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OUR FILE NUMBER:

January 27, 2025

***VIA EMAIL: BRANDON\_DADE@CJUSD.NET***

document

Brandon Dade, Ed.D.  
Assistant Superintendent of Human Resources  
Colton Joint Unified School District  
1212 Valencia Drive  
Colton, CA 92324

**Re: Implementation of Corrective Actions After Monitoring Period Has Expired  
Pursuant to Settlement Agreement with Department of Justice**

Dear Dr. Dade:

You have asked for a summary of the December 2022 Final Settlement Agreement executed by the Colton Joint Unified School District (“District”) and the United States Department of Justice (“United States” or “DOJ”), and an opinion as to whether the corrective actions contained in the Settlement Agreement are meant to be permanent, including the potential implications of not implementing these corrective actions after the monitoring period of the Settlement Agreement has expired.

As you are aware, the District is currently in the process of being monitored by the DOJ concerning the implementation of a Final Settlement Agreement in regard to various violations of Section 1703 of the Equal Educational Opportunities Act (“EEOA”) This involves the District’s educational services for students designated as English Learners, English Learners with disabilities, and student participating in the District’s gifted and talented education (“GATE”) program.

This investigation was initiated in 2010 by the DOJ, and based on the DOJ findings, the District has undertaken numerous modifications to improve services provided to EL students throughout the District. The DOJ continued its review of the District’s English Learner, Special Education, and GATE programs through 2022, and subsequently proposed a settlement agreement to remediate the ongoing violations of federal law. Specifically, the DOJ identified a number of conditions in the District’s programs and practices that the District needed to address in order to comply with Section 1703(f) of the EEOA as follows:

- The United States concluded that the District failed to provide its EL students with appropriate and adequate language services. The United States determined that the District

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deprived many secondary school EL students of necessary focused instruction in ELD, and prematurely exited students from the EL program.

- The United States found that the District did not provide its EL students with qualified staff to implement the EL program adequately. Specifically, the United States concluded that core content staff responsible for integrating ELD into their lessons were not properly trained, and, as a result, many ELs lacked meaningful access to core content classes.
- The United States found that the District failed to conduct evaluations of ELs for special education services in their native language, and failed to consider whether ELs with disabilities required native language instruction in order to meaningfully participate in the educational program in the District.
- The United States found that the screening test utilized by the District to identify students for the gifted and talented program unfairly denied access to ELs.
- The United States determined that the District did not adequately monitor and evaluate its EL programs for effectiveness. The United States concluded that the District did not systematically collect data on EL performance and services provided to ELs that was necessary to fully evaluate its EL program.

As a result, in order to avoid litigation against the District and to remedy the ongoing violations of federal law, the District and the DOJ negotiated the terms of a potential settlement agreement for several months. After several revisions and detailed discussions, the Parties executed a settlement agreement in December 2022, which included, but is not limited to, the following relevant terms:

- Provide all EL students with at least one daily period of Designated ELD taught by a teacher with appropriate certifications based on California requirements.
- Grouping of EL students by their English Language Proficiency level within a single grade to the extent possible.
- Ensure that all EL students receive integrated ELD instruction in English-Language Arts, Math, Science, and social Studies where instruction is primarily in English.
- Ensure that teacher of Designated and Integrated ELD document in their lesson plans: 1) the English Language Development Standards being taught and how they will be used to differentiate instruction for the different English Language Proficiency Levels of EL students in the class; 2) the language and content objectives for each lesson; and 3) the ELD strategies used to deliver the content to EL students.
- Ensure that teacher of Designated ELD have the appropriate certification(s) based on California requirements.

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- Ensure that teachers of Integrated ELD have (a) appropriate certification(s) to provide instruction in their content area(s); (b) have appropriate certification(s) to instruct ELs; and (c) have completed the training required by the Settlement Agreement on how to use effective strategies to integrate ELD into core content to make the content accessible to EL students and promote their ELD across the four domains.
- All appropriately certified teachers of Designated ELD shall receive four hours of annual training on language acquisition, English Language Development Standards, and research-based strategies for Designated ELD instruction.
- Teachers of Designated ELD who have not yet obtained appropriate certification(s) shall receive annually: (i) at least ten hours of in-person training on effective strategies for providing Designated ELD for EL Students and (ii) at least five hours of in-classroom support on using those strategies.
- All District core content teachers of EL students shall receive annually at least five hours of training on effective strategies for providing Integrated ELD for EL students.
- All teachers, and school and District administrators shall receive training on how to interpret EL-related data to make data-driven decisions for lesson planning, resource allocation, and professional development and support. After the initial trainings, subsequent new teachers and school and District administrators, will be provided training as listed above.
- Principals and other administrators who evaluate teachers of EL students shall, on an annual basis, receive: at least two hours of training regarding their responsibilities under this Agreement; at least five hours of training on how to identify and support effective Designated ELD and Integrated ELD strategies in classroom instruction; and at least two hours of training on how to use the classroom observation tool and walk-through protocols.
- Development of a classroom observation teacher feedback tool and walk-through protocols for use by administrators to evaluate teachers' implementation of designated ELD and Integrated ELD teaching strategies.
- No EL with a disability will be denied Designated or Integrated ELD due to the student's disability; nor will that student be denied special education services due to his/her EL status.
- The District will ensure that EL students with disabilities receive appropriate services and that limited English proficient parents/guardians are included in the Individualized Education Program ("IEP") planning process.

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- Training of the District's special education teachers, core content teachers, and teachers of Designated ELD who work with EL students with disabilities on how to provide services to EL students with disabilities, particularly disabilities affecting language acquisition and written and oral language processing and expression.
- The development of a guidance document for IEP and Section 504 teams to utilize in determining whether to provide primary language supports to EL students with disabilities, what particular supports to provide, and how to provide them.
- The District shall propose written procedures that ensure that ELs have an equitable opportunity to participate in the gifted and talented program.
- The District will monitor the EL services and English Language Proficiency progress of current EL students and the academic performance of current and former EL students through its electronic student information system(s).

The particular services, trainings, and policies included in the December 2022 Settlement Agreement in paragraphs 2 through 27, as summarized above, are meant to be continued even after the expiration of the DOJ's enforcement period for the Settlement Agreement. In negotiating the terms of the Settlement Agreement the DOJ did not intend for the corrective actions, such as those listed above, as temporary measures to be abandoned after the enforcement period of the settlement agreement was no longer in effect. While the reporting requirements of the Settlement Agreement would no longer be required after the term of the Settlement Agreement expires, that is not the expectation regarding the services, trainings, and policies developed pursuant to the Settlement Agreement. These corrective actions specifically targeted the areas of non-compliance determined through the DOJ's investigation, and to eliminate these particular services, trainings, and policies would revert the District to a status of non-compliance that would likely lead to further investigation and litigation.

The District would be specifically liable for any and all violations following the expiration of the enforcement period, and the fact that the DOJ would no longer be monitoring the District pursuant to the terms of the Agreement does not mean that it would no longer investigate any future violations. Specifically, the Settlement Agreement notes in paragraph 36 as follows:

- This Agreement will be binding upon the successor members of the District's Board of Education and successor administrators. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the EEOA or other federal laws. **The United States, consistent with its responsibility to enforce the EEOA, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA by the District.** (Emphasis added)

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As such, the elimination of the corrective actions without any meaningful, legally compliant replacement, would create future liability for the District. Further, even if alternatives to the current corrective actions are implemented, it still raises questions as to whether the District is legally compliant. The strategies, trainings, and tools implemented as part of the December 2022 Settlement Agreement have been confirmed by the DOJ to be compliant with the law and any future replacements would not have been fully vetted by the DOJ to determine compliance with the law.

Further, pursuant to the terms of the Agreement, the effective date of this Agreement is the date when both parties have signed the Agreement. The Agreement is to remain in effect for three full school years following the effective date of this Agreement. The Agreement between the District and the DOJ was signed by all Parties in December 2022. While it is anticipated that the District would achieve compliance after it submits its annual report on November 1, 2025, this is still subject to the DOJ's approval. Specifically, paragraph 37 of the Settlement Agreement states "This Agreement will remain in effect until the United States determines that the District has complied fully with its provisions and its obligations under the EEOA."

The purpose of the Specific Requirements and Reporting sections outlined in the Agreement were to remediate the District's ongoing violations of the EEOA, and ensure the appropriate implementation of the corrective actions. While the settlement agreement notes that the enforcement of the specific terms to be implemented by the District is to be in effect for three full school years, the expiration of the enforcement requirement does not absolve the District of continued compliance with the law. The elimination of the Settlement Agreement's corrective actions concerning the Provision of EL Services and Access to the Core Curriculum, Staffing and Professional Development, Special Education, GATE programs, and Program Monitoring and Evaluation would place the District out of compliance with the law and be subject to further investigation and likely litigation concerning these issues.

If you have any questions concerning the above, please do not hesitate to call me.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Carlos M. Gonzalez

cc: John W. Dietrich, Esq.