

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT Agreement and Release ("Agreement") is entered into by and between Berkeley Unified School District ("District") and Mina Sun, on behalf of her minor child KW ("Advocates"). The District and Advocates are hereafter referred to as the "Parties."

RECITALS

Whereas, Advocates raised concerns in a letter dated December 2, 2020 ("Letter") that the District may be violating the Americans with Disabilities Act (ADA), 42 U.S.C. § 12181, et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and related California statutes by using online learning technology that allegedly did not fully comply with Cal Gov. Code §§ 7405(a) and 11135;

Whereas, the District denies that it violated the law or failed to meet its legal obligations;
Whereas, in order to avoid the substantial expense and inconvenience of potential litigation;

THEREFOR, the Parties desire to resolve the concerns related to the Letter in full and fair consideration of the following terms set forth in this Agreement.

A. Definitions

The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning and as defined in the provisions of Exhibit A (BUSD Instructional Software Review and Approval Process) and Exhibit B (Accessibility Review Process and Checklist) attached to this Agreement.

1. "District" refers to the Berkeley Unified School District
2. "Effective Date" refers to the date by which this Agreement is fully executed by all Parties following approval of the Agreement by the Berkeley Unified School District Board of Education (hereafter, "the Board").
3. "Advocates' Counsel" refers to TRE Legal Practice and Brown, Goldstein & Levy, LLP.

B. District Policies

1. Within three months of the Effective Date, the District shall implement the provisions of Exhibit A (BUSD Instructional Software Review and Approval Process) and Exhibit B (Accessibility Review Process and Checklist) attached to this Agreement and begin applying this process to all new Instructional Software acquisitions. Within twelve months of the Effective Date, the District shall apply these provisions to Instructional Software acquired prior to the Effective Date as needed to achieve complete compliance. This twelve month period will be used to complete the evaluation and replacement of existing software. BUSD will begin the process of

evaluating all software, both new purchases and existing software, promptly upon the Effective Date of this Agreement.

2. For a two year period after the Effective Date, counsel for the Parties shall confer by teleconference twice a year, between consecutive academic semesters, during the term of this Agreement, to discuss how the policy changes are progressing.

C. Condition Precedent

As a condition precedent, this Agreement is subject to formal approval by the Board, which approval will be communicated to Advocates' Counsel.

D. Enforcement of Agreement

1. The enforcement period of this Agreement shall be two years from the Effective Date.

2. All disputes concerning compliance with this Agreement shall be resolved according to the process described in the following three paragraphs.

3.-Counsel for a Party (or Parties) shall notify counsel for the other Party (or Parties) in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the obligations set forth in this Agreement

4. Unless otherwise agreed to by the Parties, within fifteen (15) business days after receipt of a written notification of a dispute pursuant to the previous paragraph, the Parties agree to schedule a mutually agreeable date to meet and confer in good faith with respect to any particular dispute.

5. In the event that the Parties are unable to resolve their dispute after twenty one (21) days of meet and confer negotiations, any party may submit the dispute to the United States District Court for the Northern District of California for resolution. In connection with such a proceeding, a party may claim and recover reasonable attorneys' fees and costs either in accordance with applicable law or if it prevails in establishing that the other party materially breached this Agreement.

E. Attorneys' Fees and Costs

1. Within 90 days of the Effective Date, the District shall make a total payment of \$49,756.50 to TRE Legal Practice for the portion of Advocates Attorneys' fees and costs that the District negotiated, exclusive of any portion of Complainants' Attorneys' fees and costs negotiated by third parties.

The District shall mail the above payment to TRE Legal Practice, 1155 Market Street, Tenth Floor, San Francisco, CA 94103, or electronically wire funds as agreed upon and according to instructions provided by Advocates' Counsel.

F. Release

1. Upon the Effective Date of this Agreement, and continuing through the period of enforcement set forth in this Agreement, Advocates and their executors, successors, heirs, assigns, administrators, agents, and representatives, in consideration of the relief set forth herein, fully and finally release the District and each of its respective present, former, or future officers, directors, and employees (collectively, "Released Parties") from any and all liability, claims and demands related to the alleged inaccessibility of the District's educational programs and activities offered through any distance, online and/or remote learning tools or systems as described in the Letter, including but not limited to alleged violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA"); the California Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq.; the California Disabled Persons Act, Cal. Civ. Code § 54 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Cal Gov. Code §§ 7405(a) and 11135. This release does not extend to those rights which as a matter of law cannot be waived or that were not the subject of the Letter that resulted in the negotiation of the terms of this Agreement.

2. Advocates expressly waive the rights provided under California Civil Code Section 1542, relating to the subject matter of the Letter as to the District and the District's Released Parties, which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3. Advocates understand the significance and consequences of a California Civil Code Section 1542 waiver, and they expressly and knowingly assume full responsibility for, and risk of, any damages or losses caused by this waiver. Advocates consulted with independent counsel, or had and declined the opportunity to do so, and executed this Agreement with a complete understanding of its legal effect. Advocates understand that by executing this Agreement, they expressly waive all of the aforementioned rights, and bind themselves to the terms of this Agreement.

G. Miscellaneous

1. This Agreement and any exhibits hereto contain the entire agreement and consideration between the Parties. The terms of this Agreement supersede any prior discussions, understandings, or agreements between the Parties relating to this matter. No modifications or limits will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all of the Parties.

2. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

3. This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.

4. This Agreement shall be governed, construed, and interpreted in accordance with the laws of California.

5. In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect. Nothing in this Agreement shall be construed to require the District to act contrary to state or federal laws, regulations, or guidelines.

6. The Parties, having carefully read this Agreement, and having consulted or having been given an opportunity to consult legal counsel, hereby acknowledge their agreement to all of the foregoing terms and conditions by executing this Agreement. Each signatory hereto represents and warrants that it is authorized to sign this Agreement on behalf of the respective party. This Agreement may be executed in any number of counterparts, and each such counterpart shall be an original and together they shall constitute one agreement. Facsimile and PDF signatures on this Agreement shall be treated as original signatures. A copy of this Agreement shall be treated as an original.

For Berkeley Unified School District:

By:

Name and Title

Date

By:

Name and Title

Date

For Mina Sun, on behalf of her minor child KW:

By:

Name and Title

Date