SETTLEMENT AGREEMENT

It is hereby agreed among the Plaintiffs (Cayla J., Kai J., and Ellori J., through their guardian ad litem Angela J., Megan O. and Matilda O., through their guardian ad litem Maria O., Alex R. and Bella R., through their guardian ad litem Kelly R., Isaac I., and Joshua I., through their guardian ad litem Susan I.) and the Defendants (the State of California, the State Board of Education (SBE), the Superintendent of Public Instruction (SPI), and the California Department of Education (CDE)) (collectively, the "Settling Parties") in *Cayla J. et al. v. State of California*, Case Number RG20084386 in the Superior Court for the County of Alameda ("the Action") that:

I. Proposed Legislation

1. Defendants agree to propose legislation ("Proposed Legislation") during the 2023-24 legislative session, with the following elements:

- **Grant Allocation & Administration**: Refine parameters to strengthen planning and accountability requirements around how local educational agencies (LEAs) use Learning Recovery Emergency Block Grant ("Block Grant") funds that are not encumbered as of July 1, 2024, as follows:

    - Needs Assessment:
        - Require a needs assessment to focus the statutorily authorized interventions that LEAs select on identified student needs, particularly to identify students in greatest need of learning recovery supports.
        - Require the needs assessment to include review of the following required metrics: academic performance (English Language Arts and Math) and chronic absenteeism (available at LEA all-student, LEA student group, school all-student, and school student group levels for K-8 only in Dashboard; reported for high schools only through CALPADS).
        - For the required metrics, require the needs assessment to include review of performance on each metric across school sites (as applicable) and at the LEA level based on student groups and all students in the LEA at low levels of performance.
            - For academic performance:
                - Assessment of school-level or student-group performance would be tied to scale scores (distance from standard method), focused on schools/groups in the "Very Low" or "Low" performance levels for Status on the Dashboard;
                - Assessment of all students within the LEA at low level of performance would need to focus on a different metric (i.e., students in Level 1 and on lower end of the scale for Level 2) because calculations for distance from standard are likely too complicated for most LEAs to run;
            - For chronic absence:
                - Assessment of school-level or student-group performance would be tied to Dashboard performance levels on the

chronic absenteeism indicator, focused on schools/groups in the "Very High" or "High" performance levels for Status on the Dashboard and comparably low levels of performance based on DataQuest reports;
        - Assessment of all students within the LEA at low level of performance would focus on all students reported as chronically absent;
        - For both analyses, include language encouraging further analysis on students who have high rates of unexcused absences (which is reported down to school and student group level on Dataquest).
    - Authorize LEAs to include additional metrics that are available only locally if they reflect students who have experienced learning loss/low academic performance (e.g., formative or interim assessments or similar tools) or signs of disengagement from education (e.g., current-year absenteeism data or metrics LEA uses to identify students in need of reengagement services). CDE will provide written technical assistance resources to schools and LEAs on how to use local metrics in conjunction with the required metrics identified above.

- Rationale for Selected Actions/Services:
    - Require LEAs to articulate within the Local Control and Accountability Plan (LCAP) the rationale for selecting among the permissible use of funds under Education Code section 32526 based on the needs assessment, including identifying how the selected actions are expected to address the identified areas of need on one or more metrics and for students or schools identified by the needs assessment as being in greatest need on the relevant metric(s).
    - Amend Education Code section 32526 to incorporate the "evidence-based" standard that applies to federal funds (including the last round of federal funding, American Recovery Plan Elementary and Secondary School Emergency Relief) into permissible use for Block Grant funds and require LEAs to specify as part of the rationale required to be provided in the LCAP an explanation of how research supports each selected action or service based on the identified area(s) of need from the needs assessment.
    - Would not alter existing law requiring LEAs to: (1) solicit written community input regarding the specific actions and expenditures proposed to be included in the LCAP or annual update, (2) respond in writing to recommendations from the Parent Advisory Committee and EL Parent Advisory Committee (if applicable) and (3) identify how such engagement impacted development of LCAP or annual update.
    - Add new provision to Education Code section 32526 encouraging LEAs to contract, or otherwise partner with, community-based organizations with track record of success serving high-need students to deliver services or programs funded by the Block Grant, to the extent such organizations operate in the area.

- Planning and Accountability:
    - Require that actions/programs that LEAs implement using Block Grant funds and the rationale for selecting those actions/services be reflected in the LEA's LCAP, i.e., require that all planned expenditures of Block Grant funds be reflected in the LCAP and that the actual implementation of those planned actions be reflected in the Annual Update.
    - Require LEAs to identify at least one metric / measurable outcome in the LCAP tied to the actions / services funded by the Block Grant funds.
    - Would not alter existing requirement for LEAs to report in the LCAP Annual Update on progress relative to the identified measurable outcomes, assess effectiveness or ineffectiveness of the actions or services funded under the Block Grant, and report on changes to approach based on that review.
    - Add requirement for LCAP and Annual Update that LEAs adopt for the 2027-28 year (adopted by June 2027) for LEAs to review the rationale for selecting among the permissible use of funds that they were required to include in the LCAP adopted for the 2025-26 year (adopted by June 2025) to assess the overall effectiveness of the chosen strategy or strategies and whether adjustments to approach are warranted based on progress shown on the relevant metric(s) ("assessment of overall effectiveness").
    - Would not alter existing law requiring LEAs to: (1) solicit written community input regarding the specific actions and expenditures proposed to be included in the LCAP or annual update, (2) respond in writing to recommendations from the Parent Advisory Committee and EL Parent Advisory Committee (if applicable); and (3) identify how such engagement impacted development of LCAP or annual update.
    - Codify that "interested party" for purposes of Uniform Complaint Procedure complaints around LCAP adoption/approval includes any member of the public.

- Miscellaneous:
    - Amend Education Code 32526 to authorize LEAs to use Block Grant funds for the needs assessment and assessment of overall effectiveness, including to hire third-party expert to conduct or support LEA in conducting needs assessment.

- **Learning Recovery Resources and Assistance:**

    - Add language to statute encouraging the California Collaborative for Educational Excellence and the Community Engagement Initiative (CEI) to incorporate learning recovery work into efforts to engage LEAs and community organizations within the work around the Community Engagement Initiative 2.0.
    - Add language to statute encouraging, for school districts identified to receive differentiated assistance under the system of support, the district and county office of education providing the assistance to utilize their work together within the

differentiated assistance process to support the district in conducting the needs assessment and selection of actions funded by the Block Grant and/or evaluation of implementation of those actions, as applicable. This language would specify that the existing LCAP requirements for LEAs to provide a summary of the work underway as part of receiving differentiated assistance and to include specific actions in their LCAP related to the work underway as part of receiving differentiated assistance apply to work undertaken pursuant to the differentiated assisted process pursuant to this provision.

II. Additional Actions by Defendants

2. **Data Report:** Defendants or their designee will continue to publicly report achievement and absenteeism data by school and LEA. Such reports will reflect performance over time on all relevant Dashboard indicators for which data is available, with each report showing a baseline performance from 2018-19 (contingent on data availability) for comparison to pre-pandemic levels. Defendants or their designee will report this data through the California School Dashboard. Defendants or their designee will continue to publicly post downloadable data files that contain achievement and absenteeism data by school and LEA at the student group level.

3. **Learning Recovery Resources and Assistance:** Defendants will utilize the statutory mechanism for state agencies in the System of Support to request that geographic leads develop new resources and trainings on specific topics (Education Code section 52073(b)(1)(E)) to develop such resources and trainings for counties and districts around the needs assessment/planning process and implementation of learning recovery strategies. The requested resources will include information on evidence-based strategies or programs for learning recovery that have shown promise in practice coming out of the pandemic.

III. Settlement and Dismissal Process

4. The Parties agree that any announcement or public statements by the parties disclosing the terms of the settlement or proposed legislation will not occur until after the Governor's 2024-25 Budget proposal is released.

5 Defendants agree to promptly notify Plaintiffs' counsel as soon as the release time and date for the Governor's 2024-25 Budget proposal are announced.

6. The parties agree to give each other no less than 24 hours' notice of any public announcement of the proposed legislation and/or terms of the settlement before they make said public announcement. This does not include the announcement of the Governor's 2024-25 Budget proposal, for which Defendants agree to promptly notify Plaintiffs' counsel as soon as the release time and date are announced.

7. Following signature of the settlement agreement by all parties, the parties shall file a notice of conditional settlement and request that the Court vacate the trial date, stay the case, and set a hearing on an Order to Show Cause regarding why the case should not be dismissed in light of the settlement for September 2024.

8. Defendants shall provide electronic notice to Plaintiffs' counsel and copies of any enacted and signed legislation that Defendants believe suffice to satisfy the requirements of Section I of the Settlement Agreement.

9. If Plaintiffs agree that legislation enacted as part of the 2024-25 budget process substantially conforms with the parties' agreed-upon proposals, Plaintiffs shall dismiss the litigation with prejudice within 15 days of receipt of the proposed notice.

10. If a party believes that the Legislature has passed legislation as part of the 2024-25 budget process that does not substantially conform to the proposed legislation, the parties agree to meet-and-confer within 5 days of Defendants' notice (or within 5 days of a notice or request sent by Plaintiffs following final passage of the legislation by the Legislature) and advise the other parties whether they would seek to void settlement if the legislation is signed into law. If Defendants become aware prior to the passage of the legislation that it may not substantially conform to the proposed legislation, they will provide notice to Plaintiffs as soon as possible prior to passage of the legislation. Following meet and confer, Plaintiffs may dismiss with prejudice or move the Court to lift the stay of the litigation and submit a proposed timeline for further proceedings. Defendants may oppose a motion to lift the stay on any legal ground, including but not limited to, opposition on the ground that the legislation substantially conforms to the parties' agreed-upon proposals, or based on Plaintiffs' requested proceedings.

11. This settlement is contingent on sufficient funding available to the most impacted schools and districts. If LEAs report that there are less than $2 billion in unencumbered funds statewide under the Block Grant as of July 1, 2024, Plaintiffs are permitted to re-open this litigation, pursuant to the process described in Paragraph 10.

12. If the proposed legislation is dropped from consideration by the Legislature, or finally rejected during the legislative session without passing any part of it, Defendants will inform Plaintiffs and the parties will jointly move the Court to lift the stay that is being applied in light of the settlement.

13. The parties agree that neither they nor their counsel will support any alternative to the proposed legislation included in Section I in the 2024-25 budget process or a competing legislative proposal to the proposed legislation included in Sections I or II in the 2024-25 legislative session.

14. The parties will engage in good faith efforts to obtain the enactment of legislation implementing the agreed-upon proposals.

15. The parties understand and acknowledge that a member or members of the legislature may seek to modify the legislative proposal after it is proposed. The Defendants are not covenanting to pass the legislative proposal. Failure of the proposed legislation is not a breach of the settlement, and Plaintiffs' sole remedy is to move to lift the stay of the case as described above.

16. No oral or written statement made by the parties (Plaintiffs or Defendants), their agents, their counsel, or in the case of Defendants, other State officials, as a part of the process of introducing, seeking, testifying or advocating the proposed legislation shall be submitted to the court in briefs, oral argument, or trial, or otherwise used by either party in support of liability, any defenses, or any relief in the course of litigation if the case is not dismissed with prejudice. If the parties dispute whether legislation passed by the Legislature and signed by the Governor substantially conforms to the terms of this Settlement Agreement, nothing in the foregoing shall preclude the Court from comparing the legislation to the settlement for the purpose of resolving that dispute.

17. Defendants shall have unilateral discretion to proceed with or delay performance on the terms stated in Section II so long as the proposed legislation reflected in Section I remain pending. Defendants shall not be required to perform on the terms stated in Section II unless and until Plaintiffs dismiss their claims with prejudice.

IV. Attorneys' Fees and Costs

18. Subject to appropriation by the Legislature, and following Notice of Entry of Dismissal of the Action pursuant to Section III, Defendants will pay Plaintiffs attorneys' fees and costs in the amount of $2.5 million dollars ($2,500,000) in full and final settlement of any and all attorneys' fees and costs claims that have been or could have been or could be made in this case. An initial payment shall be made within 75 days of Notice of Entry of Dismissal, but Defendants shall have discretion to defer a portion of the payment until the following budget year, with final payment due no later than September 15, 2025. Payment shall be made by check payable to either Morrison & Foerster or Public Counsel at a bank account jointly designated by Morrison Foerster and Public Counsel in writing at the time of the dismissal of the Action. Plaintiffs' counsel, and not the Defendants, shall be responsible for any division or allocation of the payment between them. 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 Settlement Agreement. Upon receipt of the payment, Plaintiffs and their counsel waive and release Defendants and any and all State entities and officials from any and all claims for attorneys' fees and 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 Settlement Agreement. This release is binding on Plaintiffs' heirs, representatives, successors, assigns, agents and attorneys. Aside from the payment of $2.5 million dollars by Defendants to Plaintiffs, the Settling Parties shall bear their own respective expenses and costs arising out of this Action.

19. If Plaintiffs dismiss this Action with prejudice and payment is not made as provided in Paragraph 18, either Plaintiffs or their counsel, Morrison and Foerster and Public Counsel, shall have the right to recover the $2,500,000 or any unpaid portion of that amount in an action directly against the state.

20. In the event Plaintiffs do not dismiss this Action with prejudice, and the stay of the Action is lifted pursuant to the procedure described in Paragraph 10, the above provisions regarding the payment of attorneys' fees and costs shall be null and void. In the event the stay of

this Action is lifted, and if Plaintiffs seek attorneys' fees and costs from Defendants after trial or other resolution of this Action, there shall be no application for attorneys' fees and costs for any time between the date this Settlement Agreement is executed and the date Plaintiffs provide notice that the Legislature has passed legislation that does not substantially conform to the Proposed Legislation (pursuant to the procedures set forth in Paragraph 10), other than for the following work pertaining to implementation of the Settlement Agreement: any filings required by the court, attendance at court hearings, if any, by one attorney each from Morrison and Foerster and Public Counsel, and the evaluation of whether the final legislation substantially conforms with the Proposed Legislation, to the extent that Defendants have not already advised Plaintiffs that the final legislation does not substantially conform with the Proposed Legislation.

V. Miscellaneous Terms

21. This Settlement Agreement is made under and shall be construed and enforced in accordance with the laws of the State of California, without giving effect to its conflicts of law principles that would require or permit a court to consider the laws of any other state.

22. This Settlement Agreement shall not be cited or relied upon by any of the parties in this or in any other litigation or proceeding, and the parties covenant that they will not seek its admission in evidence in this or any other litigation or proceeding, except for the limited purpose of enforcing this Settlement Agreement.

23. This is a settlement of disputed claims. Nothing in this Settlement Agreement shall be interpreted or construed as an admission of liability or wrongdoing by any Defendant.

24. The Settling Parties represent that they have authority to sign this Settlement on behalf of their respective parties, subject only to the conditions and approvals discussed explicitly in this document.

25. The Settling Parties acknowledge that they have each read this Settlement Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Settlement Agreement.

26. This Settlement Agreement may be signed in separate counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Settlement Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to the original or same counterpart.

27. The Settlement Agreement shall be deemed fully executed as of the date of the last signature.

28. The parties understand and agree that this Settlement Agreement constitutes the sole agreement among them to settle this Action. Any modification to the Settlement Agreement must be made in writing and signed by all Parties to this Settlement Agreement.

Dated: _____ __, ___

Plaintiffs

CAYLA J., THROUGH HER GUARDIAN AD LITEM ANGELA J., *Plaintiff*

12/20/2023

By: Angela J

KAI J., THROUGH HER GUARDIAN AD LITEM ANGELA J., *Plaintiff*

By: Angela J

ELLORI J., THROUGH HER GUARDIAN AD LITEM ANGELA J., *Plaintiff*

By: Angela J

MEGAN O., THROUGH HER GUARDIAN AD LITEM MARIA O., *Plaintiff*

12/20/2023

By: Maria O.

MATILDA O., THROUGH HER GUARDIAN AD LITEM MARIA O., *Plaintiff*

By: Maria O.

ALEX R., THROUGH HER GUARDIAN AD LITEM KELLY R., *Plaintiff*

12/20/2023

By: Kelly R

BELLA R., THROUGH HER GUARDIAN AD LITEM KELLY R., *Plaintiff*

By: Kelly R

ISAAC I., THROUGH HER GUARDIAN AD LITEM SUSAN I., *Plaintiff*

12/21/2023

By: Susan I

JOSHUA I., THROUGH HER GUARDIAN AD LITEM SUSAN I., *Plaintiff*

By: Susan I

Defendants

STATE BOARD OF EDUCATION, *Defendan*t

By: 1/3/2024

Linda Darling Hammond
State Board President

CALIFORNIA DEPARTMENT OF EDUCATION,

Defendant

By: _____

Mary Nicely
Chief Deputy Superintendent of Public Instruction

STATE SUPERINTENDENT OF PUBLIC

INSTRUCTION TONY THURMOND, *Defendant*

By: _____

Tony Thurmond
State Superintendent of Public Instruction

THE STATE OF CALIFORNIA, *Defendant*

By: _____

David Sapp
Legal Affairs Secretary
Office of Governor Gavin Newsom

Defendants

STATE BOARD OF EDUCATION, *Defendan*t

By:_____

Linda Darling Hammond
State Board President

CALIFORNIA DEPARTMENT OF EDUCATION,

Defendant

By:_____

Mary Nicely
Chief Deputy Superintendent of Public Instruction

STATE SUPERINTENDENT OF PUBLIC

INSTRUCTION TONY THURMOND, *Defendant*

By:_____ on behalf of Tony Thurmond 1/4/2024

Tony Thurmond
State Superintendent of Public Instruction

THE STATE OF CALIFORNIA, *Defendant*

By:_____

David Sapp
Legal Affairs Secretary
Office of Governor Gavin Newsom

Defendants

STATE BOARD OF EDUCATION, *Defendant*

By:_____

Linda Darling Hammond
State Board President

CALIFORNIA DEPARTMENT OF EDUCATION,
Defendant

By:_____

Mary Nicely
Chief Deputy Superintendent of Public Instruction

STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TONY THURMOND, *Defendant*

By:_____

Tony Thurmond
State Superintendent of Public Instruction

THE STATE OF CALIFORNIA, *Defendant*

12/22/2023

By:_____

David Sapp
Legal Affairs Secretary
Office of Governor Gavin Newsom

Plaintiffs' Counsel

By: _____
Mark Rosenbaum
Public Counsel

By: _____
Amanda Mangaser Savage
Public Counsel

By: _____
Michael Jacobs
Morrison & Foerster LLP

By: _____
Chelsea Kehrer
Morrison & Foerster LLP

Defendants' Counsel

Dated: January 4, 2023

ROB BONTA
Attorney General of California
JENNIFER G. PERKELL
Supervising Deputy Attorney General

_____
ELIZABETH N. LAKE
Deputy Attorney General