SETTLEMENT IMPLEMENTATION AGREEMENT

It is hereby agreed among the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, and the State Department of Education), the plaintiff class representatives ("Plaintiffs"), and the undersigned Intervenors (the "Settling Intervenors") (collectively, the "Settling Parties") in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco ("the Action") that:

1. Promptly after the Settling Parties execute this Settlement Agreement, Plaintiffs (or, at the State's option, the State and Plaintiffs jointly) shall file a Notice of Settlement. The Notice of Settlement will describe the terms of the settlement; seek the Court's preliminary approval of the settlement; provide a procedure for giving notice to the members of the Plaintiffs' class and seek approval to proceed according to the process established in this Settlement Agreement, including a continued stay of the litigation, pending final court approval. Plaintiffs' counsel shall circulate the Notice of Settlement to the Settling Parties for their review and comment before the Notice is filed with the Court. Upon execution of this Settlement Agreement, Defendant State of California will file a notice of dismissal without prejudice of its cross-complaint in the Action (the "Cross Complaint").

2. The Settling Parties agree to engage in good faith efforts to obtain the enactment of legislation that implements the legislative proposals attached to this Settlement Agreement (the "Legislative Proposals") during the current legislative session and, to the extent that goal is not attained, as soon as possible thereafter. Consistent with this commitment, the Settling Parties also agree that they will not advocate or support any

legislative measures relating to the Legislature's consideration of the proposed legislation to implement the settlement which do not substantially conform to the Legislative Proposals. A legislative measure does not "Substantially Conform" to the Legislative Proposals if it: (1) is inconsistent with the language and intent of the Legislative Proposals, including all duties, limitations, and deadlines set forth therein; or (2) contains any revisions or modifications that add significant costs or cost pressures.

3. No later than October 15, 2004, Plaintiffs shall notify the Defendants and the Settling Intervenors whether they agree that the legislation that has been enacted by the Legislature in 2004 and signed by the Governor (the "2004 Legislation") Substantially Conforms to the Legislative Proposals, which agreement shall not unreasonably be withheld. If Plaintiffs agree that the 2004 Legislation Substantially Conforms, they shall promptly submit a motion for final approval of the settlement and dismissal of the Action as provided in this Settlement Agreement.

4. In the event that Plaintiffs, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education, or any of the Settling Intervenors believe that the 2004 Legislation does not Substantially Conform to the Legislative Proposals, they shall engage in consultation (as described in paragraph 7 below), giving written notice to all Settling Parties of the alleged deficiencies and providing the State with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. The State may give notice of the intention to seek enactment of the substance of the Legislative Proposals during the 2005 legislative session; and if so, Plaintiffs shall await the outcome of the efforts to enact the proposals during 2005. If Plaintiffs, the State Board of Education, the Superintendent of

Public Instruction, or any of the Settling Intervenors contend that what has been enacted during the 2005 legislative session (the "2005 Legislation") does not substantially conform to the Legislative Proposals then, after consultation, they may apply to the Court for leave to withdraw from the Settlement Agreement based on a showing of substantial and material differences between the 2004 Legislation/2005 Legislation and the Legislative Proposals.

5. In the event the Court grants final approval of the settlement:

a. The Action shall be dismissed without prejudice; and Plaintiffs and, subject to approval by the Court pursuant to Cal. Civ. Proc. §581(k), members of the Plaintiffs' class shall be bound by the separate Covenant Not To Sue which is, by this reference, incorporated into and made a part of this Settlement Agreement.

b. Defendant State of California will file a notice of dismissal with prejudice of the Cross Complaint.

c. The Settling Intervenors will file notices of dismissal without prejudice of their complaints in intervention in the Action.

d. As consideration for the Settling Parties' execution of this Agreement, there shall be no application for an award of attorneys' fees or costs to be paid by any party, except as provided in the separate Provision As To Claims for Attorneys' Fees agreed between the State and plaintiffs. Settling Intervenors shall have no liability for any fees or costs related to or arising from the Action.

6. Any dismissal and any covenant not to sue that applies to members of the Plaintiff class shall be subject to Court review pursuant to Cal. Civ. Proc. §581(k). In the event of disapproval by the Court at any stage of such proceedings, the Settling Parties

shall meet and confer in the attempt to correct any deficiencies. This Settlement Agreement shall not be enforceable after a final order declining to approve the settlement.

7. Plaintiffs, Defendants and Settling Intervenors agree to engage in consultation with each other before taking an action that could provoke a reasonable objection based on the letter or spirit of this Settlement Agreement. This duty of consultation shall apply to any party who applies to the Court to withdraw from or modify the settlement, for relief from a covenant not to sue, or for any order in connection with the settlement.

8. Nothing in this Settlement Agreement and no action taken by any Settling Party in the course of the negotiation of this Settlement Agreement and its attachments, or the drafting of and lobbying for the Legislative Proposals, the 2004 Legislation or the 2005 Legislation shall waive or be construed as a waiver of any party's claim for reimbursement of a state mandate or entitlement to State payment pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes. The Settling Intervenors expressly reserve their rights to seek reimbursement for any state mandate pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes.

9. Requests by defendants or Settling Intervenors for funding to meet workload is consistent with this agreement and shall not be a breach of the covenant to support legislation. A request by any Settling Party to clarify a proposal is not inconsistent with this commitment.

10. Except where specifically so noted in this Settlement Agreement, the defendants take no position regarding the plaintiffs' contentions in this suit or regarding the ultimate conclusions that would follow from those contentions.

11. Pursuant to California Code of Civil Procedure § 583.330, the Settling Parties stipulate to waive the right to dismissal of this action if it has neither been resolved nor proceeded to trial by May 17, 2005, five years from the date of the commencement of this litigation.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By:_____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger

DEFENDANTS THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION

By:_____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

By:_____
Jack W. Londen
Morrison & Foerster LLP

Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern California

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Arlene Ackerman
Superintendent of Schools

INTERVENOR CALIFORNIA SCHOOL
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LEGISLATIVE PROPOSALS

STANDARDS, BENCHMARKS, AND CORRECTIVE ACTION:

Parts I & II

August 12, 2004

"Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities." (May 14, 2004 letter from Peter Siggins, page 2 point 2.)

Instructional Materials:

The following language represents the Administration's proposal to ensure that every student is provided with standards-aligned instructional materials. Rather than a narrative format as has been used to date in our discussion, the concept language has been placed into appropriate Education Code sections to facilitate a more specific discussion of the concepts. The code section references are arranged in numerical order for easy reference.

1240. The superintendent of schools of each county, shall do all of the following:

* * *

(c) **(1) (A)** Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.
(B) As a condition of receipt of funds, the county superintendent, or his or her designee, must annually present a report describing the state of the schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index pursuant to Section 52056 in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools to the **school district governing board** and the board of supervisors of his or her county. For Amador, Alpine, Del Norte, San Francisco, Sierra, Mariposa, and Plumas Counties, these county offices of education shall contract with a neighboring county office of education **or an independent auditor to conduct the required visits and make all required reports.** The results of the visit shall be reported to the school district governing board **on a quarterly basis at a regularly scheduled meeting,** in accordance with public notification requirements.
The visits shall be conducted at least annually and must meet the following criteria:
(1) Not disrupt the operation of the school
(2) Be performed by individuals who meet the requirements of Section 45125.1, including an independent auditor that conducts the visits.
(3) Consist of not less than 25 percent unannounced visits. During unannounced visits the superintendent shall not demand access to documents or specific school personnel. Unannounced visits **shall only be used to observe the condition of school repair and maintenance and the sufficiency of or instructional materials, as defined by Section 60119.**

(4) The priority objective of the visits for schools ranked in deciles 1 to 3, inclusive, shall be to determine if there are all of the following:

(A) Sufficient textbooks as defined in Section 60119, and as provided for in (i) of this section.

(B) Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils.

(C) Accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities including good repair as required in sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

* * *

(i) **(1)** Enforce the use of sufficient state textbooks or instructional materials and of high school textbooks or instructional materials regularly adopted by the proper authority. **For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119**. In enforcing the use of textbooks or instructional materials, the superintendent shall specifically review at least annually schools in deciles 1 to 3, inclusive, of the Academic Performance Index as a priority if those schools are not currently under review through a State or federal intervention program. **The reviews shall be conducted within the first four weeks of the school year.**

If the superintendent determines that the district does not have sufficient textbooks or instructional materials pursuant to subdivision (a)(1)(A) of 60119 and as defined by subdivision (c) of Section 60119, the superintendent shall do the following:

(1) Prepare a report that specifically identifies and documents the areas or instances of non-compliance.

(2) Promptly provide a copy of the report to the district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(3) Provide the district with the opportunity to remedy the deficiency. However, the county superintendent shall ensure resolution no later than the second month of the school year.

(4) If the deficiency is not remedied pursuant to paragraph (3), the county superintendent shall request the State Department of Education, with approval by the State Board of Education, to purchase textbooks or instructional materials, necessary to comply with sufficiency requirement of this section. If the State Board approves a recommendation from the department to purchase textbooks or instructional materials for the district, the Board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board failed to provide pupils with sufficient textbooks or instructional materials as required by this section. Prior to the purchase of textbooks or instructional materials, the department shall consult with the school district superintendent to determine the districts selection of textbooks or instructional materials. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420). The funds necessary for the

purchase shall be considered to be a loan to the school district receiving the textbooks or instructional materials. Unless the district repays the amount owed based upon an agreed upon schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks, from the district's next principal apportionment or other apportionment of state funds.

It is the intent of the Legislature to appropriate any savings achieved as a result of schools being phased out of from the High Priority Schools Grant Program to provide High Priority Schools Grant awards to eligible schools, pursuant to Section 52055.605, that have not previously received a grant under this program.

* * *

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not adopt all of the listed options as a condition of funding under the terms of this act. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to
address the needs of high-priority pupils.

(b) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(1) Pupil literacy and achievement.

(2) Quality of staff, including highly qualified teachers as required by the No Child Left Behind Act and provision of appropriately credentialed teachers for English learners.

(3) Parental involvement.

(4) Facilities in good repair as specified in subdivision (a) of Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089, and curriculum, instructional materials, **at a minimum,** consistent with the requirements of Section 60119, and support services. The amendments to this paragraph shall apply only to schools entering the program on or after the 2004-05 fiscal year.

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners, as defined in subdivision (c) of Section 60119. The amendments to this section shall apply only to schools entering the program on or after the 2004-05 fiscal year.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

* * *

60119. (a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)**(A)**The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has~~, or will have prior to the end of that fiscal year,~~ sufficient textbooks or instructional materials, or both, in each subject (mathematics, science, history -social science and English/language arts (including any English Language Development component of an adopted program)) that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education. The public hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year, except for districts that operate schools on multitrack, year-round calendars, the hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year on any tracks that begin school years in the months of August or September.

(B) As part of the hearing required in this section, the governing board shall also make a written determination as to whether each pupil enrolled in Foreign language and Health courses in the district has sufficient textbooks or instructional materials, for those subjects that are consistent with the content and cycles of the curriculum framework adopted by the state board. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses in grades 9 to 12, inclusive. However, the provision of the textbooks or instructional materials or science equipment specified in this subparagraph shall not be a condition of receipt of funds as provided by this subdivision.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to

classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the extent of the insufficiency, the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within ~~a two-year period~~ two months of the beginning of the school year in which the determination is made ~~from the date of the determination~~.

* * *

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c) (1) For purposes of this section sufficient textbooks or instructional materials means that each pupil, including English Learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments. This shall not be construed to require two sets of textbooks or instructional materials for each pupil.
(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

* * *

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.
(3) A school district shall ensure that textbooks or instructional materials are ordered before the school year begins, to the extent practicable.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the

statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section. ~~(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.~~

Repeal Education Code Section 62000.4

62000.4. ~~The Instructional Materials Program shall sunset on June 30, 2006. The implementation of the Instructional Materials Program during the 2002-03, 2003-04, 2004-05, and 2005-06 fiscal years shall be contingent upon funding in the annual Budget Act.~~

Additional Legislation

The Administration proposes to require publishers of instructional materials to provide high school districts and unified districts with a standards map related to the instructional materials with verification by the California Department of Education (CDE) with approval by the State Board of Education (SBE). However, the verification process is contingent upon the payment of a fee by the publisher, to be determined by CDE. Thus, the verification process is made available to publisher on a voluntary basis (fee vs. tax issues). Because of the great value in the State endorsement of materials, it is expected that the publishers will voluntarily submit their materials for verification. Currently Superintendent O'Connell is pursuing a similar proposal through Senate Bill 1405 (Karnette), which we would request be amended to reflect this proposal.

Audit Guide Changes

14501. (a) As used in this chapter, "financial and compliance audit" shall be consistent with the definition provided in the "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions" promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, "compliance audit" means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.

(c) Compliance audit shall also include the verification of each of the following:
(1) the reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119,
(2) teacher missassignments pursuant to Section 44258.9 and

(3) the accuracy of information reported on the School Accountability Report Card required by Section 33126. These requirements shall be added to the audit guide requirements pursuant to Section 14502.1 (b).

* * *

41020 (i) (1) Commencing with the 2002-03 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.
(2) Commencing with the 2004-05 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, use of Instructional Materials Program funds, teacher missassignments pursuant to Section 44258.9, information reported on the School Accountability Report Card required by Section 33126 and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.

* * *

41344.4 Notwithstanding any other provision of law, a local education agency shall not be required to repay an apportionment based on a significant audit exception related to the requirements specified in subdivision (c) of 14501, if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception has been corrected by the local education agency or that an acceptable plan of correction has been submitted to the county superintendent of schools, pursuant to Section 41020(k). With respect to textbooks and instructional materials the plan shall be consistent with the requirements of section 60119 (a)(2)(A).

* * *

Uniform Complaint Process

The Administration proposes that each district use its existing uniform complaint process, **as set forth in Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations,** with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. **The process shall include, but is not limited to, each of the following components:**

(A) Complaints may be filed anonymously. Complainants who identify themselves are entitled to a response, **if they indicate they request a response (forms to include a check off if a response is requested)**. All complaints and responses shall be public records.

(B) The complaint form shall specify the location for filing these complaints and complainants may add as much text to expand on the complaint as they wish.

(C) Complaints should be filed with the Principal of the school or his or her designee. Complaints about problems beyond the authority of the school Principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate district official for resolution.

The Principal **or district superintendent's designee**, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The Principal **or district superintendent's designee** shall remedy the problem within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The Principal **or district superintendent's designee** shall report to the complainant of the resolution of the complaint within 45 working days of the initial filing. If the Principal makes this report, then the Principal shall also report the same information in the same timeframe to the district superintendent's designee.

Complainants not satisfied with the resolution of the Principal **or superintendent's designee** shall have the right to describe the complaint to the governing board of the district at a regularly scheduled hearing thereof. As to complaints involving emergency or urgent school facilities conditions, a complainant not satisfied with the resolution of the Principal or superintendent's designee shall have the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

Districts shall report summarized data on the natures and resolutions of all complaints on a quarterly basis to the county superintendent of education and the school governing board. **The summaries** shall be publicly reported on a quarterly basis at regularly scheduled school board meeting. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

These procedure are intended to address all of the following:

Complaints related to Instructional Materials where:

- Consistent with Section 60119:
  1. A student, including an English Learner, does not have standard-aligned textbooks or instructional materials, State Board adopted or district-adopted (for grades 9-12) text or other required instructional material to use in class.

2. A student does not have access to instructional materials to use at home/after school as needed to meet homework assignments.

- Materials are in poor or unusable condition, e.g. pages are missing, books are unreadable due to damage.

Complaints related to Teacher Vacancy or Misassignment:

- A semester begins and no permanent teacher is assigned to teach a class.
- A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20% English learner students in the class.
- A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

Complaints related to Facilities:

- Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff.

In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the district notifying parents and guardians of the following:
(1) Sufficiency of textbooks or instructional materials as defined in section 60119.
(2) School facilities must be clean and safe and in good repair pursuant to Sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.
(3) The location from which to receive a form to file a complaint in case of a shortage. Posting the notice downloadable from the CDE website satisfies this requirement.

School Facilities

Good repair is determined by local health standards applicable to similar facilities. Sections 17014, 17032.5, 17070.75, and 17089 shall be amended to define "good repair" to mean, until at least July 31, 2005, satisfaction of local health standards applicable to restaurants, rental housing, and other similar facilities.

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition.

* * *

(e) As a condition of participation in the school facilities program and the receipt of funds pursuant to Section 17582, each district shall establish a facilities inspection system to ensure that school are in good repair **consistent with local health standards applicable to restaurants, rental housing and other similar facilities** (Health & Safety Code Section 16500).

* * *

TEACHERS

Part III

August 12, 2004

"With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State's academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed." (May 14, 2004 letter from Peter Siggins, page 2 point 3.)

The following language represents the Administration's proposal to ensure that every student is provided with a qualified teacher who is also a highly qualified teacher under the federal No Child Left Behind Act (NCLB). The code sections are set forth in numerical order. For clarity, only changes related to teachers are presented in this document.

33126. (a)

* * *

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

* * *

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, ~~and~~ any assignment of teachers outside their subject areas of competence, **misassignments, including misassingments of English learner teachers, and the number of vacant teacher positions** for the most recent three-year period.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

* * *

42127.6 (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the

current or two subsequent fiscal years or if a school district has a qualified certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:

***

(7) Assign the Fiscal Crisis and Management Assistance Team to review district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and extent of teacher misassignment and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a district is assigned this review, the district shall follow the recommendations made unless the district shows good cause for failure to do so.

* * *

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low . To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and ~~(c)~~ (e).

(b) (1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment **and teacher vacancies** based on past experience or other available information. **However, priority shall be given to schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, if those schools are not currently under review through a State or federal intervention program.**

(B) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher in an assignment requiring a CLAD, BCLAD or SB 1969/395 training, completed the necessary requirements, for these certificates.

(**3**) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel **and teacher vacancies** shall be submitted to each affected district within ~~45~~30 calendar days of the monitoring activity.

(e) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing **and the Department of Education** summarizing the results of

all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by local district governing boards under the authority of Sections 44256, 44258.2, and 44263 of the Education Code.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) Information on certificated employee assignment practices in schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, to ensure that, at a minimum, in any classes in these schools in which 20 percent or more students are English learners the assigned teachers possess CLAD or BCLAD credentials or have SB 1969/395 training, or is otherwise authorized by law.

(~~4~~5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

* * *

(i) The State Superintendent of Public Instruction shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (e) of this section to the Legislature. The Legislature shall hold, within a reasonable period after receipt of the summary, public hearings on student access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or to a joint committee, to determine: (a) the effectiveness of the reviews required pursuant to this section; (b) the extent, if any, of vacancies and misassignments; and (c) the need, if any, to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, eliminating vacancies and misassignments.

* * *

44274. (a)The commission shall conduct periodic reviews, beginning in 1998, to determine whether any state has established teacher preparation standards**, including standards for teachers of English learners,** that are at least comparable and equivalent to teacher preparation standards in California.

* * *

(c) The commission shall grant an appropriate credential to any applicant from another state who has completed teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the

commission pursuant to this section, if the applicant has met the requirements of ~~California for the basic skills proficiency test pursuant to subdivision (d) of Section 44275.3 and~~ teacher fitness pursuant to Sections 44339, 44340, and 44341.

* * *

44275.3. Notwithstanding any other provision of law:

* * *

(b) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject or single subject teaching credential or a five-year preliminary education specialist credential to any out-of-state prepared teacher who meets all of the following requirements:

* * *

~~(c) An out-of-state prepared teacher who has been issued a California five-year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section.~~

(d) The commission shall issue a professional clear credential to an out-of-state prepared teacher who has met the requirements in subdivision (b) and who meets the following requirements:

(1) ~~Passage of the state basic skills proficiency test administered by the commission pursuant to Section 44252.~~

* * *

~~(5)Completion of the study of health education pursuant to suparagraph (A) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.~~

***

~~(8) Completion of a fifth-year program at a regionally accredited institution of higher education, except that the commission shall eliminate this requirement for any candidate who has completed an induction program for beginning teachers.~~

44325 <u>(e): The California Commission on Teacher Credentialing shall ensure that each district internship program in California provides program elements to its interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.</u>

44453: add: <u>The California Commission on Teacher Credentialing shall ensure that each university internship program in California provides program elements to its</u>

interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and
training in areas including, but not limited to, the following:

(1) School financial and personnel management. **This training shall specifically provide instruction related to personnel management, including hiring, recruitment and retention practices and misassignments of certificated personnel.**

* * *

(3) Curriculum frameworks and instructional materials aligned to the state academic standards, **including ensuring the provision of textbooks or instructional materials as defined in Section 60119.**

* * *

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

* * *

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. **Commencing with fiscal year 2004-05, for any districts with schools entering the program on or after July 2004, the report shall include whether the school does not have at least 80 percent of its teachers credentialed and the number of classes in which 20 percent or more students are English learners and assigned to teachers who do not possess that CLAD/BCLAD credentials or SB 1969/395 training, or is otherwise authorized under current law.**

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

* * *

52059. * * *

(b)The system shall provide assistance to school districts and schools in need of improvement by:

(1)Rreviewing and analyzing all facets of a school's operation including:

(A)D~~d~~esign and operation of the instructional program offered by the school~~, and by assisting,~~

(B) Recruitment, hiring and retention of principals, teachers and other staff, including vacancy issues. The system may access the assistance of the Fiscal Crisis and Management Assistance Team to review district or school recruitment, hiring and retention practices.

(C) Roles and responsibilities of district and school management personnel.

(2)Assisting the school district and its schools in developing recommendations for improving pupil performance and school operations.

(3)Assisting schools and districts in efforts to eliminate misassignments of certificated personnel.

* * *

Audit Guide Changes:

See Standards and Benchmarks I & II

Additional Legislation

- The annual report to the Legislature concerning the teaching force in California (Education Code section 44225.6) shall also include data on the extent to which pupils receive instruction from teachers who do not have a preliminary or professional clear credential, the extent to which English learners receive instruction by teachers without CLAD, BCLAD, or SB1969/395 authorization and if available, the percentage and distribution throughout the state of teachers possessing the different types of credentials set forth in section 44225.6 and including CLAD, BCLAD, and SB 1969/395 credentials. [If data is available, the report shall also include information on the number of teacher vacancies.]

- In an effort to meet the highly qualified teacher timelines of NCLB, districts are encouraged to provide first priority in the receipt of resumes and job applications from credentialed teachers, with hiring priority to all schools in deciles 1 to 3, inclusive, based on the API rankings established by Education Code section 52056(a). Thereafter, any school in the district may review and offer a position to a new applicant. Applicant teachers are not required to accept the offers from first priority schools as a condition for employment in the district.

FACILITIES INVENTORY & GRANT PROGRAM

Part IV

August 12, 2004

> **"The defendants will prepare a statewide inventory of all school facilities to determine the capacity, usage and present physical status of those facilities."** (May 14, 2004 letter from Peter Siggins, page 2, point 2.)

The Administration is committed to identifying and resolving urgent facilities needs that effect the health and safety of students and staff at schools to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056. To that end, the Administration proposes an assessment of these schools as well as a state grant program to reimburse school sites and districts for costs associated with the resolution of specified facilities needs.

School Facilities Needs Assessment Grant Program

SEC. 1. Section 17591.500 is added to the Education Code to read:

(a) There is hereby established a School Facilities Needs Assessment Grant Program to provide for a comprehensive assessment of school facilities needs. The grant shall be administered jointly by the Superintendent of Public Instruction and the State Allocation Board.

(b) The grants shall be awarded to schoolsites ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school.

(c) The Superintendent shall allocate funds pursuant to subdivision (b) of this Section to school districts with jurisdiction over eligible schoolsites, based on schoolsite enrollment, with a minimum allocation of _____ thousand dollars ($X,XXX) and a maximum allocation of _____ thousand dollars ($XX,XXX) for each schoolsite.

(d) As a condition of receiving funds pursuant to this Section, school districts shall:

(1) use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at minimum, all of the following for each school building that is currently used for instructional purposes:

1. the year each building was constructed
2. the year, if any, it was modernized
3. the capacity of the school

4. the number of students actually enrolled in the school
5. the density of the school campus measured in students per acre
6. the total number of classrooms at the school
7. the number of portable classrooms at the school
8. whether the school is operating on a multi-track, year-round calendar, and if so, what type; and
9. whether the school has a lunchroom, or an auditorium or other space used for student eating and not for class instruction.
10. Useful life remaining of all major building systems for each structure housing instructional space including but not limited to sewer, water, gas, electrical, roofing, fire and life safety protection.
11. Estimated costs for five years necessary to maintain functionality of each instructional space to maintain health and safety and suitable learning environment, as applicable, including classrooms, counseling, administrative space, libraries, gymnasiums, multi-purpose and feeding space, and the accessibility to such spaces.

(2) The district shall provide the data currently filed with the State as part of the process of applying for and obtaining facilities modernization or construction funds, or information that is available in CBEDS for the element required in 4, 5, 6 and 7.

(3) Districts shall use the assessment as the baseline for the facilities inspection system required pursuant to subdivision **(e)** of Section 17070.5.

SEC. 2. Section 17591.501 is added to the Education Code to read:

17591.501 From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance to complete the comprehensive assessments pursuant to this section.

School Facilities Emergency Repairs Account (FERA)

SEC. X Section 17594 is added to the Education Code to read:

(a) There is hereby established in the State Treasury the School Facilities Emergency Repairs Account. The Office of Public School Construction in consultation with the Superintendent of Public Instruction shall administer the account. A total of $800 million shall be made available for this account as funds become available from the sources described in this paragraph. Beginning with the 2005-06 budget, at least 50 percent of the unappropriated balance, but not less than $100 million, from the Proposition 98 Reversion Account shall be annually transferred to this fund. In addition, any other one-time Proposition 98 General Fund sources as well as any monies donated by private entities may be transferred to this account. The amounts deposited into the account shall be used for the purpose of addressing unforeseeable emergency facilities needs at schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school. Any donations to the account shall be tax exempt and treated as a charitable contribution to the extent allowed under both federal and state law.

(b) (1) All monies in the Facilities Emergency Repairs Account are available for reimbursement to schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school, to cover the school district's cost repair projects that meet the criteria specified in paragraph (c) and as approved by the State Allocation Board.

(2) As a condition of reimbursement, districts shall complete the projects and shall certify to the Office of Public School Construction that the repair or replacement could not have been avoided as part of their ongoing maintenance or deferred maintenance programs. The Office of Public School Construction shall conduct random reviews of certifications submitted by school districts to ensure that the repairs are consistent with the intent of this section.

(c) For the purpose of this Section, unforeseeable emergency facilities needs shall mean structures or systems which are unusable for their current purpose and which, as a result, pose a threat to the health and safety of pupils or staff while at school. Such needs may include the following types of facility project repair or replacements:

1. Gas Leaks
2. Existing non-functioning heating, ventilation, fire sprinklers, air conditioning systems
3. Electrical power failure
4. Major sewer line stoppage
5. Major pest or vermin Infestation
6. Broken windows or exterior doors, gates, that will not lock and that pose a security risk.
7. Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff
8. Unforeseen structural damage creating a hazard or uninhabitable condition

For the purpose of this section, structures or components shall only be replaced if it is more cost effective than repair.

(d) For the purpose of this Section, unforeseeable emergency facilities needs shall not include any cosmetic, or non-essential repairs or repairs that would already be addressed in the districts' 5 year deferred maintenance plan or through ongoing scheduled maintenance.

SEC. X Section 17594.1 is added to the Education Code to read:

(a) In addition to all other powers and duties as are granted to the State Allocation Board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. The initial regulations adopted pursuant to this chapter shall be adopted by **_____, X, 2004.** If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter. Regulations adopted pursuant to this subdivision shall be adopted by **_____X, 2004**, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

CONCEPT 6 PROPOSAL

August 12, 2004

1. Education Code section 37670 shall be amended to provide that no district not currently operating a school on a three-track year-round calendar providing fewer than 180 days of school per year ("Concept 6 Calendar") shall be allowed to begin using any such calendar and no school not currently operating on a Concept 6 calendar may be converted to that calendar. No school district may open a school on a Concept 6 calendar if doing so would increase the number of schools in the district operating on that calendar beyond the number in operation in the district, on average, over the preceding two school years.

2. Education Code section 37670 shall be amended to prohibit the use of the Concept 6 calendar after July 1, 2012 or such earlier date as may be prescribed by the Legislature under AB 560. Section 37670 shall also be amended to state that, while 2012 is the formal end of the authority to use the Concept 6 calendar, it is the intent of the state that all schools cease using it as soon as practicable.

3. As a condition of operating any school on a Concept 6 calendar in the 2004-05 school year or thereafter, a district must, by January 1, 2005, present to the State Department of Education a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 calendar as soon as practicable.

a. This action plan shall include an analysis of the district's demographic forecasts, space use and needs, class sizes, programmatic constraints, facilities construction status, the amount of funding needed to create additional classroom space, and the proposed sources of that funding. A district may not rely upon the use of involuntary busing of more than 40 minutes each way, other than that otherwise done pursuant to a desegregation plan, as a means for achieving elimination of the Concept 6 calendar.

b. The action plan shall also contain (i) a detailed description of the multiple phases of planning and construction (e.g., site identification, site acquisition, construction commencement, construction completion/ occupancy) of projects designed to eliminate use of the Concept 6 calendar, including a reasonable projection of the number of additional seats to be provided through each of the multiple phases of planning and construction, and (ii) reasonable, district-wide numerical goals against which annual progress towards eliminating the use of the Concept 6 calendar can be measured (e.g., number of new seats added to reduce reliance on the Concept 6 calendar), including a reasonable projection of the number of students, if any, it estimates will remain on a Concept 6 calendar on July 1 of each year through 2012. However, where a district projects that it will cease use of the Concept 6 calendar before July 1, 2008, the district's comprehensive action plan need not include a detailed description, as required in (i), but only a narrative explanation of how it will accomplish the end of the use of the Concept 6 calendar and project the date that each school currently using it will cease to do so.

4. The Superintendent of Public Instruction shall evaluate the comprehensive action plans submitted by each district and shall make recommendations to the State Board of Education for approval or disapproval of the plans. The Superintendent's evaluation shall be based on the reasonableness of the district's plan in eliminating Concept 6 calendars by the earliest practicable date and no later than July 1, 2012, including whether adequate sources of funding have been identified to accomplish this end. In considering whether a district has identified adequate sources of funding, the Superintendent shall consult with the Office of Public School Construction. If the Board disapproves a plan, it shall specify the reasons for disapproval and require the district to submit a revised plan, within a specified time frame, to address the Board's concerns.

5. Each district operating a Concept 6 calendar shall report each January to the Superintendent of Public Instruction, who shall report to the State Board of Education, on progress made in reaching the annual numerical goals established in its comprehensive action plan.

Any failure to meet an annual goal shall require the district to identify the specific cause(s) of that failure and will necessitate the amendment of the comprehensive action plan showing the specific steps that will be taken to remedy that failure such that the district will still eliminate the use of the Concept 6 calendar by the ending date originally specified in the action plan.

Each district operating a Concept 6 calendar shall file a supplementary, mid-year report where the district's progress toward its numerical goals has or is projected to change materially. The report shall describe the nature and cause of the material change(s) and show the specific steps that will be taken, and detail state technical assistance needed, if any, to address the change(s).

The Superintendent of Public Instruction shall evaluate the supplementary, mid-year reports, if any, and make recommendations to the State Board of Education for approval or disapproval of the reports. The Superintendent's evaluation shall be based on the reasonableness of the district's supplemental plan to reach its annual numerical goals and eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. If the Board disapproves a supplemental report, it shall specify the reasons for disapproval and require the district to submit a revised report, within a specified time frame, to address the Board's concerns.

6. Districts planning to operate a Concept 6 calendar after June 30, 2006 must, by July 1 of 2006 and any succeeding year in which it will operate a Concept 6 calendar, as a condition of operating that calendar, prove to the satisfaction of the Superintendent of Public Instruction that substantial progress has been made toward moving all schools to a calendar of at least 180 days. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether substantial progress has been made.

Substantial progress shall be defined as having come within 10% of the annual numerical goals set forth in the district's comprehensive action plan.

If a district has failed to make substantial progress toward its annual numerical goals, as defined above, for any two consecutive years between 2005 and 2012, the district shall be precluded from approving any new construction or portable classroom project other than a project directly designed to eliminate the use of the Concept 6 calendar or reduce capacity-related busing that transports students more than 40 minutes to or from school; designating developer fees revenue for any purpose not directly related to eliminating Concept 6 or reducing capacity-related busing; and approving the issuance of any Certificates of Participation for any facilities-related purpose not directly related to the elimination of the Concept 6 calendar or the reduction of capacity-related busing. Construction deemed eligible and necessary by the State Allocation Board under 2 Cal. Code Regs. 1859.82(a)(1) shall not be precluded.

These restrictions on the approval of new school or portable classroom projects, designation of developer fees, and issuance of Certificates of Participation shall remain in effect until such time as the district has achieved substantial progress as determined by the State Board of Education.

7. Districts planning to operate a Concept 6 calendar after June 30, 2009 must, by July 1 of 2009 and any succeeding year in which it will operate a Concept 6 calendar, prove to the satisfaction of the Superintendent of Public Instruction that it has developed specific school building planning to deliver classroom seats sufficient to eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether the district has developed specific school building planning.

"Specific school building planning" shall mean, at a minimum, that the district has identified preferred sites and approved as required under CEQA the project(s) needed to create the capacity required, and that the district has identified and obtained the funding necessary to complete the project(s) required. If state funding is part of the funding so identified, "obtained" shall mean that the district has received 1) an apportionment from the state for the project, or 2) a preliminary apportionment for the project under the Critically Overcrowded School Facilities program.

8. If on or after July 31, 2008 and any succeeding year in which a district operates a Concept 6 calendar, the State Board of Education finds that a district has failed to make substantial progress in eliminating the Concept 6 calendar, or if on or after July 31, 2009 and any succeeding year in which a district operates a Concept 6 Calendar, the State Board of Education finds that a district has failed to develop specific school building planning, the Board shall hold a public hearing to determine the causes of such failure and the remedies to be undertaken by the state or imposed on the district to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012.

9. Before the public hearing, the Superintendent of Public Instruction and the State Allocation Board shall each provide a written analysis and opinion to the State Board of Education as to the causes of the failure and the remedies proposed to be undertaken. The

State Allocation Board shall render its opinion acting upon a written analysis prepared by the Office of Public School Construction. Any affected district may submit its own analysis as to the causes of the failure and remedies it proposes to be undertaken. After the public hearing, the State Board of Education shall adopt a remedial plan -- to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012 -- that the district shall follow.

10. If the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is due to circumstances beyond the control of the district and despite the district's good faith efforts, the Board's remedial plan may include the provision of technical assistance to the district from the Department of Education, the Office of Public School Construction and/or the Division of the State Architect. "Technical assistance" may include, but is not limited to, assistance in identifying and acquiring school sites, guidance in maximizing access to funding necessary to create alternative student housing, and facilitation of the process of obtaining state approval for new construction projects. The Board's remedial plan may also recommend action for state financial assistance necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If the State Board of Education determines, however, that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar or to execute the plan, the Board's remedial plan must mandate regular (at least quarterly) review and oversight of the district's efforts by the State Department of Education. In the exercise of the Board's discretion, such review and oversight may be weekly, monthly, quarterly, or whatever other regular interval the Board deems appropriate. The Board's remedial plan may also include any of the measures described in the paragraph above or other such measures as it deems necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If on or after July 1, 2009, the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar and/or to execute the plan, the Board shall hold a public hearing to determine whether the Board should implement direct oversight of the district's facilities construction program. If, in the exercise of its discretion, the Board determines implementation of direct oversight is needed to ensure elimination of the Concept 6 calendar no later than July 1, 2012, the Board shall implement such oversight within 90 days of its determination.

Direct oversight by the Board of Education shall consist of assigning to the district a monitor, who shall report to the Board at each of its regularly scheduled meetings on progress made by the district in working towards the elimination of the Concept 6 calendar. The monitor shall have relevant experience in engineering, construction or management of major public works projects and shall have the resources and authority to contract with appropriate

professionals in the fields of program management, project management and finance. In selecting any monitor, the State Board of Education shall receive nominees from, and consult with, the superintendent of the district subject to the monitor, the Office of Public School Construction, and the bond oversight committee of such district as has been established under Education Code section 15278.

The Board-appointed monitor shall make recommendations to the district with respect to the planning and implementation of its school-building program. The district shall follow the recommendations of the monitor unless the district shows, to the satisfaction of the State Board of Education, good cause for not doing so. Any recommendation of the monitor that is mandatory, as opposed to prohibitory, shall be stayed during the time the district contests the recommendation before the State Board. The Board shall meet to hear and decide any such contest within 30 days of the district's submitting its contest. The monitor shall report to the State Board of Education regarding the district's implementation of the monitor's recommendations. The Board shall have the authority to direct the district to implement the monitor's recommendations in the absence of the district showing good cause for not doing so. Any order of the Board directing the district to implement the monitor's recommendations and any determination of the district's good cause in failing to implement such recommendation shall be made upon recommendation of the Office of Public School Construction, with reasonable notice to the district, at a meeting of the Board, with an opportunity for the district to show in writing or in oral testimony the grounds for its position. The monitor's reports shall be made available to the district's superintendent, governing board and bond oversight committee at least 10 days before the meeting of the Board at which they are presented and the district and the bond oversight committee shall be given an opportunity to address the Board regarding such reports.

11. "Circumstances beyond the control of the district" shall be strictly defined and interpreted and the definition shall include at minimum the following:

a. any increase in student population beyond district demographic projections set forth in the district comprehensive action plan or any amendments to the plan shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the increase was not reasonably foreseeable through the use of annual, informed re-estimation of demographic projections;

b. any cost escalation, shortages in construction material or capacity, delay in completion of environmental reviews, or natural or human-made disaster materially affecting the district's facilities program shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the delay or increased cost was not reasonably foreseeable and the district exercised due diligence in planning for such risk;

c. lack of sufficient state or local funding to complete necessary school construction shall not constitute a circumstance beyond the control of the district unless the district can demonstrate that from July 1, 2004 to date, it has not approved the expenditure of any state or local funds designated for new school construction for any purpose other than the construction of additional school seats to reduce reliance on the Concept 6 calendar and such additional

education-related facilities as are reasonably necessary to construct a new school, with the exception of construction deemed eligible and necessary by the State Allocation Board for funding under 2 Cal. Code Regs. 1859.82(a)(1).

12. The Critically Overcrowded Schools program shall be amended to ensure that any project that will relieve overcrowding at a Concept 6 school will meet the definition of, and be eligible for funding, as a Critically Overcrowded School Facilities Program project.

13. Reports mandated of districts operating on a Concept 6 calendar shall be made available to the public, and all interested parties shall be permitted the opportunity to submit comments to such reports within a reasonable time following the reports' submission to the appropriate state agency.

COVENANT NOT TO SUE

COVENANT NOT TO SUE

It is hereby agreed between the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education), and the representatives of the plaintiff class that:

1. Members of the plaintiff class shall be bound by a covenant not to sue the defendants on the claims pursued in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco ("the Action") for a period of four years from the date the Court grants final approval of the Settlement Agreement; subject to the conditions and exclusions in paragraphs 2 though 5 below.

2. Members of the plaintiff class shall be bound by a covenant not to sue the defendants for constitutional violations based on allegations as to deficiencies in the quality of teachers, with this covenant not to sue in effect for the following periods: (a) through September 30, 2006 (three months after the current compliance deadline for States under the No Child Left Behind Act) for claims with regard to public schools that are not subject to an extended compliance deadline under the No Child Left Behind Act for schools in rural settings ("Extended NCLB Deadline Schools"); and (b) for a period of four years from the date the Court grants final approval of the Settlement Agreement as to claims with regard to Extended NCLB Deadline Schools.

3. Actions pending as of August 9, 2004 brought by parties other than the named plaintiffs in the Action will not be affected by the covenant not to sue.

4. The covenant not to sue shall not apply to an action contesting the denial of graduation from High School based on the results of the High School Exit Examination.

5. If, after final approval of the settlement and during the period of the covenants, plaintiffs contend that the implemented settlement no longer Substantially Conforms to the Legislative Proposals because of actions by the defendants, plaintiffs shall consult with the State and Settling Intervenors and provide defendants with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. After such consultation, plaintiffs may petition the Court to relieve them of the covenant not to sue, provided that such a petition shall be rejected absent clear and convincing evidence that affirmative actions of the defendants after enactment of the 2004 and/or 2004 Legislation caused the implemented settlement no longer to Substantially Conform to the Legislative Proposals. In addition, defendants shall not be required to respond to such a petition unless plaintiffs present a written offer of proof and obtain an order from the Court that the offer of proof is potentially sufficient to carry plaintiffs' ultimate burden as defined above.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By: _____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger

DEFENDANTS THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION

By: _____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

By: _____
Jack W. Londen
Morrison & Foerster LLP

Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern California

Alan Schlosser
ACLU Foundation Of Northern California

John T. Affeldt
Jenny P. Pearlman
Public Advocates, Inc.

Thomas A. Saenz
Hector O. Villagra
Mexican American Legal Defense and Educational Fund

Attorneys for Plaintiffs

DEFENDANTS THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION

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Attorneys for Plaintiffs

PROVISION RE ATTORNEYS' FEES

PROVISION AS TO CLAIMS FOR ATTORNEYS' FEES

It is hereby agreed between the State of California and the representatives of the plaintiff class that:

1. Plaintiffs' counsel will be entitled to recover reasonable attorneys' fees and costs from the State in an amount to be agreed between plaintiffs' counsel and the State or, if not agreed after consultation, to be determined by the Court. After dismissal of the Action in other respects the Court will retain jurisdiction to make that determination, if necessary.

2. Time and costs spent by all of plaintiffs' counsel, including Morrison & Foerster LLP, will be submitted to the Court to justify the amount of an award of attorneys' fees and costs if the Court is asked to determine the reasonableness of such an award. However, whether the amount is determined by agreement or Court award, the firm of Morrison & Foerster LLP will not seek to be paid for its time spent on the *Williams* case except for an amount, if the State agrees, that the firm will donate for charitable uses related to the goals of the settlement.

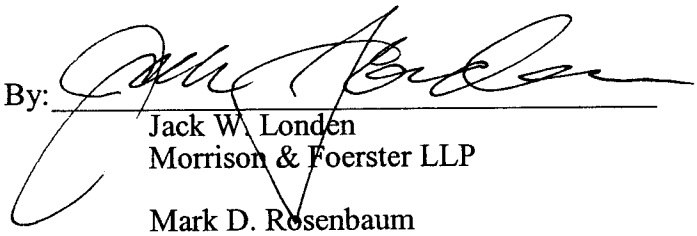
Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By: _____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY

AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

By: 

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