

SETTLEMENT OF AB 2685 HUGHES BILL MANDATED COST LITIGATION

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STEPS TO BE TAKEN IN ORDER TO RECEIVE SETTLEMENT PROCEEDS:

1. Read the Settlement and Release Agreement and the Waiver (Copy) attached.
2. Place the matter to your school Board agenda in January or February.
 - A. Include the Resolution and Notice to LEAs in the Board packet.
 - B. Include the Settlement Agreement and the original Waiver, if you wish.
 - C. Conform the Agenda item and Resolution to your District.

(The documents are available on CSBA's website at:
<http://www.csba.org/LegislationAndLegal/Legal/ELAUpdates.aspx>
under "Legal Resources."

- D. Insert the estimated dollar amount that your District will receive into the Agenda item and the Resolution. (Locate the estimated amount at <http://www.sscal.com> where the amounts have been calculated for your use.)
 - E. If you need assistance conforming the Agenda item and Resolution to your District, contact Stacy Inman or Andrea Jones.
3. Adopt the Board Resolution.
4. Sign and date the original Waiver and return it to Richard Hamilton at the following address by **FRIDAY, FEBRUARY 27, 2009** at the latest:

Richard Hamilton
California School Board Association
3100 beacon Blvd.
West Sacramento, CA 95691

5.
 - 1) If 85% of all LEAs, representing 92% of statewide ADA sign a waiver agreeing to waive their rights to contest the settlement and to file any claim regarding Hughes Bill legislation and regulations; and
 - 2) The plaintiffs in the lawsuit will seek a Superior Court ruling that the settlement is final and binding on all LEAs; and
 - 3) Legislation is enacted appropriating the necessary funds for the 2009-2010 and placing ongoing funding in statute.

Thereafter, you will be provided your settlement proceeds.



California School Boards Association

Education Legal Alliance

We fight better when we stand together.

The Education Legal Alliance takes on legal issues that impact schools.

Major victory

Thanks to the efforts of the Education Legal Alliance, on behalf of San Diego USD and Butte and San Joaquin COEs, there has been a settlement in the long-standing behavioral intervention plan (BIP) mandate with the state. As a result, **ALL** school districts, county offices and SELPAs (LEAs) will receive additional money in 2009-10.

What is this settlement about?

In response to legislation (AB 2586, the Hughes Bill), the State Board of Education in 1993 adopted regulations requiring LEAs to develop BIPs for special education students who exhibit serious behavioral problems. The regulations imposed detailed and costly requirements that exceed federal law. This claim has been tied up in the mandate reimbursement process and in the courts for over 14 years.

How much will LEAs receive?

Starting in 2009-10, LEAs will see increased AB 602 funding (the special education funding mechanism) in the amount of **\$65 MILLION**. Commencing in 2010-11, that amount will be subject to cost-of-living adjustments. In addition, in settlement of the BIP costs going back to 1993-94, school districts will receive **\$510 MILLION** payable in **\$85 MILLION** annual installments over six years starting in 2011-12 and ending in 2016-17. **All payments will be made into school districts' general funds based on 2007-08 P2 ADA.** Also, in 2009-10, an additional **\$7.5 MILLION** will be paid to COEs and SELPAs.

What are the next steps?

CSBA and the Education Legal Alliance have the responsibility for securing approval of the proposed settlement. Before the end of the year, LEAs will receive materials from CSBA asking for approval of the terms of the settlement. Each LEA must act on the approval and return the signed document to CSBA before the end of February. In order for the settlement to take effect, 85 percent of the LEAs representing 92 percent of the statewide ADA must approve it.



California School Boards Association
Education Legal Alliance

3100 Beacon Boulevard, West Sacramento, CA 95691 | 800-266-3382 | Fax: 916-374-3407 | legal@csba.org



December 19, 2008

To: All School District Superintendents, County Superintendents of Schools, and SELPA Directors

From: Richard Hamilton, Associate General Counsel and Director, Education Legal Alliance, California School Boards Association

Re: Approval of Special Education Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim Settlement

We are pleased to announce that the State and school test claimants San Diego USD, Butte COE and San Joaquin COE have agreed on a settlement for the Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim. The legislation which is the source of the claim requires school agencies to develop behavioral intervention plans for special education students with serious behavioral problems.

We believe this is a fair settlement and look forward to your participation. We are requesting that you place approval of this settlement on your school board, county board, or SELPA board agenda in January or February. Enclosed are the following documents related to your approval of the settlement.

- Notice to LEAs with original and copy of a Waiver plus a self-addressed return envelope
- Sample board agenda item language
- Draft resolution
- Settlement Agreement with waiver and draft legislation attached

In order to trigger the obligation by the Legislature to enact the funding, at least 85% of all school districts, county offices of education (COEs) and SELPAs, constituting 92% of statewide ADA, must approve the waiver, sign it, and return it to me by February 27, 2009.

In approving the resolution, school boards will be enabling their districts to share in ongoing increased AB 602 funding for each SELPA of about \$10.924857 per ADA starting 2009-10 and receive an additional estimated \$ 14.851782 per ADA for the general fund each year for six years commencing 2011-12 through 2016-17. In exchange for the state funding, your board must waive its right to file mandated cost claims on the Hughes Bill mandate, thus, in effect, conceding that this mandate is fully funded by virtue of this legislation. Thus, districts will be reimbursed for the costs of this mandate without filing annual mandate claims, which are subject to audits and other procedural hurdles.

Similar detail regarding per ADA funding for SELPAs and COEs is available on the next page under "Settlement Terms".

This settlement is modeled on the Special Education Mandated Cost Settlement which 100% of LEAs approved in January 2001. We hope to achieve a similar result here.

CSBA's Education Legal Alliance was proud to support the efforts leading to the settlement, funding the services of Fagen Friedman & Fulfro, Diana McDonough, Of Counsel, to reach this agreement. We are also grateful for the efforts of 29 SELPAs throughout the State who volunteered to collect extensive data on this mandate. Their information was key to the resolution.

The Settlement Terms

This settlement provides a permanent increase in special education funds to cover Hughes Bill costs in the future, allocated as follows:

- \$65 million as a permanent increase to the AB 602 funding base effective 2009-10. Each SELPA's funding rate will increase by about \$10.924857 per 2008-09 P-2 ADA. COLA and growth will be added in 2010-11 and thereafter, to the extent it is added to AB 602 generally.

This settlement also provides \$520 million in general fund reimbursement for past special education Hughes Bill costs and is allocated as follows:

- \$510 million to school districts at \$85 million per year over 6 years commencing 2011-12 through 2016-17 based on 2007-08 P-2 ADA. This amount translates to about \$14.851782 per unit of 2007-08 P-2 ADA for each of the 6 years;
- \$1.5 million to COEs in 2009-10 based on December, 2007 special education pupil count, with no COE receiving less than \$5,000. This amount translates to about \$35.056558 per county special education pupil according to the December 2007 pupil count;
- \$6 million to SELPAs in 2009-10 based on December, 2007 special education pupil count, with no SELPA receiving less than \$10,000. This amount translates to about \$8.850014 per special education pupil according to the December 2007 pupil count; and
- \$2.5 million for administrative and legal costs incurred by the test claimants since 1994, including reimbursement to CSBA's Education Legal Alliance for legal fees and to the 29 SELPAs for the costs of completing the surveys.

Steps Required for Implementation

The above will be implemented contingent on the following:

1. 85% of all LEAs (school districts, COEs and SELPAs), representing 92% of statewide ADA sign a waiver agreeing to waive their rights to contest the settlement and to file any claim regarding Hughes Bill legislation and regulations and
2. The parties (test claimants and the State) will seek a superior court ruling that the settlement is final and binding on all LEAs and
3. Legislation is enacted appropriating the necessary funds for 2009-10 and placing ongoing funding in statute.

Please Note: you are only responsible for # 1.

Action To Be Taken By Your District, County Office or SELPA:

The following is an outline of action required:

1. Read the "Notice to LEAs" and "Waiver"; consult your attorneys as needed.
2. Place the matter on your school board, county board or SELPA board's agenda in January or February. Include the "Resolution" and "Notice to LEAs" in the board packet. (You may include the entire settlement document if you wish.) Conform the Agenda item and Resolution to your district, COE or SELPA. To do so, the documents are available on CSBA's website at <http://www.csba.org/LegislationAndLegal/Legal/ELAUUpdates.aspx> under "Legal Resources." To insert the estimated dollar amounts your district, COE or SELPA will receive into the Agenda item and Resolution go to the School Services of California website at <http://www.sscal.com/> where the amounts have been calculated for your use.
3. Adopt the Board resolution.
4. Sign and date the original waiver and return it to me in the enclosed self-addressed envelope.

Richard Hamilton
California School Boards Association
3100 Beacon Blvd.
West Sacramento, CA 95691

Please send the documents to me no later than **Friday, February 27, 2009**. Thank you, in advance, for attending to this in an expeditious manner.

Should you have questions regarding the above information, please email Carol Cox at ccox@csba.org and me at rhamilton@csba.org.

Below is a list of those SELPAs who provided the data. We are grateful to them for their willingness to join us in this important endeavor.

Butte County	Modoc County	Stanislaus County
Calaveras County	Mono County	Tehama County
Clovis Unified School District	North Region	Tri-City
El Dorado County	Poway Unified School District	Tuolumne County
Fresno County	Sacramento City Unified School District	Ventura
Fresno Unified School District	San Diego South	West End
Glenn County	San Diego Unified	West Orange
Greater Anaheim	San Joaquin County	Yolo County
Inyo County	Solano County	
Lodi Area	Sonoma County	
Marin County		

Enclosures:

- 1) Notice to LEAs w/waivers and self-addressed envelope
- 2) Agenda item
- 3) Draft resolution
- 4) Settlement Agreement

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Education Legal Alliance



Butte County SELPA
Butte County Special Education Local Plan Area



CCSESA



NOTICE TO LEAS

Re: Pending Settlement of the Behavioral Intervention Plans
[Hughes Bill] Mandated Cost Claim

This Notice is intended to inform all local educational agencies ("LEAs") in California about their rights regarding the Behavioral Intervention Plans Mandated Cost Test Claim, claim CSM-4464, initiated September 28, 1994 by San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education ("Claimants"), and the subsequent Sacramento Superior Court case, case No. 03CS01432, regarding this same test claim ("the Claim"). For purposes of this Notice, LEAs include all school districts, county offices of education, special education local plan areas ("SELPA's"), and joint agencies composed of such organizations in the State of California. The Claim has significant fiscal implications for LEAs. For this reason, LEAs are advised to review this Notice and the attached Waiver with legal counsel before deciding whether to sign the Waiver.

In reviewing this Notice, please be aware of the following items:

1. This Notice and the attached Waiver apply only to the Behavioral Intervention Plans Mandated Cost Claim and claims arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052, as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations").
2. This Notice and the attached Waiver do not affect any rights any LEAs may have to file test claims with the Commission on State Mandates ("the Commission") on any mandates created as a result of changes to state or federal statutes or regulations that occur after July 1, 2008.

A. What is the Behavioral Intervention Plans Mandated Cost Claim?

The Behavioral Intervention Plans Mandated Cost Claim is a fourteen-year effort by local school districts, county offices of education, and SELPAs to obtain reimbursement for costs associated with behavioral intervention plans required by the Hughes Bill Statute and Regulations under state law.

The California Constitution requires that whenever the Legislature mandates a new program or a higher level of service, the State must provide funds to reimburse local government for the actual costs of implementation, with certain exceptions. State law requires that the State shall reimburse each local agency for all unfunded costs mandated by the State. The Commission has the authority to hear and decide tests claims that local agencies file as a result of new laws passed by the Legislature and signed into law by the Governor. The legal framework and authority for the mandated claims reimbursement process is found at article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of title 2 of the California Code of Regulations.

The Behavioral Intervention Plans Mandated Cost Claim was initiated in 1994 when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 asking the State to reimburse LEAs for the unfunded costs associated with behavioral intervention plans, as required by state law under the Hughes Bill

Statute and Regulations. Under the Commission's rules, test claims are treated like class actions, and therefore the Claim is applicable to all LEAs statewide.

B. What is the Outcome of the Behavioral Intervention Plans Mandated Cost Claim?

On September 28, 2000, after years of filings and hearings, the Commission adopted a Statement of Decision regarding CSM-4464 finding that the Hughes Bill Statute and Regulations imposed a reimburseable state mandate on school districts by requiring the following seven activities in excess of federal law: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-01 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim. (Ed. Code § 56836.156(g).)

Subsequently, Claimants proposed parameters and guidelines for the CSM-4464 claiming process, but various disputes arose with the State and a final draft of the claiming parameters and guidelines was never adopted by the Commission. The parties attempted to settle without success and the matter reached a stalemate.

On September 26, 2003, the State's Department of Finance filed a lawsuit in the Sacramento Superior Court (Department of Finance v. Commission on State Mandates, Case No. 03CS01432) challenging the Commission's decision in CSM-4464. The State and the Claimants ("Parties") agreed to delay the proceedings before the Court in order to attempt to negotiate a settlement. The initial settlement negotiations were unsuccessful.

On October 4, 2007, pending reforms in the mandate process prompted the Parties to continue negotiations. The Parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Claimants surveyed more than 20 SELPAs representing more than 10% of the public school students statewide. The State's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the State that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years. The Parties filed a stipulation with the Sacramento Superior Court agreeing to extend the five-year period pending this resolution.

C. What is the Outcome of the Settlement Negotiations?

The State and Claimants have negotiated a settlement agreement ("Agreement") which is contingent upon the following three events occurring:

1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education (COEs), and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices of education signing Exhibit A must have served student populations accounting for no less than 92% of the second principal apportionment ("P-2") average daily attendance ("ADA") in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.
3. Legislation must be enacted appropriating the following funds for the settlement:
 - a. \$65 million as a permanent increase to the AB 602 base, commencing 2009-10, subject to COLA and ADA growth in subsequent years.
 - b. \$510 million retroactive payment in total for general fund use payable to school districts in \$85 million installments over six years, commencing 2011-12 and ending 2016-17, all payments to be based on 2007-08 P-2 ADA. The State may enlarge these installments, discharging the obligation more quickly if it so decides. These payments may be suspended in a year in which Test 3 of Proposition 98 is operative. If the payment is suspended in any year or years, it must be made in the year or years immediately following the designated six-year period or lesser period if the State has discharged its obligation prior to the end of the six years.
 - c. \$10 million lump sum retroactive payment for general fund use payable in 2009-10, divided as follows:
 - \$1.5 million to COEs based on December, 2007 county special education pupil count, with no county office of education receiving less than \$5000;
 - \$6.0 million to SELPAs based on December, 2007 special education pupil count, with no SELPA receiving less than \$10,000; and
 - \$2.5 million to San Joaquin County Office of Education for administrative costs incurred in pursuing the Claim.

By separate agreement among the Claimants, the \$2.5 million allocation to the San Joaquin County Office of Education will be used to pay for the administrative costs incurred to pursue the Claim from 1994 to the present.

The Parties intend that the legislation will be requested in early 2009 and enacted on an urgency basis prior to or concurrent with the Budget Act for the 2009-10 fiscal year. It is possible that non-substantive changes to the proposed legislation described above may occur with the consent of the parties.

D. What Rights Are Waived by LEAs Who Elect to Sign the Waiver?

Under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of title 2 of the California Code of Regulations, LEAs have the right to file mandated cost claims with the Commission on State Mandates. Further, under section 1542 of the Civil Code, a waiver does not extend to unknown claims. However, LEAs who sign this Waiver agree to give up certain of these rights as follows:

1. **Known Claims:** LEAs electing to sign the attached Waiver agree to waive their right to file or to otherwise pursue reimbursement claims for the mandated programs and services contained in the Behavioral Intervention Plans Mandated Cost Claim or any other known claim arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and

3052, as those sections read on or before July 1, 2008. Further, LEAs signing the Waiver acknowledge that the amount needed to satisfy the State's minimum funding obligation under Proposition 98 shall not be increased by the retrospective payments required by the settlement and forever give up their right to contend otherwise.

2. **Unknown Claims:** LEAs electing to sign the attached Waiver also agree to waive their right to pursue any unknown mandated cost claim arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052, as those sections read on or before July 1, 2008.
3. **Exemptions:** The Waiver does not prohibit LEAs from filing mandated cost claims to the extent that state or federal statutes or regulations are amended or added or changed in any way after July 1, 2008.

Of course, unless the three events take place which are set out in Section C above, the Waiver is not binding.

E. Where is More Detailed Information on the Settlement Available?

With the mailing of this notice all LEAs have been sent a copy of the Settlement and Release Agreement in this matter and a copy of the Proposed Draft Legislation. A review of these documents provides additional information. For more information or additional copies of these documents go to CSBA's website at:

<http://www.csba.org/LegislationAndLegal/Legal/BLAUpdates.aspx> under "Legal Resources"

or email Carol Cox at ccox@csba.org and Dick Hamilton at (916) 669-3270, e-mail rhamilton@csba.org.

PLEASE NOTE:

A copy of the Waiver is attached to this notice. The original Waiver (separately enclosed) should be signed and mailed, using the enclosed self-addressed envelope to:

Dick Hamilton, Associate General Counsel and Director
Education Legal Alliance
California School Boards Association
3100 Beacon Blvd.
West Sacramento, CA 95691

The signed Waiver must reach Mr. Hamilton on or before **February 28, 2009**.

In doing so you are indicating support for the Settlement and approval of the Waiver.

00334.00100/105208

SETTLEMENT AND RELEASE AGREEMENT
BEHAVIORAL INTERVENTION PLANS [HUGHES BILL] MANDATED COST CLAIM

This settlement and release agreement ("Agreement") is entered into this ____ day of 2008 by and between the State of California ("the STATE") on the one hand, and San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (collectively "CLAIMANTS") on the other, who, in consideration of the promises made herein, agree as follows:

I. Nature and Status of the Dispute

Effective January 1, 1991, Education Code section 56523 was added to the Education Code. That section required the development and adoption of regulations governing positive behavioral interventions for special education students by the State Board of Education ("the SBE"). In 1993, the SBE promulgated California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 to implement Education Code section 56523. The Education Code section and its implementing regulations are referred to cumulatively as "the Hughes Bill."

The Behavioral Intervention Plans Mandated Cost Claim was initiated on September 28, 1994, when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 with the Commission on State Mandates ("the Commission"). The Behavioral Intervention Plans Mandated Cost Claim asked the STATE to reimburse local educational agencies ("LEAs"), including school districts, county offices of education, special education local plan areas ("SELPA's"), and joint agencies composed of such organizations for the costs of implementing the Hughes Bill.

On September 28, 2000, the Commission adopted a Statement of Decision on CSM-4464 finding that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring the following seven activities: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-2001 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim (Ed. Code § 56836.156(g)).

Subsequently CLAIMANTS proposed parameters and guidelines for the CSM-4464 claiming process but various disputes arose with the STATE and a final draft was never adopted by the Commission. The parties attempted settlement without success and the matter reached a stalemate.

On September 26, 2003, the STATE's Department of Finance filed a Petition for Administrative Mandamus in the Sacramento Superior Court challenging the Commission's decision in CSM-4464. It named the Commission as Respondent, and CLAIMANTS as Real Parties in Interest (*Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 03CS01432). The Petition maintained that the Hughes Bill was not a reimbursable state mandate because 1) it was required by federal law, 2) it merely implemented federal requirements, and

3) it did not exceed those requirements. The matter is still pending. CLAIMANTS have filed no responsive pleadings as yet.

On October 4, 2007, the Deputy Attorney General representing the STATE's Department of Finance in the above case wrote to CLAIMANTS stating that pending reforms in the mandate process could present a timely opportunity to continue negotiations. The Deputy Attorney General noted that the mandate reform legislation, AB 1222, included the option of the joint development of a reasonable reimbursement methodology and cost estimate. The Deputy Attorney General suggested a meeting if CLAIMANTS were interested in resolving the matter and noted that, absent successful settlement, she planned to schedule a hearing in Sacramento Superior Court in April 2008. In response, CLAIMANTS contacted the Deputy Attorney General and the parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Ultimately CLAIMANTS completed surveys of more than 20 SELPAs representing more than 10% of public school students statewide. The STATE's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the STATE that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years ("the five-year rule"). Ultimately, the parties filed a stipulation with the court agreeing to extend the five-year period to March 27, 2009, in the hopes that agreement could be reached.

The STATE's Department of Finance continues to dispute the Commission's decision in CSM-4464 that the Hughes Bill is a reimbursable mandate. CLAIMANTS believe the Commission's decision was correct and that the Hughes Bill imposes requirements on school districts that are not mandated by federal law.

To avoid the costs and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill funding, and to expedite the resolution of this long-pending mandate claim in the spirit of AB 1222, the parties have determined to compromise and settle the claims raised in Sacramento Superior Court Case No. 03CS01432 and the underlying administrative decision of the Commission on State Mandates in CSM-4464 on the terms and conditions set forth below.

II. Actions to Resolve Dispute

- A. The mutual obligations and duties of the parties set forth herein are contingent upon all of the following events occurring:
 - 1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education, and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices signing Exhibit A must have served student populations accounting

for no less than 92% of the second principal apportionment (P-2) average daily attendance in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.
 3. Prior to or concurrent with the enactment of the Budget Act for the 2009-10 fiscal year, legislation is enacted that contains provisions identical to or substantially similar to the language contained in Exhibit B. It is the intent of the parties that, on or before January 10, 2009, the Legislature shall be requested to enact such legislation on an urgency basis. Any modifications to the proposed legislation shall be made only with agreement of all the signatories to this settlement document.
 - a. The proposed legislation shall appropriate the amount of ten million dollars (\$10,000,000) payable upon enactment and allocated in accord with Section II.B. of this Agreement.
 - b. The proposed legislation shall require additional funding of five-hundred and ten million dollars (\$510,000,000) in total payable over a six-year period, or lesser period at the STATE's discretion, commencing July 1, 2011, and allocated in accord with Section II.B. of this Agreement.
 - c. The proposed legislation shall include statutory language to revise the existing special education funding model established by Assembly Bill 602 (Chapter 854, Statutes of 1997) to provide an ongoing increase of sixty-five million dollars (\$65,000,000) annually to special education programs. The proposed legislation shall appropriate the first year of funding.
 - d. The combination of the above appropriations is to be considered in full satisfaction of, and is in lieu of, any reimbursable mandate claims that would have been filed as a result of CSM-4464. By providing this funding for CSM-4464, the STATE in no way concedes the existence of an unfunded reimbursable mandate for that claim.
- B. For the purposes of this settlement only, to resolve any and all retrospective mandated cost claims from 1993-94 to 2008-09 arising from CSM-4464 and the Statement of Decision adopted by the Commission on State Mandates on September 28, 2000, the STATE agrees that:

1. Upon enactment of legislation prior to or concurrent with the 2009-10 Budget Act, payment in the amount of ten million dollars (\$10,000,000) will be allocated to LEAs as follows:
 - a. One million five hundred thousand dollars (\$1,500,000) shall be allocated to county offices of education on an equal per-pupil basis. The amount of each agency's allocation shall be determined by dividing one million five hundred thousand dollars (\$1,500,000) by the total statewide county special education pupil count only, as reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each county office of education is at least five thousand dollars (\$5,000).
 - b. Six million dollars (\$6,000,000) shall be allocated to SELPAs that existed for the 2007-08 fiscal year. The amount of each agency's allocation shall be determined by dividing six million dollars (\$6,000,000) by the total statewide special education pupil count as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each SELPA is at least ten thousand dollars (\$10,000).
 - c. Two million five hundred thousand dollars (\$2,500,000) shall be paid to San Joaquin County Office of Education.
2. In accord with legislation enacted prior to or concurrent with the 2009-10 Budget Act, the State will pay an additional five hundred and ten million dollars (\$510,000,000) to school districts. This amount shall be allocated in installment payments of eighty-five million dollars (\$85,000,000) commencing July 1, 2011, and annually thereafter for a period of six years unless the STATE in its discretion enlarges the installment amount from time to time, thereby discharging the obligation in advance of the six year period. These payments shall be allocated to school districts on a per-pupil basis as follows:
 - a. The appropriation shall be divided by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent for the second principal apportionment for the

2007-08 fiscal year. Each school district shall receive an allocation equal to the per-pupil amount times the district's reported average daily attendance for the second principal apportionment for the 2007-08 fiscal year, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year unless the State enlarges the appropriation as specified in II.B.2. above.

- b. In any fiscal year after 2011-12 in which the provisions of paragraph (b)(3) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made. If an appropriation is not made for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately succeeding the final payment pursuant to Section II.B.2 of this Agreement.

- C. To effectuate a stay of the five-year rule and to seek court approval of the settlement which makes it final and binding on LEAs, the parties agree to the following:

- 1. Within ten court days after execution of this Agreement, CLAIMANTS will file a response to the Petition for Administrative Mandamus, Sacramento Superior Court Case No. 03CS01432. Concurrently or as soon thereafter as the parties deem appropriate, the STATE and CLAIMANTS shall jointly stipulate to a stay of the five-year rule, and shall file such stipulation with the court. The stipulation shall provide for and ask the court to order the following:
 - a. A stay of the five-year rule for the purposes of this settlement, with the understanding that the five-year rule shall be in effect within ninety (90) days if the settlement terms cannot be effectuated.
 - b. Notice of the stay and of the settlement terms to all LEAs.
 - c. A court hearing, if necessary, to consider any objections to the settlement made by LEAs or other parties of standing.
 - d. Entry of judgment that the settlement is the final resolution of CSM-4464 assuming implementing legislation is enacted, and that after appropriate consideration of objections, if any, it is final and binding on all LEAs.

- D. In the absence of any entry of judgment as specified in Section II.C.1.d. of this Agreement, the parties shall seek an alternative mutually agreeable final and formal resolution of the dispute.
- E. If the events listed in Section II.A. as preconditions to the parties' obligations do not take place, the STATE or the CLAIMANTS may request the Superior Court to lift the stay issued pursuant to Section II.C.1.a., above, and to order that the five-year rule shall take effect in ninety (90) days.

III. Known Claims

With respect to section 56523 of the California Education Code and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008, ("the Hughes Bill Statute and Regulations"), CLAIMANTS hereby knowingly and voluntarily waive the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Agreement, CLAIMANTS hereby acknowledge that CLAIMANTS forever relinquish their right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and further forever relinquish their right to receive any benefit(s) from any claim(s) so filed. CLAIMANTS may file mandated cost claims concerning such statutes and regulations only to the extent that state or federal statutes or regulations are amended or added or changed in any other way after July 1, 2008. CLAIMANTS further acknowledge and concede that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to school districts pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the amounts set forth in Sections II.B.1 and II.B.2 of this agreement.

IV. Unknown Claims

- A. CLAIMANTS expressly waive the application of California Civil Code section 1542 regarding mandated cost claims based on Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

- B. CLAIMANTS certify that they have read the following provisions of California Civil Code section 1542:

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

- C. CLAIMANTS understand and acknowledge that the significance and consequence of the waiver of California Civil Code section 1542 is that:

1. They may have additional claims arising or occurring up to the date of this Agreement of which they are not now aware;
2. They may not make a further demand for any such claims;
3. They may not receive any benefit(s) from any such claims; and
4. They extend their waiver to include now unknown or later discovered claims.

V. Advice of Attorney

CLAIMANTS warrant and represent that they have been advised to seek legal advice from the attorney of their choice regarding the risks, complications, and costs of the Agreement. CLAIMANTS acknowledge and represent either that they relied upon legal advice from their attorney in executing this Agreement or that they chose not to rely upon legal advice from their attorney in executing this Agreement. They further acknowledge and represent that, in executing this Agreement, they have not relied on any inducements, promises, or representations other than those stated in this Agreement.

VI. Conditions of Execution

Each party acknowledges and warrants that the party's execution of this Agreement is free and voluntary.

VII. Execution of Other Documents

Each party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

VIII. Nonadmission

Nothing contained in the Agreement constitutes an admission or concession, by any party, as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464, and no party hereto shall deem or construe this Agreement, or any part thereof, to be any such admission or concession. Further, nothing in this Agreement may be deemed or construed to be, by any entity or person not a party hereto, as against any party hereto, or any agency thereof, any admission or concession as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464.

IX. Entire Agreement

This Agreement and Exhibits A and B attached hereto contain the entire Agreement between the parties. A breach of any portion of this Agreement shall be considered a breach of the whole Agreement.

X. Effective Date

This Agreement shall be effective immediately upon execution by the parties. This Agreement has retroactive effect to the extent specified herein.

XII. Governing Law

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California and the United States.

00334.00100/105941.1

XIII. Counterparts

This Agreement may be signed in counterparts, such that signatures appear on separate pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

For the State of California:

Michael C. Genest
Director, Department of Finance

Dated: _____

Stephen P. Acquisto
Supervising Deputy Attorney General

Dated: _____

San Diego Unified School District

By _____
Terry Grier, Superintendent

Dated: _____

Butte County Office of Education

By _____
Roy L. Applegate, Ed.D., SELPA Director

Dated: _____

San Joaquin County Office of Education

By _____
Santee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Dated: _____

Approved as to form:

Fagen Friedman & Fulfrost

Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

Dated: _____

00334.00100/105941

WAIVER

This Waiver is entered into on _____ [DATE] by
_____ [NAME OF LEA], hereinafter "LEA,"
to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral
Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;
2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;
3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;
4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;
5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and
7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

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

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:

- a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;
- b. LEA may not make a further demand for any such claims;
- c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and
- d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____

Signed: _____

Print or Type Name Above

Authorized Agent for: _____
Name of LEA

00334.00100/107130.1

WAIVER

This Waiver is entered into on _____ [DATE] by
_____ [NAME OF LEA], hereinafter "LEA,"
to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral
Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;
2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;
3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;
4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;
5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and
7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

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

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:
 - a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;
 - b. LEA may not make a further demand for any such claims;
 - c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and
 - d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____

Signed: _____

Print or Type Name Above

Authorized Agent for: _____
Name of LEA

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AGENDA ITEM

For consideration and action:

No. _____

Resolution approving Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim Settlement and waiving rights to file any claim regarding the Hughes Bill statute and regulations in the future.

Background [Optional – use according to local practice; note alternate wording in first paragraph depending on district, county, or SELPA use]:

In the resolution, the Board (1) approves the settlement which will bring [the District approximately \$___ per 2007-08 ADA annually for the six-year period beginning 2011-12 through 2016-17] [the county office of education approximately \$___ per December 2007 county special education pupil count in 2009-10 and not less than \$5,000][the SELPA approximately \$___ per December 2007 special education pupil count in 2009-10 and not less than \$10,000] and approximately \$___ per ADA for the SELPA as part of the AB 602 funding formula, beginning in 2009-2010, and increasing by COLA and ADA growth in subsequent years; (2) agrees to waive its ability to file future mandated cost claims on the Hughes Bill statute and regulations as currently worded; and (3) directs the District's authorized representative to sign the Waiver to implement this action.

The Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim Settlement settles the test claim CSM-4464 initiated by San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education, and the related Sacramento Superior Court case, case No. 03CS01432, regarding reimbursement for costs associated with behavioral intervention plans required by the Hughes Bill statute and regulations under state law. If approved, it ends a fourteen-year dispute with the State of California regarding funding for state behavioral intervention plan requirements that are in excess of federal law. The settlement provides \$520 million in reimbursement for past costs associated with behavioral intervention plans and \$65 million annually for ongoing costs. The Legislature's obligation to fund the settlement is contingent on 85% of all districts, county offices of education, and special education local plan areas constituting 92% of statewide ADA waiving their rights to file additional mandated cost claims on the current Hughes Bill statute and regulations.

00334.00100/106677.1

RESOLUTION NO. _____

GOVERNING BOARD OF THE _____ DISTRICT
[COUNTY OFFICE OF EDUCATION OR
SPECIAL EDUCATION LOCAL PLAN AREA (as appropriate)]

**APPROVAL OF BEHAVIORAL INTERVENTION PLANS [HUGHES BILL]
MANDATED COST CLAIM SETTLEMENT AND AGREEMENT
TO WAIVE FUTURE CLAIMS**

WHEREAS, the Commission on State Mandates (“the Commission”), in a test claim known as the Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim, has determined that, since 1993, there are unfunded state mandates exceeding the federal requirements in the following seven (7) components of the Hughes Bill Statute and Regulations (California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052): special education local plan area (“SELPA”) plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings;

WHEREAS, these state mandates remain required components of the Hughes Bill Statute and Regulations;

WHEREAS, final claiming instructions for the Behavioral Intervention Plans Mandated Cost Claim were never adopted by the Commission due to various disputes that arose with the State;

WHEREAS, the State’s Department of Finance disputes that any of the identified Behavioral Intervention Plans Mandated Cost Claim mandates qualify for state reimbursement because it contends they are required by federal law, and therefore the State has filed a lawsuit with the Sacramento Superior Court, case No. 03CS01432, to contest the Commission’s decision in the Behavioral Intervention Plans Mandated Cost Claim;

WHEREAS, the Test Claimants believe that the identified mandates require new programs and increased levels of service in excess of federal law, and are therefore unfunded state mandates, and therefore the Test Claimants oppose the court action filed by the State challenging the Commission’s decision;

WHEREAS, this litigation could thwart resolution of these matters for a number of years;

WHEREAS, to avoid the cost and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill Statute and Regulations funding, and to expedite the resolution of this long-pending mandate claim, the State and the Test Claimants (“Parties”) have determined to compromise and settle the claims set forth in the Behavioral Intervention Plans Mandated Cost Claim;

WHEREAS, the Parties have negotiated a settlement agreement (“Agreement”), which provides \$520 million as general fund reimbursement for past costs associated with the Hughes Bill Statute and Regulations, allocated as follows:

- \$510 million to school districts based on 2007-08 P-2 average daily attendance (“ADA”) (about \$14.85 per ADA annually for six years, beginning in 2011-12, or for a lesser period at the State’s discretion should the State choose to accelerate payment of such reimbursement);
- \$1.5 million to county offices of education in 2009-10 based on December 2007 county special education pupil count, about \$35.06 per pupil, with no county office of education receiving less than \$5,000;
- \$6 million to SELPAs in 2009-10 based on December 2007 special education pupil count, about \$8.85 per pupil, with no SELPA receiving less than \$10,000; and
- \$2.5 million in 2009-10 for administrative costs incurred in pursuing the Claim;

WHEREAS, the settlement further provides \$65 million as a permanent increase to the AB 602 funding base for special education programs and services beginning in 2009-10, resulting in each SELPA’s funding rate increasing by about \$10.92 per ADA, with this amount increasing by the cost of living adjustment and ADA growth in subsequent years;

WHEREAS, by approving this settlement the _____ School District [COE or SELPA (as appropriate)] will receive approximately \$ _____ [total] in discretionary funding for retroactive reimbursement, \$ _____ [amount of installment] over six-years in equal installments [districts only], unless the State, in its discretion, accelerates payment of such reimbursement;

WHEREAS, the _____ School District [COE or SELPA (as appropriate)], in exchange for the foregoing financial settlement, must waive its right to file any further mandate claims arising from the Hughes Bill Statute and Regulations, or to benefit from any new Hughes Bill Statute and Regulations claims filed, unless the Hughes Bill Statute and Regulations change;

WHEREAS, if for some reason the settlement process is not completed, the Waiver will not take effect;

WHEREAS, the Governing Board of the _____ School District [COE or SELPA (as appropriate)] has reviewed the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans [Hughes Bill] Mandated Cost Claim and the required Waiver; and

WHEREAS, the District [COE or SELPA (as appropriate)] administrative staff, having reviewed the terms of the pending settlement, recommends that the Governing Board approve the

settlement and agree to waive its rights to file mandated cost claims arising from the Hughes Bill Statute and Regulations in the future or to benefit from such claims unless the Hughes Bill Statute and Regulations change;

NOW THEREFORE, BE IT RESOLVED, the Governing Board of the _____ School District [COE or SELPA (as appropriate)] approves the terms of the pending settlement of the Behavioral Intervention Plans Mandated Cost Claim, agrees to waive its rights regarding claims as set forth in the attached Waiver, and authorizes the Superintendent [or Associate/Assistant Superintendent (as appropriate)] [or in the case of the COE the Board President and County Superintendent] [or SELPA Director] to sign the required Waiver and to deliver it as requested by no later than February 28, 2009, and to complete any other administrative task necessary to effectuate this decision.

Passed and adopted by the Governing Board of the _____ School District [COE or SELPA (as appropriate)] on _____ (date) _____, by the following vote:

Ayes: _____

Noes: _____

Absent: _____

President, Governing Board

School District (COE, SELPA as appropriate)

County, California

Attested by: _____
Secretary to the Board

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