

## NEGOTIATED INTERIM SETTLEMENT AGREEMENT

March 25, 2015

This INTERIM Settlement Agreement (“Agreement”) is between the East County Branch of the National Association for the Advancement of Colored People (hereinafter referred to as “Petitioner”), and the Antioch Unified School District (“District”), hereinafter collectively referred to with Petitioner as “Parties.”

### INTERIM AGREEMENTS

In response to allegations of violations of Title VI of the Civil Rights Act (“Title VI”), 42 U.S.C. § 2000d *et seq.*, Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, (“ADA”), and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, the undersigned Parties, having participated in negotiations, hereby agree to the following interim procedures:

#### 1. Engagement of Experts

The parties have agreed that the District will engage the following experts for purposes of this settlement agreement:

- 1.1 Dan Losen, Director of the Center for Civil Rights Remedies (CCRR) at the University of California, Los Angeles (UCLA), to review District disciplinary data, policies and practices.
- 1.2 Jeffrey Sprague, Ph.D., of the University of Oregon, to review IDEA/Section 504 practices, including child find, assessment, behavioral and academic services.
  - a. Mr. Losen and Dr. Sprague will, additionally, coordinate a joint review of the District’s PBIS and RTI systems (current and planned).
- 1.3 Professor John A. Powell and Ingrid Melvaer Paulin of the University of California, Berkeley Haas Institute for a Fair and Inclusive Society, the Center for Policing Equity, and Professor Rachel D. Godsil, Director of Research for Perception Institute and Seton Hall University School of Law and researchers working under their supervision (collectively “social psychology experts”) to examine the relationship between psychological phenomena (e.g., implicit bias, racial anxiety, and stereotype threat) and disproportionate outcomes (collectively “experts”).
- 1.4 These experts will collaborate with the lead expert Dan Losen to produce report(s) specific to the District discussing the experts’

findings and proposing any necessary remediation, if warranted. The Parties and their counsel will provide the experts with information they deem relevant to the experts' assessment and analysis of the District.

## **2. Disciplinary Expert (Lead Expert)**

Mr. Losen will review the District's disciplinary data, practices and policies. He will additionally act as the lead expert, through whom the special education and social psychology experts will coordinate all reviews and recommendations. Mr. Losen will perform his analysis as an independent consultant.

The Parties agree that Mr. Losen will conduct his analysis according to the following terms:

- 2.1** The District acknowledges that Mr. Losen's analysis could take as much as 20 days, including at least three (3) days on-site and the rest off-site. The District also acknowledges that Mr. Losen's analysis may not exceed \$60,000, excluding travel expenses.
- 2.2** The district will cooperate with reasonable requests for information in a timely fashion, including:
  - a.** The District will ensure Mr. Losen has full access to, and the cooperation of, the District's designated data keeper for the purpose of access to district disciplinary and related data. The District's designated data keeper will consult and collaborate with Mr. Losen in good faith.
  - b.** Mr. Losen shall have access to all of the District's FY 2013-2014 data, as well as all District data going back at least three (3) years (i.e., FY 2010-2011).
  - c.** Mr. Losen shall have access to the District's latest California Longitudinal Pupil Achievement Data System (CALPADS) data due to the California Department of Education, as well as the District's 2013-2014 Civil Rights Data Collection data that is due to the Department of Education's Office for Civil Rights (OCR) in Fall 2014.
- 2.3** The Parties understand and agree that Mr. Losen will prepare and present a report specific to the District, but that the report will include many of the elements of the report Mr. Losen recently completed for the Syracuse (NY) City School District. Mr. Losen may not publish or disseminate any results, except as described in Section 5.1, without permission from the District.

- 2.4 The District agrees that Mr. Losen will make at least one (1) on-site visit of up to three (3) days in the District in Spring 2015.
- 2.5 The District agrees that Mr. Losen is a "consultant" under the Family Educational Rights and Privacy Act ("FERPA") regulations, 34 C.F.R. §99.31(a)(1)(i)(B), and thus may access personally identifiable information from the education records of students without consent. The District and Mr. Losen will execute a separate agreement memorializing the parameters of this FERPA waiver.

### **3. Special Education Expert**

Dr. Sprague will act as the special education expert, and will coordinate all reviews and recommendations with Mr. Losen. Dr. Sprague will perform his initial assessment and analysis as an independent consultant.

The Parties agree that Dr. Sprague will conduct his initial analysis according to the following terms:

- 3.1 Dr. Sprague will complete an assessment of the District's Special Education Programs, and coordinate with Mr. Losen a review of the District's RIT and PBIS systems (Dr. Sprague's scope of work and the coordinated review of PBIS and RTI with Mr. Losen is attached hereto as Addendum A.)
- 3.2 The District acknowledges that Dr. Sprague's initial analysis could take as much as 30 days, including at five (5) to ten (10) days on-site and the rest off-site. The District also acknowledges that Dr. Sprague's initial analysis may not exceed \$60,000, excluding travel expenses.
- 3.3 The district will cooperate with reasonable requests for information in a timely fashion, including:
  - a. The District will ensure Dr. Sprague has full access to, and the cooperation of, the District's designated data keeper for the purposes of Dr. Sprague's analysis. The District's designated data keeper will consult and collaborate with Dr. Sprague in good faith.
  - b. Dr. Sprague shall have access to all of the District's FY 2013-2014 Special Education/504 data and IEP/504 Plan files going back at least three (3) years (i.e., FY 2010-2011).
  - c. Dr. Sprague shall have access to the District's latest and most accurate California Longitudinal Pupil Achievement Data System (CALPADS) data due to the California Department of Education, as well as the District's 2013-2014 Civil Rights Data

Collection data that is due to the Department of Education's Office for Civil Rights (OCR) in Fall 2014.

- d. The District agrees to work in good faith to make administrators and teachers available for participation in survey, interview and other examination. The District agrees to facilitate communication with administrators and shall allow reasonable on-duty time for administrators and teachers to engage in interviews with Dr. Sprague.
- 3.4 The Parties understand and agree that Dr. Sprague will prepare and present a report specific to the District. Dr. Sprague may not publish or disseminate any results, except as described in Section 5.1, without permission from the District.
- 3.5 The District agrees that Dr. Sprague will make at least one (1) on-site visit of up to five (5) days in the District in Spring 2015.
- 3.6 The District agrees that Dr. Sprague is a "consultant" under FERPA regulations, 34 C.F.R. §99.31(a)(1)(i)(B), and thus may access personally identifiable information from the education records of students without consent. The District and Dr. Sprague will execute a separate agreement memorializing the parameters of this FERPA waiver.
- 3.7 Dr. Sprague agrees to coordinate with Mr. Losen with regards to data collection to ensure there is no duplication of efforts on the part of both experts.

#### **4. Social Psychology Experts**

The social psychology experts will serve as experts in psychological phenomena such as "implicit bias," "racial anxiety," and "stereotype threat" and coordinate all reviews and recommendations with Mr. Losen. Professor John A. Powell will lead the team of social psychology experts, who will perform their initial assessment and analysis as independent consultants.

The Parties agree that the social psychology experts will conduct their initial analysis according to the following terms:

- 4.1 The social psychology experts will use the data collected by Mr. Losen and/or Dr. Sprague and other qualitative and quantitative organizational analyzes which are widely used psychological assessments as necessary, including surveys and other psychological measurements of administrators and teachers, to provide a diagnosis or opinion as to the systemic effect, if any, of influences such as "implicit bias," "racial anxiety," or "stereotype threat," on the areas

studied by Mr. Losen or Dr. Sprague, and to provide recommendations for specific interventions the District should consider to address any such effect.

4.2 The District acknowledges that social psychology experts initial analysis will take no less than 30 days including five to ten days on site to engage in interviews and the social psychological measures during Spring 2015. The District also acknowledges that the initial analysis may cost the District up to \$20,000. The Center for Policing Equity will contribute funding to conduct additional assessments and analyses for the project.

a. The parties shall not challenge the social psychology experts' recommendations due to any failure by the experts to secure sufficient outside funding for purposes of the dispute resolution procedures set forth below.

4.3 The district will cooperate with reasonable requests for information in a timely fashion, including:

a. The District will ensure the social psychology experts have full access to, and the cooperation of, the District's designated data keeper for purposes of their analysis. The District's designated data keeper will consult and collaborate with the social psychology experts in good faith.

b. The District agrees to work in good faith to make administrators and teachers available for participation in survey, interview and other examination (collectively "social psychological measures"). The District shall work with social psychology experts towards obtaining the consent of individual administrators and teachers for the teachers' participation in the social psychological measures. The District agrees to facilitate communication with administrators about the social psychological measures and shall allow reasonable on-duty time for administrators and teachers to participate in the social psychological measures. The parties agree that participation in the social psychology members by District staff shall be voluntary. The social psychology experts agree to inform participating staff regarding the general purpose of the measures and the experts' inquiry.

4.4 The Parties understand and agree that the social psychology experts will prepare and present a report specific to the District. The social psychology experts may not publish or disseminate any results,

except as described in Section 5.1, without permission from the District.

- 4.5 The social psychology experts will keep confidential:
- a. Notes and recordings of interviews with administrators and teachers;
  - b. All data and information containing personally identifiable information from administrators or teachers;
  - c. Researcher correspondence, notes, and unpublished opinions derived from or that would reveal other confidential data; and
  - d. Any other records or other data containing personal information and personally identifiable data that the parties so designate during the terms of this Agreement.
- 4.6 All notes and data referenced in Paragraph 4.5, above, shall be destroyed upon completion of the scope of work herein.
- 4.7 The social psychology experts agree to coordinate with Mr. Losen and Dr. Sprague with regards to data collection to avoid duplication of efforts on the part of the experts and the District's designated data keeper.
- 4.8 The District agrees that the social psychology experts are "consultants" under FERPA regulations, 34 C.F.R. §99.31(a)(1)(i)(B), and thus may access personally identifiable information from the education records of students without consent. The District and the social psychology experts will execute a separate agreement memorializing the parameters of this FERPA waiver.

## **5. Dispute Resolution Process for Recommendations**

The Parties agree to the following framework for dispute resolution for challenges to the experts' reports and recommendations:

- 5.1 All expert reports and recommendations shall be due to the Parties by December 31, 2015. Timelines can be extended for good cause and with the consent of the Parties.
- 5.2 The Parties agree to meet and confer, on a date to be determined, following receipt and review of the experts' reports and recommendations. The parties agree to negotiate a final settlement agreement in good faith within the parameters of the expert recommendations. If the Parties do not come to an agreement

regarding the experts' recommendations, Petitioner can exercise all available options.

5.3 This interim agreement does not limit the inclusion of additional provisions in the final settlement agreement, as agreed to by the parties.

**6. No Admission of Wrongdoing**

This Interim Settlement Agreement shall not be construed as an admission of any wrongdoing by the District. The District maintains that at all times it has acted in accordance with all applicable state and federal laws.

**AGREED:**

**WILLIE MIMS, on behalf of East County Branch of the NAACP**

By: Willie Mims 3-24-2015  
Willie Mims Date  
Education Chair

**ANTIOCH UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Claire Smith Date  
President, Board of Education

**APPROVED AS TO FORM:**

By: Arlene B. Mayerson March 24, 2015  
Arlene Mayerson Date  
Disability Rights Education &  
Defense Fund (DREDF)  
Attorney for Petitioner East County Branch of the NAACP

By: Eva Paterson March 24, 2015  
Eva Paterson Date  
Equal Justice Society (EJS)  
Attorney for Petitioner East County Branch of the NAACP

By: [Signature] March 24, 2015  
Michael Harris Date  
National Center for Youth Law (NCYL)  
Attorney for Petitioner East County Branch of the NAACP

By: \_\_\_\_\_  
Lenore A. Silverman Date  
Fagen Friedman & Fulfrost, LLP  
Attorney for Antioch Unified School  
District

By: \_\_\_\_\_  
David Mishook Date  
Fagen Friedman & Fulfrost, LLP  
Attorney for Antioch Unified School  
District



## APPENDIX A

### Scope of Work of Dr. Sprague

- Dr. Sprague will complete an assessment of the District's Special Education Program, including,
  1. How children with disabilities are identified and placed for SPED (or not)
    - i. Child find
    - ii. Trigger/nomination/pre-referral system for behavioral assessment (universal screening)
    - iii. Assessment, Identification and Placement protocols
      1. Assessment
        - a. Appropriately normed/validated
        - b. Multi-method, Multi-informant
      2. Placement
        - a. LRE
        - b. Continuum of placement options
  2. Review SPED policy and procedure (district)
    - i. Latest state SPED compliance report
    - ii. Child find
    - iii. Pre-referral/Student study team process related to behavior
  3. Review sample of IEP/504 files and sample of students who were referred to SPED but found ineligible
    - i. Stratified sample of students (race/ethnicity, gender, grade level)
    - ii. Anticipated plaintiffs' files (such names to be provided to the District 14 days in advance)
    - iii. Behavior support/intervention plans, FBAs, and school records (cumulative file)
    - iv. Placement after students are found eligible for SPED
    - v. Placement after students are found ineligible for SPED services

\* Dr Sprague and Mr. Losen will coordinate an evaluation of the District's current and/or planned PBIS and RTI procedures, policies and implementation

