

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND  
HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT**

**TO:** all current and future Berkeley Unified School District (“BUSD”) students who have, may have, or are suspected of having a reading disability within the meaning of IDEA, Section 504, the ADA and/or California Education Code Section 56000.

**PLEASE READ THIS NOTICE. YOUR RIGHTS MAY BE AFFECTED  
BY A COURT HEARING IN THIS CASE.**

This is about a proposed settlement in a class action case filed on May 2, 2017, by four current and former BUSD students with reading disorders, including dyslexia. The case is called *Student A. et al. v. Berkeley Unified School District*, and was filed in the federal court for the Northern District of California, Case No. 3:17-cv-02510 (“Action”).

The students who brought the case claim that BUSD discriminates against and fails to provide students with reading disabilities a Free Appropriate Public Education (“FAPE”), to which they are entitled to under federal and state law. BUSD denies that there is any factual or legal basis for the plaintiffs’ claims.

The Action has been actively litigated. The students and BUSD (“the Parties”) have also participated in extensive settlement negotiations. Based on the negotiations, the Parties have reached a class-wide settlement and have entered into a Class Action Settlement Agreement (“Settlement”). The Court has preliminarily approved the Settlement. The Court has not ruled on who should prevail in his case. The Parties have entered into the Settlement to avoid the burden, expense, and uncertainties of continued litigation.

**THE SETTLEMENT CLASS**

If you are a student or will be a student at BUSD (or the education rights holder of any such student) who has, may have, or are suspected of having a reading disability within the meaning of IDEA, Section 504, the ADA and/or Section 56000, you may be a member of the proposed settlement class. Your rights may be affected by the Settlement.

**SUMMARY OF THE PROPOSED SETTLEMENT**

**Literacy Improvement Plan:**

BUSD will work collaboratively with nationally recognized outside consultants to develop and implement a Literacy Improvement Plan (“Plan”) to improve reading and language arts achievement for all students, especially those with or at risk for reading disabilities. The Plan will be implemented over three to five years and includes the following:

- BUSD will provide appropriately intensive and early research-based reading intervention services, related services, supplementary aids and services,

accommodations, and modifications, including, but not limited to, assistive technology and accessible materials, to students with reading disabilities.

- BUSD will implement policies to promote early and successful reading.
- BUSD will maintain systematic, equitable, and verifiable policies and practices to provide early, intensive, research-based general education interventions for students at risk for reading disabilities. These will be facilitated by universal screening and progress monitoring of reading growth to promote timely evaluation and identification of students at risk for reading disabilities.
- BUSD will conduct a review and assessment of its core reading program.
- BUSD will choose and implement a “reading data system” and “reading testing system” for use in Grades K-8 to measure students’ reading fluency, and their progress toward “benchmarks” or academic goals.
- BUSD will maintain a routine and practical method to carry out Child Find duties to identify students with suspected reading disabilities.
- BUSD will implement policies and procedures to improve IEP goal and Section 504 plan development, progress monitoring, and use of appropriately intensive, research-based interventions. BUSD will transition to the Pattern of Strengths and Weaknesses (“PSW”) for specific learning disability eligibility (“SLD”). BUSD has also selected the Wilson Reading System for use with struggling readers.
- BUSD will create an Implementation Team including the BUSD Director of Schools, Director of Special Education, and Section 504 Plan Coordinator. This team will report to the School Board at least quarterly on progress on the Plan.
- BUSD leadership will support the Plan through targeted professional development for teachers and related-services personnel, and ongoing monitoring of staff engagement and perceptions about the Plan.

### **Monitoring by Outside Monitor**

BUSD will retain an impartial outside Monitor to provide a Monitoring Plan to the School Board and Implementation Team, receive progress reports on compliance from BUSD, and submit semi-annual progress reports to the School Board and Implementation Team.

### **Term of Settlement**

The Settlement lasts for three years after its Effective Date, which depends on whether there are objections to the Settlement and, if so, whether any objector files any appeal.

## **Release of Claims**

The Settlement resolves and releases any and all claims for injunctive, equitable, or declaratory relief that are the subject of, included within, and/or arise from the Action, including such claims which could have been brought as educationally-based claims under IDEA, Section 504, ADA, and/or Section 56000, arising from May 2, 2017, through the Term of the Agreement. The Settlement does not bar any administrative or judicial action by a student Plaintiff or Settlement Class Member alone, claiming that the individual student is not receiving a free and appropriate public education in the least restrictive environment to which the individual is entitled under IDEA, Section 504, the ADA or California law.

## **Attorneys' Fees**

The class was represented by Disability Rights, Education & Defense Fund ("DREDF"), Jacobson Education Law ("JEL"), King & Spalding LLP, and Goodwin Proctor LLP (together "Class Counsel"). BUSD has agreed to pay \$350,000 for attorneys' fees and costs, with this amount to be split equally by DREDF and JEL. BUSD is represented by Gordon Rees Scully Mansukhani LLP.

## **Fairness of Agreement**

The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing, finally approving the Settlement as fair, reasonable and in the best interests of the Class Members.

The class representatives and Class Counsel have decided that the Settlement is fair, reasonable, and in the best interests of the class. In reaching this decision, the class representatives and Class Counsel have worked with and consulted with nationally recognized literacy experts, thought about the pros and cons of the settlement, the possible outcomes, costs, and length of more litigation and appeals of these issues.

## **OBJECTIONS TO THE SETTLEMENT**

The Court has given preliminary approval of the Settlement, and has scheduled a hearing for November 4, 2021 at 2:00 p.m. in the Courtroom of the Honorable Judge Jon S. Tigar, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, to determine whether the proposed Settlement Agreement is fair and reasonable and should be finally approved.

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to change the settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

All written objections and supporting papers must (a) identify the case name and number (Student A. et al. v. Berkeley Unified School District, N. D. Cal. Case No. 4:17-cv-02510), (b) include the full name, address, and phone number of the objector, (c) include a

statement of each objection, (d) include a written brief detailing the reasons for each objection, any legal and factual support, and facts demonstrating the objector is a Settlement Class Member, (e) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California (check COVID-19 orders before visiting), (g) be filed or postmarked on or before October 1, 2021.

If you are a Class Member and you have filed a timely written objection that includes a statement of your intention to participate in this hearing, you may participate in, and be heard at, this hearing. You are not required to appear. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. This hearing date may be changed by the Court without further notice to the entire class. If you wish to be on the electronic service list to be informed of any changes to the schedule, please file a notice of appearance with the Court which includes a valid e-mail address at which you can receive notice.

### **HOW TO OPT OUT OF THE SETTLEMENT**

You may request to be excluded, or “opt out,” from the Settlement Agreement. Class members who request to be excluded from the Settlement will NOT have released their claims for injunctive, equitable, or declaratory relief. They will then be entitled to pursue such claims in a separate action. If you do not request to be excluded from the Settlement Agreement, you will be releasing your claims as described above in the “Release of Claims” section of this notice.

To request to be excluded from the Settlement Agreement, you *must* prepare and submit a written request. The request must provide (a) the class member’s full name, (b) a statement that the class member wishes to be excluded from the settlement class in *Student A. et al. v. Berkeley Unified School District*, Case No. 4:17-cv-02510-JST, and (c) the class member’s signature. The request must be submitted to the Court either by mailing it to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, or by filing it in person at any location of the United States District Court for the Northern District of California (check COVID-19 orders before visiting), (d) be filed or postmarked on or before October 1, 2021.

**IF YOU DO NOT TIMELY SUBMIT AN OBJECTION OR REQUEST TO OPT OUT AS DESCRIBED HEREIN, YOU WILL WAIVE YOUR OBJECTION AND RIGHT TO OPT OUT AND BE FORECLOSED FROM MAKING ANY OBJECTION TO OR REQUEST TO OPT OUT FROM THE SETTLEMENT. IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT APPEAR OR FILE ANYTHING IN WRITING.**

### **BINDING EFFECT**

The Settlement, if given final approval by the Court, will bind all members of the Settlement Class. This will prevent any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement for the term of the Settlement.

### **FURTHER INFORMATION**

This notice summarizes the proposed Settlement. Complete copies of this notice and the Settlement Agreement, motions for approval of the class settlement, motions for attorneys' fees, and other important documents in this case are available at <https://dredf.net/student-a-settlement> or from class counsel at Disability Rights, Education, and Defense Fund, Attn: Malhar Shah, Telephone (510) 644-2555, ext. 5230, [mshah@dredf.org](mailto:mshah@dredf.org), or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave. San Francisco, CA 94102 (call 415-522-2000 to seek authorization during COVID-19).

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

**To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.**