing the actions specified in this Agreement.

10. Regulatory Process following Enactment of Assembly Bill 1012. Plaintiffs and their counsel agree that, if signed into law, Education Code §§ 51228.1(f) and 51228.2(e) ("The Superintendent shall develop regulations for adoption by the state board to establish procedures governing this section, including the form of the written statement required pursuant to subdivision (a).") do not require the State Superintendent of Public Instruction to develop, or the State Board of Education to consider adoption of, any regulations other than those regarding the form of the written statements identified in those sections unless the State Superintendent and/or the State Board conclude that additional regulations are needed or appropriate.

11. Future Actions with Respect to Assembly Bill 1012. State Education Defendants will not advocate for the repeal of AB 1012 at any point prior to the conclusion of the 2017-18 school year. This Paragraph is not intended and will not limit the ability of any Party to advocate for or recommend technical amendments to AB 1012. State Education Defendants will notify counsel for Plaintiffs before proposing any such technical amendments but will not need to secure agreement from counsel for Plaintiffs to proceed. Nothing in this Agreement is intended to preclude or will preclude any Party from initiating or participating in discussion of possible legislative or administrative changes regarding the process for handling complaints and/or appeals under the Uniform Complaint Process.

12. Certification of Settlement Class. Within thirty (30) court days of full execution of this Agreement, the Parties will file a joint motion for preliminary approval of the settlement. This motion will request the Court to conditionally certify a settlement class consisting of (1) all students enrolled at Castlemont High School in Oakland Unified School District ("OUSD"), Fremont High School in OUSD, John C. Fremont High School in Los Angeles Unified School District ("LAUSD"), Susan Miller Dorsey High School in LAUSD, Thomas B. Jefferson High

School in LAUSD, Compton High School in Compton Unified School District (“CUSD”) (collectively, “Focus High Schools”) at any point during the time period May 29, 2014 through June 30, 2020. The motion will further request the Court to declare the class as a mandatory, non-opt-out class and set a final approval hearing date.

13. Final Settlement Approval. Once the Court grants preliminary approval of the settlement, the Parties will jointly move for final approval and will hold a final approval hearing using a schedule to be set by the Court.

14. Entry of Judgment and Continuing Court Jurisdiction. The Parties will jointly seek a judgment from the Court after the Court has granted final approval of the settlement, and the Court will retain exclusive and continuing jurisdiction over the action through June 30, 2018 for purposes of supervising the implementation and interpretation of the Agreement and resolving any disputes, as described in Paragraph 15.

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

- a. The Party alleged to be in noncompliance will have 30 days following receipt of the notification concerning the alleged noncompliance to respond to the notification.
- b. Following the complaining Party’s receipt of the response from the allegedly noncompliant Party, the Parties agree to negotiate in good faith to resolve any remaining disputes regarding the alleged noncompliance. The complaining Party agrees not to file any motion to enforce this Agreement until this dispute resolution process has been completed – or until the 30-day deadline by which the noncompliant Party must respond to the complaining Party’s initial notification expires – and then only if the alleged noncompliance has not been corrected or deemed by the Parties to be unfounded. Any motion to enforce this Agreement will be brought in the Court in which this action was filed.

16. Release of Claims by Settlement Class. In consideration of the promises set forth herein, Plaintiffs who have attended or are currently attending the Focus High Schools, on behalf of themselves (and their successors and assigns) and on behalf of the class they represent hereby release, discharge, and covenant not to sue Defendants State of California, the California Department of Education, State Superintendent of Public Instruction Tom Torlakson and his successors, and State Board of Education, and their Board members, officers, directors, employees, agents, attorneys, and representatives from any and all known or unknown claims, demands, actions or causes of action whatsoever arising out of or relating to the Action, or to the claims and defenses asserted therein, that existed or will exist at any time on or before the date of June 30, 2020 (“the Released Claims.”)

17. Dismissal of Elementary and Middle School Plaintiffs. Plaintiffs Jumantae Smith, Taliyah Jacobs, Samaria Hudson, Nathan Saucedo, Emmanuel Enriquez, Rianna Brown, Arnold Gutierrez and Brian Cruz, will seek dismissal from the Litigation at the time of filing of the Preliminary Approval Order. Upon the entry of the Final Approval Order, the dismissal of Jumantae Smith, Taliyah Jacobs, Samaria Hudson, Nathan Saucedo, Emmanuel Enriquez, Rianna Brown, Arnold Gutierrez, and Brian Cruz will become a dismissal with prejudice to re-filing.

18. Dismissal of Defendants State of California and Does 1-100. Plaintiffs will seek, in conjunction with the joint motion for preliminary approval of the settlement described in Paragraph 12, the conditional dismissal with prejudice of claims against Defendants State of California and Does 1-100, which shall become final upon entry of the Final Approval Order of the class settlement described in Paragraph 13.

19. Attorneys' Fees and Costs. Within 30 days of approval by the appropriate agencies following final approval by the Court, State Education Defendants will pay Plaintiffs by check, Four Hundred Thousand Dollars (\$400,000), in full and final settlement of any and all attorneys' fees and costs claims that have been or could have been or could be made in this case; provided, however, that should any person appear to object to the settlement, payment of attorneys' fees and costs shall not occur until 30 days after final resolution of such objection. Such check will be payable to Public Counsel Law Center to be distributed among counsel for Plaintiffs—Public Counsel Law Center, ACLU Foundation of Southern California, Arnold and Porter LLP, and Carlton Fields Jordan Burt LLP. Except as provided in this settlement agreement, Plaintiffs and their counsel waive and release defendants from any and all claims for attorneys' fees in this case, past, present and future. This release is binding on plaintiffs' heirs, representatives, successors, assigns, agents and attorneys.

This payment shall constitute full resolution of any and all claims for attorney's fees and/or costs by Plaintiffs arising from and related to the Action, including the implementation, monitoring, and/or oversight of this Agreement. Aside from this payment, the Parties shall bear their own respective expenses and costs of litigating the Action.

In the event that further legal fees and costs are incurred as the result of a dispute arising from this Agreement, enforcement thereof and/or the terms herein, each party shall bear its own future attorneys' fees and costs, unless the Court determines there is a material breach of a term of this Agreement, in which case the successful party shall be awarded reasonable attorneys' fees and costs as determined by the Court.

20. Cooperation. Each of the Parties will cooperate with each and every other Party to carry out, effectuate and accomplish the terms of this Agreement. Accordingly, where appropriate, and in furtherance of carrying out the terms and conditions of this Agreement, each Party will sign any and all additional papers and obtain and convey any and all necessary documentation to any other Party. However, if any Party fails to perform in a timely manner any act required by this Agreement, or otherwise acts in violation of any provision of this Agreement, the aggrieved party may, after failure of good faith efforts to resolve the matter as set

forth in Paragraph 15 above, move the Court to issue any relief the Court deems proper. The prevailing Party may seek fees and costs for the motion for relief from the offending Party

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

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

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

24. Applicable Law. This Agreement shall be interpreted under the laws of the State of California.