

## COMPROMISE AND RELEASE AGREEMENT

This Compromise and Release Agreement (“Agreement”) is made by and between Plaintiffs Nona Rhea, Myron Buller, Carol Hirahara, Lynn Derfelt, Angelina Ogata and Does 1 – 5 (“Plaintiffs”) and Defendant Dinuba Unified School (“District”) (referred to collectively with Plaintiffs, as “the Parties” or individually as “Party”) to resolve all issues and disputes in *Doe 1, et al. v. State of California, et al.* Sacramento County Superior Court, Case No. 34-2012-80001164 (the “Action”).

### I. NATURE AND STATUS OF DISPUTE

#### Recitals

1. On May 30, 2012, Plaintiffs filed a petition for writ of mandate and civil complaint in the Action against the District, asserting claims for injunctive and declaratory relief as well as attorneys’ fees, costs, and other equitable relief, based upon, among other things, alleged violations of the California Constitution’s equal protection and free education guarantees, the Federal Equal Education Opportunity Act, and related laws, because the District allegedly maintains an improper program called “SLADI.”
2. Second Language Acquisition Development Instruction (“SLADI”) is the acronym used for the District’s English Language Development instructional component of Structured English Immersion.
3. The District asserts that in the summer of 2007, the District hired a consultant to help restructure the District’s English Language program. That consultant recommended that the District use SLADI strategies as its English Language Development instruction.
4. The District asserts that SLADI strategies were implemented in first through grade six beginning in the 2009-10 school year and that in 2010-11 school year, the District implemented SLADI in kindergarten, and grades seven through twelve. As of the 2011-12, the District had yet to fully implement SLADI strategies.
5. Since Plaintiffs’ filed suit, the Parties have engaged in good faith and productive discussions. The District cares deeply about the education of all students and remains dedicated to its unwavering commitment to close the Achievement Gap.
6. For and in consideration of the mutual promises and covenants in this Agreement, and for other good and valuable consideration, the Parties have agreed to resolve the Action, without any admission of liability or wrongdoing. Therefore, the Parties agree as follows:

## II. TERMS OF RESOLUTION

### District's Authority

7. Nothing in this Agreement shall be construed in anyway to delegate, supersede, limit, restrict or otherwise conflict with any powers vested in the Board of Trustees, the Administration, or the employees of the District, to fulfill their respective duties to the students, parents, and taxpayers of the District under state and federal law.

8. Nothing in this Agreement shall be construed in anyway to delegate, supersede, limit, restrict or otherwise conflict with any powers or obligations provided for in any collective bargaining agreement between the District and any party.

### Elimination of Existing English Language Development Program

9. Effective the 2012-13 school year, the District will stop using the Second Language Acquisition Development Instruction (SLADI) program as its English Language Development (ELD) instructional program for any aspect of its educational services for English Language Learner (ELL) students. The District will communicate this fact to all District administrators, teachers, and parents or guardians of ELL students. Nothing in this paragraph prohibits the use of any instructional methods or techniques that may have been used by the District if recommended by the consultant, who is identified in paragraph 10.

### Retaining ELD/ELL Consultants

10. The District shall retain, for a reasonable rate, the services of Dr. Magaly Lavadenz and Dr. Alfredo Schifini. In the event that the consultants, during the term of this Agreement, are unable to perform their duties in this Agreement, or upon agreement between the Parties to replace the consultants, the Parties agree to resolve the matter pursuant to paragraph 18.

### Development of New Curriculum

11. The consultants shall work with the existing authority, agreements, and practices of the District, including but not limited to, the District's English Language Development Professional Learning Committee ("ELD PLC"), and shall consult with a teacher representative designated by Plaintiffs' counsel. Prior to making final recommendations to the District on matters identified in this Agreement, the consultants shall present each recommendation to the District Superintendent or the Superintendent's designee, and the ELD PLC. All final recommendations shall be in writing, pedagogically sound, financially feasible, and demonstrated to best improve learning outcomes for ELL students.

The District may refuse to implement any final recommendations made by the consultants, for any legitimate reason, including that a recommendation is not pedagogically sound; not financially feasible; or not demonstrated to best improve learning outcomes for English Language Learners. Upon a showing that a recommendation was rejected without a legitimate reason, the Parties must endeavor in good faith efforts to informally resolve all differences pursuant to paragraph 18.

The consultants shall consider whether recommendations are appropriate in the following areas:

(a) Development or revision of the District's Master Plan for ELL students and all other programs for ELL students that become necessary as a result of the District's implementation of this Agreement, including, but not limited to, any modification of the ELD Program; the development of the summer program; and continued access to instruction in all core curriculum areas for ELL students.

The Parties agree not to restrict the consultant's recommendation(s) to the Treasures ELD Program and the Treasures English Language Arts curriculum, which are designed for grades kindergarten through fifth, for implementation in the 2012-2013 school year, though the Parties agree that a modified Treasures ELD Program and the Treasures English Language Arts curriculum could be acceptable for those grade levels, for the purposes of this Agreement. The consultants will monitor the implementation of any of the foregoing for the duration of this Agreement, as provided in Paragraph 17.

(b) The purchase of ELD instructional materials in support of the new curriculum for use in the 2012-2013 school year. The new curriculum will be implemented as completely as practicable in kindergarten through grade five, for the 2012-2013 school year. For grades six through twelve, the ELD component or some other program that is consistent with a transition from the ELD program in grades kindergarten through five. The program will be implemented in a manner that allows for the fullest integration of ELL students with other students during the instructional day.

(c) Modifications to the ELD program designed to enhance oral language skills, written language skills, comprehension and access to core curriculum, as well as to integrate ELL students to the fullest extent possible with their English-speaking peers. Subject to the procedures specified in this Paragraph, the District will purchase the additional instructional materials recommended by the consultants as necessary to implement these modifications.

12. The District and the consultants will jointly identify benchmarks to measure the progress of ELL students. Any disagreement between the parties on the identification of benchmarks shall be resolved pursuant to the procedures outlined in Paragraph 18.

### Targeted Instructional Support

13. Subject to the process identified in paragraph 11, the existing authority, agreements, and practices of the District, and as further specified below, the Parties agree as follows:

- (a) August 2012 Information Session. The District will conduct an information session for parents and guardians of ELL students enrolled in August 2012. This session will be made available to all parents and guardians of students enrolled in its ELD instructional program for the 2012-2013 school year, and who were enrolled in the SLADI program at any time since the 2009-2010 school year as long as they are currently enrolled students in the District in the 2012-2013 school year. Information to be communicated at this information session shall include, but is not limited to, the following:
  - i. Effective the 2012-2013 school year, the District will stop using the SLADI program as its ELD instructional program for any aspect of its educational services for ELL students, pursuant to paragraph 9.
  - ii. SLADI will be replaced with an ELD curriculum that will continue to provide access to instruction in all core curriculum areas for ELL students.
  - iii. A School Year Program, defined in paragraph 13(b), will be implemented for all students identified jointly by the consultants and the District after assessing all prospective students, especially including students who have been enrolled in the 2.5 hour SLADI program.
  - iv. A 2013 Summer Program, defined in paragraph 13(c), will be implemented for all students identified jointly by the consultants and the District after assessing all prospective students, especially including students who have been enrolled in the 2.5 hour SLADI program.
  - v. The District encourages all eligible students identified jointly by the consultants and the District to enroll in the School Year Program and the 2013 Summer Program.
- (b) 2012-2013 School Year Program. The District will implement during the 2012-13 school year, a targeted intervention program available to all students identified jointly by the consultants and the District after assessing all prospective students, especially including students who have been enrolled in the 2.5 hour SLADI program. The program will be supplemental to the regular school day (i.e., will not involve pull-out from

the regular school day). Subject to the procedures specified in this paragraph, the District agrees to purchase materials necessary to implement such a program.

- (c) 2013 Summer Program. The District will implement a targeted summer intervention program in 2013. The summer program will last no less than four weeks, and will be made available to all students, if any, identified jointly by the consultants and the District after assessing all prospective students, especially and including students who were enrolled in the 2.5 hour SLADI program. Subject to the procedures specified in this paragraph, the District agrees to purchase materials necessary to implement such a program.
- (d) In-Service Program. The District will conduct in-service trainings of all teachers and staff who will be assigned to instruct ELL students. The District will explain, during the in-service training, that SLADI will no longer be used as its ELD instructional program for any aspect of its educational services for ELL students, pursuant to paragraph 9. Subject to the procedures specified in this paragraph, the consultants will recommend the extent of training necessary, if any, for the 2013 targeted summer program, for the targeted intervention program for the 2012-13 school year, for implementation of the ELD program, and for implementation of the newly modified Master Plan for English Learners.
- (e) Observation and Program Evaluation. For each year that this Agreement is in place, the consultants will also conduct at least two days of observations, one at mid-year and one at the end of the year to observe in classrooms to document implementation of program and instructional practices. The consultants shall conduct a formative program evaluation by January of each school year, and a summative program evaluation by May of each school year, and shall provide these written evaluations to the Superintendent or the Superintendent's designee at those respective times.

#### Conduct of the Parties

14. The District denies any retaliation, harassment, intimidation, coercion, or discrimination against any employee, parent or student for the support or perceived support of the lawsuit. It will continue to adhere to all applicable laws prohibiting retaliation against, harassment, intimidation, coercion or discrimination against any employee, parent or student for the support or perceived support of the lawsuit, and will provide notice to all of its management employees of this provision. Furthermore, Plaintiffs and counsel for Plaintiffs agree that they will not publicly assert that the District's decision to enter into this Agreement represents an admission of liability or reflects negatively on the District's commitment to provide the best possible education for all of its students, especially its English Language Learners. Plaintiffs further agree

not to harass, intimidate or discriminate against any District employee. The Parties agree not to disparage each other.

#### Common Core State Standards Consultation

15. Both the District and Plaintiffs recognize that the Common Core State Standards will be implemented soon, with revised ELD standards due this fall pursuant to AB 124 (Statutes of 2011), the new curriculum framework for English language arts that will integrate the new ELD standards scheduled for local district implementation, and the related state adoption of instructional materials. The District will implement the revised ELD standards as soon as practicable. Subject to the process identified in paragraph 11, the existing authority, agreements, and practices of the District, and to the extent possible, the consultants will make recommendations regarding implementation of the ELD standards, curriculum framework and instructional materials. Nothing in this paragraph extends the term of this Agreement.

#### Implementation and Enforcement

16. The District, in good faith, shall take all steps and expend all funds reasonably necessary to comply with the terms of this Agreement and the accepted recommendations of the consultants.

17. This Agreement will remain under the jurisdiction of the court pursuant to C.C.P. section 664.6 until, and this Agreement shall terminate on, June 30, 2014. However, the term of the Agreement shall be extended by up to one year, if recommended by the Consultants. Plaintiffs will dismiss with prejudice the Action, *Doe I, et al. v. State of California, et al.* Sacramento County Superior Court, Case No. 34-2012-80001164, no later than July 1, 2014, or July 1, 2015, if extended based on the Consultants' recommendation. In the event that one but not both of the Consultants recommend extension of the Agreement the parties will be notified and the issue of whether the Agreement shall be extended shall be based on whether it is necessary to effect full compliance with the terms of this Agreement and shall be resolved in accordance with the terms of Paragraph 18. Nothing in this Agreement prohibits plaintiffs from dismissing the Action prior to July 1, 2014 or prior to July 1, 2015 if the extended based on the Consultants' recommendation.

18. The District and Plaintiffs shall endeavor in good faith to resolve informally any differences regarding interpretations of, and compliance with, this agreement prior to bringing such matters to the Court for resolution. However, if any Party fails to perform in a timely manner any act required by this Agreement, regardless of the reason, 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 outlined below, move the Court to issue any relief the Court deems just and proper:

- (a) Contact in writing the opposing counsel, citing any relevant provisions of this Agreement, and the reasons why such provisions may be violated;
- (b) Meet with opposing counsel and or the opposing Party in an effort to resolve any issue about such violations; and
- (c) Seek relief through Alternative Dispute Resolution, namely mediation, if steps (a) and (b) do not resolve the issue.

A Party to this Agreement is encouraged to exhaust steps (a), (b) and (c) listed above prior to seeking relief from the Court as provided above. The prevailing Party may seek fees and costs only if it complied with all of the good faith efforts identified in paragraph 18 subds. (a), (b) and (c) listed above. The purpose of this paragraph is to avoid unnecessary, costly litigation, through continued good faith efforts to resolve differences between the Parties.

19. The District, in three (3) installments, will pay Plaintiffs one hundred forty-two thousand dollars (\$142,000.00) in attorneys' fees and costs as payment in full for fees and costs incurred by Plaintiffs in *Doe I, et al. v. State of California, et al.* Sacramento County Superior Court, Case No. 34-2012-80001164, in consideration for which Plaintiff will file a request for dismissal with prejudice in Case No. 34-2012-80001164 as provided for in this Agreement. The first installment shall be due within 30 days of the execution of this Agreement. Subsequent installments shall be due every six months thereafter, until fully paid. Notwithstanding the terms of paragraph 17, the Court shall retain jurisdiction until such time as all fees and costs have been paid.

### III. REMAINING TERMS TO AGREEMENT

20. **Board Ratification and Effective Date.** This Agreement shall be executed by the Parties as indicated below. This Agreement shall be complete and become effective upon the execution by Plaintiffs and the District, and upon ratification by the District's Board of Trustees.

21. **No Admission of Liability.** It is understood and agreed that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by any Party.

22. **Ownership of Claims.** Plaintiffs represent and warrant that Plaintiffs are the sole and lawful owners of the claims, which are the subject of the foregoing release, and that Plaintiffs have not assigned or transferred, or purported to assign or transfer, any of such claims or any portion of such claims to any other person or entity.

23. **Release of Claims.** Plaintiffs agree to accept the conditions in this Agreement in full settlement and compromise of the above-entitled matters and agree that same shall

fully and forever discharge and release all claims and causes of action whether now known or now unknown, which Plaintiffs have, or might have or could have asserted, in the Action against the District, its officials, employees, representatives, agents or attorneys, in the Action, arising out of the incidents which are the subject thereof, including restitution, disgorgement, attorneys' fees and costs.

24. **Civil Code section 1542.** This Agreement includes an express waiver by Plaintiffs of Civil Code section 1542, and any protection or benefit provided by it, which states:

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

In the event that the Court finds this provision to be inconsistent with law as to any particular party or claim, it shall nullify the terms of this Agreement only as to release of that claim and otherwise have no effect on the enforcement or validity of this Agreement.

25. **Contents of Agreement.** Counsel for each of the Parties to this Agreement represents that they have fully explained to their client(s) the legal effect of this Agreement and of the Releases and Dismissal with Prejudice provided for in this Agreement and that the settlement and compromise stated in this Agreement is final and conclusive, and each attorney represents that their respective client(s) has/have freely consented to and authorized this Agreement.

26. **Voluntary Agreement.** Each Party affirms and acknowledges that the Party has read, fully appreciates, and understands the words, terms, and provisions of this Agreement, is entirely satisfied with the settlement described, and has duly executed this Agreement voluntarily and of their full free will and accord. Each Party had an opportunity to review and consult with their respective legal counsel on this matter.

27. **Integration – Code of Civil Procedure Section 1856.** This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms. The use of the term “continue” or “continued” in this Agreement shall not be construed to mean that merely conformance to the District's prior actions meets the requirements of this Agreement.

28. **No External Promises, Representations or Warranties.** Each of the Parties acknowledges no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this

Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.

29. **Amendments.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all Parties.

30. **Joint Preparation.** This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.

31. **Other Documents.** The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effectuate the purpose of this Agreement.

32. **Attorneys' Fees for Enforcement.** If any action is brought to interpret or enforce this Agreement, or is brought in connection with any dispute arising out of this Agreement, the prevailing Party may seek fees and costs only if it complied with all of the good faith efforts identified in paragraph 18.

33. **Interpretation and Applicable Law.** Each of the Parties acknowledges and agrees that this Agreement is an accord and satisfaction to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise. California law shall apply to this Agreement, and shall control the interpretation of all of its terms.

34. **Severability.** If any provision of this Agreement is held to be void, voidable or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

35. **Representation by Counsel.** Each of the Parties acknowledges and agrees that they have been represented by independent legal counsel of their own choice throughout the negotiation of this Agreement and that they are executing this Agreement having had sufficient opportunity to investigate the facts and obtain the advice of such counsel.

36. **Execution in Counterparts.** This Agreement may be executed in several counterparts and shall be deemed legally effective at such time as the executed counterparts have been furnished and delivered to the attorneys for all Parties to this Agreement. Signature of copies and facsimile versions of this Agreement shall have the same force and effect as signature of the original.

**IN WITNESS WHEREOF the Parties hereto have executed the Agreement as dated below.**

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
DOE 1

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
DOE 2

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
DOE 3

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
DOE 4

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
DOE 5

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
NONA RHEA

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
MYRON BULLER

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
CAROL HIRAHARA

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
LYNN DERFELT

Dated: \_\_\_\_\_, 2012

PLAINTIFF

\_\_\_\_\_  
ANGELINA OGATA

Dated: \_\_\_\_\_, 2012

DEFENDANT DINUBA UNIFIED SCHOOL  
DISTRICT

\_\_\_\_\_  
Dr. Joe Hernandez  
Superintendent  
Dinuba Unified School District

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2012

ACLU OF NORTHERN CALIFORNIA

\_\_\_\_\_  
Jory C. Steele  
Linnea Nelson  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2012

CALIFORNIA RURAL LEGAL ASSISTANCE,  
INC.

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Cynthia L. Rice  
Elizabeth Aakhus  
Andres Garcia  
Attorneys for Plaintiffs Doe 1 and Doe 3

Dated: \_\_\_\_\_, 2012

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

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Mark Rosenbaum  
Jessica Price  
Brooks Allen  
David Sapp  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2012

ASIAN PACIFIC AMERICAN LEGAL CENTER

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Justin Ma  
Yungsuhn Park  
Nicole K. Ochi  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2012

WILSON SONSINI GOODRICH & ROSATI PC

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Steven Guggenheim  
Jeanna Steele  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2012

ACLU FOUNDATION OF SAN DIEGO &  
IMPERIAL COUTIES

\_\_\_\_\_  
David Loy  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2012

LOZANO SMITH

\_\_\_\_\_  
Steve H. Ngo  
Regina A. Garza  
Attorneys for Dinuba Unified School District

**BOARD RATIFICATION:**

I, \_\_\_\_\_, Clerk of the Board of Trustees  
of Dinuba Unified School District, HEREBY CERTIFY that the foregoing Agreement  
was ratified by the Board of Trustees at a meeting thereof held on this \_\_\_\_ day of  
\_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENCES:

IN WITNESS THEREOF, I have hereto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Clerk of the Board of Trustees