

**FINAL SETTLEMENT AGREEMENT (“AGREEMENT”)
WITH CONTINUING JURISDICTION OF THE COURT**

By and Between

Kerri K. and Jacob K., through their guardian ad litem, Elyse K.; Sara S., through her guardian ad litem, Zena C.; and Annie T., through her guardian ad litem, Esme T. (“Student Plaintiffs”), on behalf of themselves and a putative class of similarly situated students (the “Marchus Way Class”); and Elyse K., Zena C., and Esme T., as taxpayers (together with Student Plaintiffs, “Plaintiffs”),

and

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

In the Matter of

***Kerri K., et al. v. State of California, et al.*, Case No. MSC19-00972
(Super. Ct. Contra Costa 2019).**

Effective Date: _____

I. RECITALS

A. Overview

1. On May 13, 2019, Plaintiffs filed their putative class action complaint and complaint for individual and taxpayer remedies in Contra Costa County Superior Court against State Defendants; the Contra Costa County Office of Education (“CCCOE”); and Doña Foreman, Julie Duncan, Kyla Santana, Aslam Khan, and Ben Navarro (together with Defendant CCCOE, “CCCOE Defendants”) for alleged misconduct related to the Floyd I. Marchus Counseling and Education Program (“Marchus”), captioned *Kerri K., et al. v. State of California, et al.*, MSC19-00972 (the “Action”). The Action was assigned for all purposes to The Honorable Edward G. Weil (“Judge Weil” or the “Court”).
2. Plaintiffs’ operative Third Amended Complaint (“TAC”) includes two claims against State Defendants by Student Plaintiffs and the Marchus Way Class for the alleged violations of (1) Cal. Ed. Code §§ 56000, *et seq.*; and (2) Cal. Const. Art. I, § 7(a) and Art. IV, § 16(a). The Marchus Way Class is a putative class of all Marchus students who are, have been in the last three (3) years (as of May 13, 2019), or will be enrolled at Marchus. The TAC also includes a taxpayer claim against State Defendants brought by plaintiffs Elyse K., Zena C., and Esme T. under Cal. Civ. Proc. Code § 526(a).

3. Plaintiffs filed a motion to certify the Marchus Way Class, which State Defendants opposed. Judge Weil vacated the class certification hearing and remaining briefing after Plaintiffs, CCCOE Defendants, and State Defendants jointly stipulated to continue class certification pending mediation. The Action's proceedings have remained functionally stayed pending a settled resolution.
- B.** State Defendants and Plaintiffs (together, the "Parties") enter into this Agreement to resolve all disputes between them to date and to avoid further litigation in the Action. This Agreement is limited to the resolution of the claims asserted by Plaintiffs against State Defendants and does not resolve any claims asserted against CCCOE Defendants.

II. TERMS AND CONDITIONS

A. Substantive Relief

1. Defendant CDE will conduct two (2) years of follow-up review of Marchus. The two (2) years will commence from the date that the Agreement is fully executed, *see* Section (VIII)(A), *infra* (the "Follow-Up Review Period"). The Follow-Up Review Period will include at least *two* announced on-site reviews of Marchus, which will occur no later than two (2) school days after notification of the review. The reviews will be specifically focused on restraint, seclusion, and the behavior intervention issues identified in the TAC, and they will include—but are not limited to—the "compliance tests" identified in the "checklist" provided by Defendant CDE, attached as Appendix A. If any portion of a corrective action assigned during the Follow-Up Review Period remains outstanding at the end of the Follow-Up Review Period, Defendant CDE will continue to enforce those corrective actions until they are completely resolved.
2. Defendant CDE will provide technical assistance and training on evidence-based Positive Behavioral Interventions and Supports ("PBIS") to Marchus during the Follow-Up Review Period. Defendant CDE will confer with Defendant CCCOE and Marchus to determine the particular format and focus of the training relating to PBIS that will be most useful to Defendant CCCOE and Marchus staff and not duplicative of other trainings staff have received.
3. Defendant CDE will review any of Marchus's written documentation of its policies and procedures regarding behavior during the Follow-Up Review Period.
4. Defendant CDE will review all behavioral emergency reports individually at Marchus during the Follow-Up Review Period.
5. Defendant CDE will prepare written reports following its on-site visits to Marchus setting forth its findings and any needed corrective actions.

B. Exchange of Information

1. The Parties agree to the exchange of information to evidence the status and/or achievement of the Substantive Relief set forth in Section (II)(A)(1)–(5), *supra*. Plaintiffs and their counsel shall have a right to review this information. This information will include written reports that State Defendants will prepare as part of their review of Marchus, relevant correspondence with Defendant CCCOE and Marchus, training materials, and training attendance records—to the extent such documents would be subject to disclosure pursuant to a Public Records Act (“PRA”) request. Written reports and correspondence with Defendant CCCOE and Marchus regarding the activities set forth above will be shared with Plaintiffs’ counsel at the same time they are shared with Defendant CCCOE and Marchus.
2. Notwithstanding subsection (1) above, training materials and attendance records will be provided to Plaintiffs’ counsel within ten (10) business days after the training. With respect to training attendance records, State Defendants agree to ask participants who attend trainings to sign in and will provide Plaintiffs’ counsel with what participants provide to State Defendants.
3. Prior to the exchange of information with Plaintiffs, State Defendants will redact the aforementioned information as if the documents were being produced in response to a PRA request. Counsel for Plaintiffs will then review the documentation provided by State Defendants for compliance with this Agreement.

III. RELEASE OF CLAIMS

- A. Subject to the terms of this Agreement, Plaintiffs hereby waive, release, and forever discharge State Defendants, including State Defendants’ officers, employees, agents, or successors, either in their official or individual capacities, from any and all claims, demands, and causes of action of every kind, nature, or description, whether known or unknown, as alleged in the Action. Nothing in this release shall impact any or all of Plaintiffs’ claims against CCCOE Defendants or any of their officers, employees, agents, or successors, either in their official or individual capacities.
- B. Subject to the terms of this Agreement, State Defendants hereby waive and release any right to appeal any part of the Action, including but not limited to the judgment that will be entered pursuant to the terms of the Agreement in accordance with Cal. Civ. Proc. Code § 664.6(a), *see* Sections (VI)(A) and (VIII)(B), *infra*.

IV. NO RELEASE OF FUTURE CLAIMS

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

V. NO CERTIFICATION OF SETTLEMENT CLASS AND NO BINDING EFFECT OF AGREEMENT ON PUTATIVE MARCHUS WAY CLASS

- A. The Parties agree that certifying a settlement class is unnecessary, and that this Agreement is intended to serve third-party beneficiary current and future Marchus students. The Agreement will remain enforceable for the entire Follow-Up Review Period, even after Student Plaintiffs no longer attend Marchus. Notwithstanding that third parties may benefit from this Agreement, this Agreement does not bind any members of the putative Marchus Way Class other than Student Plaintiffs.

VI. CONTINUING JURISDICTION OF THE COURT

- A. The Parties agree to dismiss the Action against State Defendants with prejudice with respect to Plaintiffs' claims, and to dismiss, without prejudice, the claims of the putative Marchus Way Class, other than Student Plaintiffs, against State Defendants. The Parties expressly agree that the Court will retain jurisdiction under Cal. Civ. Proc. Code § 664.6. The motion for the Court to enter judgment pursuant to the terms of the Agreement and retain jurisdiction related thereto pursuant to Cal. Civ. Proc. Code § 664.6(a) shall expressly state that the Agreement is conditioned upon continued Court jurisdiction to enforce the settlement until performance in full of the terms of the Agreement.
- B. Before filing any motion or lawsuit to enforce the terms of this Agreement, the party seeking relief shall contact counsel for the opposing party to discuss thoroughly, preferably in person or by videoconference, the substance of the contemplated motion and any potential resolution.
1. The Parties agree to meet and confer within five (5) days of notice of the alleged breach (the "Notice of Alleged Breach"), but may, at their option, meet and confer before that.
 2. The Parties also agree that if State Defendants advise Plaintiffs in writing as part of the meet-and-confer process that they are willing to take action to cure the alleged breach of the Agreement in order to informally resolve the dispute, State Defendants shall be given a thirty (30)-day period to cure the alleged breach following the meet-and-confer conference (the "30-Day Grace Period").
- C. Any affected party or beneficiary, or their guardian, may file a motion to request enforcement of the Agreement under Cal. Civ. Proc. Code § 664.6 at any time after the 30-Day Grace Period if they believe State Defendants have not cured Plaintiffs' Notice of Alleged Breach.

VII. ATTORNEYS' FEES AND COSTS

- A. Subject to appropriation by the Legislature, approval by the necessary control agencies, and within 75 days after the operative date of the 2022-23 budget on July 1, 2022, State Defendants shall pay attorneys' fees and/or costs incurred by Public Counsel, Sullivan & Cromwell LLP, and Disability Rights Education and Defense Fund in the amount of Five Hundred Thousand Dollars (\$500,000), payable to Public Counsel. Public Counsel will be responsible for disbursement of the respective attorneys' fees and/or costs. Such payment will be in full and final settlement of any and all attorneys' fees and/or costs claims that have been, could have been, or could be made in this Action. If Plaintiffs dismiss this Action with prejudice and payment is not made pursuant to this section, either Plaintiffs or their counsel shall have the right to recover the Five Hundred Thousand Dollars (\$500,000) in an action directly against State Defendants. Once received, this payment shall constitute full resolution of any and all claims for attorneys' fees and/or costs by Plaintiffs arising from and related to the Action, including any costs or fees for implementation, monitoring, and/or oversight of this Agreement. Upon receipt of the payment, Plaintiffs and their counsel waive and release State Defendants and any and all State entities and officials from any and all claims for attorneys' fees and/or costs in this Action, past, present, and future, including any fees or costs incurred by any counsel working on Plaintiffs' behalf in monitoring the activities contemplated by the Agreement. State Defendants and their counsel agree to waive and release Plaintiffs from any and all claims for attorneys' fees and/or costs in this Action. This mutual release is binding on the Parties' heirs, representatives, successors, assigns, agents, and attorneys. Aside from the payment set forth above by State Defendants to Plaintiffs, the Parties shall bear their own respective expenses and costs arising out of this Action.

VIII. EXECUTION OF AGREEMENT AND EFFECTIVE DATE

- A. The Agreement shall be operable when it is fully executed, and Defendant CDE may begin its follow-up review of Marchus and related work set forth in Section (II)(A), *supra*.
- B. The Agreement's "Effective Date" shall be when the Court, upon motion, enters judgment pursuant to the terms of the Agreement and retains jurisdiction related thereto in accordance with Cal. Civ. Proc. Code § 664.6(a).

IX. DUTY OF COOPERATION

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

X. VOLUNTARY AGREEMENT

- A.** The Parties represent that they have read this Agreement in full and understand and voluntarily agree to all the provisions herein, free from fraud, coercion, or duress.
- B.** The Parties further represent that they have the legal capacity to understand, agree to, and sign this Agreement.
- C.** Each of the Parties has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as it deems necessary.
- D.** Each of the Parties hereto acknowledges that no other Party or any representative or attorney of any of the Parties has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce any Party to execute this Agreement in reliance upon any such promise, representation, or warranty not contained herein.
- E.** The Parties hereby acknowledge that they have discussed the Agreement with their respective legal representatives, and each of them acknowledge that they understand all of the terms and conditions of this Agreement and that this is a total and final settlement and compromise of all claims under or any other claims related to Plaintiffs' educational programs that arise from any acts or omissions prior to the Effective Date of this Agreement and could have been brought in this Action.

XI. NON-ADMISSION OF LIABILITY

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

XII. WAIVER

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

XIII. ENTIRE AGREEMENT

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

XIV. BINDING EFFECT

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

XV. SEVERABILITY

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

XVI. GOVERNING LAW

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

XVII. ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT

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

XVIII. EXECUTION BY FACSIMILE COUNTERPARTS

- A. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy of an original, with all signatures appended together, shall be deemed a fully executed Agreement. A facsimile, PDF, or scanned version of any Party's signature shall be deemed an original signature. Each counterpart shall be deemed an original and the same document for all purposes.

XIX. HEADINGS

- A. The section headings appearing in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to give substantive meaning or significance to the terms of this Agreement or limit, characterize, or in any

way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no heading had been used in this Agreement.

Signed in Agreement to the Above Terms

Plaintiffs

KERRI K., through her guardian ad litem
ELYSE K., *Plaintiff*

By: KERRI K.
Dated: 5/24/2022

JACOB K., through his guardian ad litem
ELYSE K., *Plaintiff*

By: JACOB K.
Dated: 5/24/2022

SARA S., through her guardian ad litem
ZENA C., *Plaintiff*

By: _____
Dated: _____

ANNIE T., through her guardian ad litem
ESME T., *Plaintiff*

By: _____
Dated: _____

ELYSE K., *Plaintiff*

By: ELYSE K.
Dated: 5/24/2022

ZENA C., *Plaintiff*

By: _____
Dated: _____

ESME T., *Plaintiff*

By: _____
Dated: _____

Plaintiffs' Counsel

PUBLIC COUNSEL

By: _____
Mark Rosenbaum
Dated: _____

SULLIVAN & CROMWELL LLP

By: _____
Michael H. Steinberg
Dated: _____

way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no heading had been used in this Agreement.

Signed in Agreement to the Above Terms

Plaintiffs

KERRI K., through her guardian ad litem
ELYSE K., *Plaintiff*

By: _____

Dated: _____

JACOB K., through his guardian ad litem
ELYSE K., *Plaintiff*

By: _____

Dated: _____

SARA S., through her guardian ad litem
ZENA C., *Plaintiff*

By: Sara S.

Dated: 5/24/2022

ANNIE T., through her guardian ad litem
ESME T., *Plaintiff*

By: Annie T.

Dated: 5/26/2022

ELYSE K., *Plaintiff*

By: _____

Dated: _____

ZENA C., *Plaintiff*

By: Zena C.

Dated: 5/24/2022

ESME T., *Plaintiff*

By: Esme T.

Dated: 5/26/2022

Plaintiffs' Counsel

PUBLIC COUNSEL

By: Mark Rosenbaum

Mark Rosenbaum

Dated: 05/26/2022

SULLIVAN & CROMWELL LLP

By: _____

Michael H. Steinberg

Dated: _____

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Plaintiffs

KERRI K., through her guardian ad litem
ELYSE K., *Plaintiff*

By: _____

Dated: _____

JACOB K., through his guardian ad litem
ELYSE K., *Plaintiff*

By: _____

Dated: _____

SARA S., through her guardian ad litem
ZENA C., *Plaintiff*

By: _____

Dated: _____

ANNIE T., through her guardian ad litem
ESME T., *Plaintiff*

By: _____

Dated: _____

ELYSE K., *Plaintiff*

By: _____

Dated: _____

ZENA C., *Plaintiff*

By: _____

Dated: _____

ESME T., *Plaintiff*

By: _____

Dated: _____

Plaintiffs' Counsel


PUBLIC COUNSEL

By: _____

Mark Rosenbaum

Dated: _____

SULLIVAN & CROMWELL LLP

By:  _____

Michael H. Steinberg

Dated: 5-23-22

Defendants

STATE OF CALIFORNIA, *Defendant*

By: David Sapp
David Sapp
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Dated: 5/12/22

CALIFORNIA DEPARTMENT OF
EDUCATION, *Defendant*

By: _____
Mary Nicely
Chief Deputy Superintendent
of Public Instruction

Dated: _____

STATE BOARD OF EDUCATION,
Defendant

By: _____
Linda Darling-Hammond
State Board President

Dated: _____

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND,
Defendant

By: _____
Tony Thurmond
State Superintendent of Public Instruction

Dated: _____

Defendants' Counsel

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: _____
Jennifer A. Bunshoft
Deputy Attorney General

Dated: _____

Defendants

STATE OF CALIFORNIA, *Defendant*

By: _____

David Sapp
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Dated: _____

STATE BOARD OF EDUCATION,
Defendant

By: _____

Linda Darling-Hammond
State Board President

Dated: _____

CALIFORNIA DEPARTMENT OF
EDUCATION, *Defendant*

By:  _____

Mary Nicely
Chief Deputy Superintendent
of Public Instruction

Dated: 05/13/2022 _____

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND,
Defendant

By: _____

Tony Thurmond
State Superintendent of Public Instruction

Dated: _____

Defendants' Counsel

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: _____

Jennifer A. Bunshoft
Deputy Attorney General

Dated: _____

Defendants

STATE OF CALIFORNIA, *Defendant*

By: _____

David Sapp
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Dated: _____

STATE BOARD OF EDUCATION,
Defendant

By: Linda Darling-Hammond
Linda Darling-Hammond
State Board President

Dated: 5/12/22

CALIFORNIA DEPARTMENT OF
EDUCATION, *Defendant*

By: _____

Mary Nicely
Chief Deputy Superintendent
of Public Instruction

Dated: _____

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND,
Defendant

By: _____

Tony Thurmond
State Superintendent of Public Instruction

Dated: _____

Defendants' Counsel

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: _____

Jennifer A. Bunshoft
Deputy Attorney General

Dated: _____

Defendants

STATE OF CALIFORNIA, *Defendant*

By: _____

David Sapp
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Dated: _____

CALIFORNIA DEPARTMENT OF
EDUCATION, *Defendant*

By: _____

Mary Nicely
Chief Deputy Superintendent
of Public Instruction

Dated: _____

STATE BOARD OF EDUCATION,
Defendant

By: _____

Linda Darling-Hammond
State Board President

Dated: _____

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND,
Defendant

By: _____


Tony Thurmond
State Superintendent of Public Instruction

Dated: 05/16/2022

Defendants' Counsel

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: _____

Jennifer A. Bunshoft
Deputy Attorney General

Dated: _____

Defendants

STATE OF CALIFORNIA, *Defendant*

By: _____

David Sapp
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Dated: _____

STATE BOARD OF EDUCATION,
Defendant

By: _____

Linda Darling-Hammond
State Board President

Dated: _____

CALIFORNIA DEPARTMENT OF
EDUCATION, *Defendant*

By: _____

Mary Nicely
Chief Deputy Superintendent
of Public Instruction

Dated: _____

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND,
Defendant

By: _____

Tony Thurmond
State Superintendent of Public Instruction

Dated: _____

Defendants' Counsel

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: Jennifer A. Bunshoft

Jennifer A. Bunshoft
Deputy Attorney General

Dated: May 13, 2022

Appendix A

Child Name:

Verification of Student Records

District of Residence:

District of Service:

Behavior							
Note: This section needs to be completed for the student except for Preschoolers and infants.							
Item No.	Compliance Test	Compliance Standard	Other Guidance	Legal	C	NC	NA
2-5-7	Do the behavior interventions in the BIP cause physical pain, release noxious, toxic, or otherwise unpleasant substances in proximity to the student's face; deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities; subject the student to verbal abuse, ridicule or humiliation, or excessive emotional trauma; result in restrictive intervention, including prone containment, except as used by trained personnel as a limited emergency intervention; locked seclusion unless it's in a facility permitted by state law, an intervention that precludes adequate supervision of the individual; or include any intervention that deprives the individual of one or more of his or her senses?	A local educational agency or nonpublic school shall not authorize, order, consent to or pay for the following interventions, or any interventions similar to or like the following: behavior interventions that cause physical pain, release noxious, toxic, or otherwise unpleasant substances in proximity to the student's face; deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities; subject the student to verbal abuse, ridicule or humiliation, or excessive emotional trauma; result in restrictive intervention, including prone containment, except as used by trained personnel as a limited emergency intervention; locked seclusion unless it's in a facility permitted by state law, an intervention that precludes adequate supervision of the individual; or include any intervention that deprives the individual of one or more of his or her senses.	Review the student's BIP. Review the LEA's policies and procedures.	EC 5 56521.2(a)			
2-5-7.1	Are emergency interventions only used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior?	Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.	Review the BERs for the student. Review the student's IEP and BIP, as appropriate. Review the LEA's policies and procedures.	EC 56521.1(a)			
2-5-8	The behavioral emergency report shall include the following: the name and age of the individual; the setting and location of the incident; the name of the staff or other persons involved; a description of the incident and the emergency intervention used; whether the individual is currently engaged in any systemic behavioral intervention plan; and the details of any injuries sustained by the individuals or others including staff, as a result of the incident.	<p>To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. The behavioral emergency report shall include all of the following:</p> <p>(1) The name and age of the individual with exceptional needs.</p> <p>(2) The setting and location of the incident.</p> <p>(3) The name of the staff or other persons involved.</p> <p>(4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.</p> <p>(5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.</p>	Review the BER(s) for the student. Review the LEA's policies and procedures.	EC 5 56521.2(e)			

Child Name:

Verification of Student Records

District of Residence:

District of Service:

Item No	Compliance Test	Compliance Standard	Other Guidance	Legal Citations	C	NC	NA
2-5-8.1	Are all behavioral emergency reports immediately forwarded to, and reviewed by, a designated responsible administrator?	All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.	Review the student's BER(s). Review the LEA's policies and procedures.	EC 56521.1(f)			
2-5-9	If the student does not have a behavioral intervention plan, does the administrator schedule an IEP team meeting within two days of the behavioral emergency to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim (behavioral) plan?	If the student does not have a behavioral intervention plan, the administrator shall schedule an IEP team meeting within two days of the behavioral emergency to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim (behavioral) plan. The IEP team shall document the reason(s) for not conducting the functional behavioral assessment, not developing an interim (behavioral) plan, or both, if that was the determination of the IEP team.	Review the LEA's policies and procedures. Review documentation from IEP meeting. Look for documentation of the meeting notice or calls to schedule the meeting.	EC 56521.1(g)			
2-5-9.1	At the meeting to review the emergency report, did the IEP team document the reason(s) for not conducting the functional behavioral assessment, not developing an interim (behavioral) plan, or both, if that was the determination of the IEP team?	If the student does not have a behavioral intervention plan, the administrator shall schedule an IEP team meeting within two days of the behavioral emergency to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim (behavioral) plan. The IEP team shall document the reason(s) for not conducting the functional behavioral assessment, not developing an interim (behavioral) plan.	Review the LEA's policies and procedures. Review documentation from IEP meeting.	EC 56521.1(g)			
2-5-10	Is there evidence the emergency intervention was not used as a substitute for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a target behavior?	Emergency interventions shall not be used as a substitute for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a target behavior.	Review the student's BER(s), IEP and BIP, as applicable. Review the LEA's policies and procedures.	EC 56521.1(b)			
2-5-10.1	For a student that has had an emergency intervention, was the emergency intervention employed for not longer than necessary to contain the behavior?	The emergency intervention must not be employed for longer than necessary to contain the behavior.	Review the student's BER(s) and BIP, as applicable. Review the LEA's policies and procedures.	EC 56521.1(c)			
2-5-10.2	For a situation that requires prolonged use of an emergency intervention, did LEA staff seek assistance of the school site administrator or law enforcement agency, as applicable to the situation?	A situation that requires prolonged use of an emergency intervention requires LEA staff seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.	Review the student's BER(s) and BIP, as applicable. Review the LEA's policies and procedures. Review documentation from IEP meeting.	EC 56521.1(c)			

Child Name:

Verification of Student Records

District of Residence:

District of Service:

Item No	Compliance Test	Compliance Standard	Other Guidance	Legal Citations	C	NC	NA
2-5-10.3	Did the emergency intervention include an amount of force that did not exceed that which was reasonable and necessary under the circumstances?	The emergency intervention shall not include an amount of force that exceeds that which is reasonable and necessary under the circumstances.	Review the student's BER(s) and BIP, as applicable. Review the LEA's policies and procedures.	EC 56521.1(d) (3)			
2-5-10.4	For the student who has a positive behavioral intervention plan, was a behavioral emergency report written for an incident involving a previously unseen serious behavior problem, or when a previously designed intervention is ineffective, was there a referral to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention?	If a behavioral emergency report is written for the student with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or when a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention.	Review the student's BER(s) and BIP, as applicable. Review the LEA's policies and procedures. Review documentation from IEP meeting.	EC 56521.1(h)			
2-5-10.5	Were the parent, guardian, and residential care provider, as appropriate, notified within one schoolday if an emergency intervention was used or serious property damage occurred, and was a BER immediately completed and maintained in the student's file.	To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one schoolday if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs.	Review the LEA's documentation of notification of the appropriate individual to determine such notification occurred and that it was within the required timeline. Review the student file for the BER.	EC 56521.1(e)			
2-5-11	If prone restraint techniques are used, does a staff member observe the pupil for any signs of physical distress throughout the use of the prone containment, and whenever possible, is the staff member monitoring the pupil not involved in the restraining of the pupil?	If prone restraint techniques are used, does a staff member observe the pupil for any signs of physical distress throughout the use of the prone containment, and whenever possible, is the staff member monitoring the pupil not involved in the restraining of the pupil.	Review policies and procedures, interview LEA personnel about training on procedures and determine current practices.	EC 49005.8(d)			
2-5-12	If seclusion is used, does the educational provider keep constant, direct, observation of the pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil?	If seclusion is used, the educational provider must keep constant, direct, observation of the pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil. The observation required pursuant to this subdivision shall not be through indirect means, including through a security camera or closed-circuit television.	Review policies and procedures, interview LEA personnel about training on procedures and determine current practices.	EC 49005.8(b)			
3-5-7	For a student whose behavior impedes his or her learning or that of others, does the IEP team consider the provision of positive behavior interventions and strategies and/or supports to address the behavior?	In the case of a student whose behavior impedes his or her learning or that of others, the IEP team shall consider the provision of positive behavior interventions and strategies and/or supports to address the behavior.	Review the student's BIP. Review the LEA's policies and procedures. Review the student's IEP.	EC 56521.2(b)			