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13 Attorneys for Petitioners

14 **SUPERIOR COURT OF CALIFORNIA**
 15 **IN AND FOR THE COUNTY OF ALAMEDA**

16 PARENT VOICES OAKLAND, JENNIFER
 17 JOHNSTON, TINA TERRAZAS, HAWA
 18 MASSALEY and BRANDIE BROWNLEE,

19 Petitioners,

20 v.

21 JACK O'CONNELL, in his capacity as Chief
 22 Executive Officer of the Department of
 23 Education; CALIFORNIA DEPARTMENT
 24 OF EDUCATION; JOHN WAGNER, in his
 25 capacity as Director of the California
 Department of Social Services; and
 CALIFORNIA DEPARTMENT OF SOCIAL
 SERVICES,

26 Respondents.

FILED
 ALAMEDA COUNTY
 JUN 22 2011
 CLERK OF THE SUPERIOR COURT
 By _____ Deputy

Case No. RG10544021

**STIPULATED ORDER OF FINAL
 SETTLEMENT**

Date: June , 2011

**ASSIGNED FOR ALL PURPOSES TO
 JUDGE WYNNE CARVILL**

DEPARTMENT 21

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1 IT IS HEREBY STIPULATED AND AGREED, by and between Petitioners and
2 Respondents, through their respective attorneys of record herein, as follows:

3 **RECITALS:**

4 1. On October 8, 2010, Governor Schwarzenegger vetoed all funding for Stage 3
5 child care services for FY 2010-11 effective November 1, 2010. Petitioners' Application for
6 Interim Relief and Petition for Writ of Mandamus was filed on October 28, 2010 to challenge the
7 procedures by which the Respondent California Department of Education ("CDE") was
8 implementing the termination of subsidized child care services on November 1, 2010 for the
9 Stage 3 child care services program.

10 2. On November 5, 2010, this Court issued an Order Granting in Part and Denying
11 in Part Petitioners' Application for Interim Relief. ("Interim Order", attached as Exhibit "A").
12 The Interim Order did not hold that CDE must provide appeal hearings, as Petitioners had
13 contended, but enjoined CDE from terminating Petitioners' Stage 3 child care services until it
14 had issued a new notice which adequately informed recipients that they might qualify for other
15 subsidized child care services administered by CDE. The Interim Order further required CDE to
16 notify recipients that they were entitled to have contractors screen them for potential eligibility
17 for other CDE-administered child care services, and for contractors to use their best efforts to
18 place them in a manner consistent with the continuity of care provisions of California Education
19 Code § 8263 (c). Interim Order, ¶¶ 23-24.

20 3. Following the issuance of the Court's Interim Order, the Parties disagreed about
21 how the Order was to be implemented and entered into negotiations resulting in a Stipulation and
22 Order for Implementation of the Court's November 5, 2010 Order ("Stipulation and Order",
23 attached as Exhibit "B"), which specified the procedures to comply with the Interim Order; that
24 is, procedures by which families would be screened on an individual basis for eligibility for
25 enrollment in other child care programs, and for administering a lottery to distribute available
26 subsidized child care slots administered by CDE's contractors. The Stipulation and Order further
27 provided that all Stage 3 families would receive continued child care services through December
28 31, 2010, to allow sufficient time for the issuance of new notices, the individualized screening of

1 affected families and the administration of the lottery. CDE further agreed that the names of all
2 Stage 3 families who had lost care as of December 31st would be included on a separate CDE
3 Stage 3 "hold" list, to be maintained by CDE through each County's Centralized Eligibility List
4 (CEL), with the names "flagged" for the purpose of tracking former Stage 3 families. The
5 Stipulation further provided that the Stage 3 families who were included on the "hold" list would
6 be considered "eligible for and otherwise in enrolled but waiting status" until March 20, 2011.
7 This date was extended to July 31, 2011 by a Supplemental Stipulation and Order described in
8 ¶4, below.

9 4. On February 17, 2011, the Parties entered into a Supplemental Stipulation and
10 Order ("the Supplemental Stipulation and Order", attached as Exhibit "C"). The Supplemental
11 Stipulation and Order contemplated the restoration of funding for fiscal year 2010-2011 for the
12 Stage 3 child care program, and provided for notices to be sent to all former Stage 3 families
13 whose names were on "the hold list," informing them that they were eligible for reenrollment in
14 the Stage 3 child care program. These notices and reenrollment procedures also applied to the
15 Stage 2 families who had "timed out" of Stage 2 on or after December 31, 2010 and before June
16 30, 2011, and whose names CDE had subsequently agreed to place on "the hold list". The
17 Supplemental Stipulation and Order specifically exempted two groups of former Stage 3 families
18 from these notice procedures. By agreement of the Parties, both the former Stage 3 families who
19 enrolled in CDE-funded center-based child care and those families who had been enrolled in the
20 Alternative Payment Program (APP vouchers) as a result of the lottery would not be transferred
21 back onto Stage 3 "at this time." Supplemental Stipulation and Order, ¶5.

22 5. Because of the uncertainty of the sufficiency of interim funding for Stage 3 and
23 the uncertainty surrounding enactment of a 2011-2012 budget, the Parties signed a Second
24 Supplemental Stipulation on April 19, 2011 (attached as Exhibit "D"), agreeing that resolution of
25 the final implementation issues in this case had been delayed pending enactment of the 2011-
26 2012 budget, and that the case management conference and hearing on a writ of mandate should
27 be continued until May 16, 2011.

1
2 **STIPULATED TERMS OF AGREEMENT:**
3

4 7. The Parties now wish to enter into this Stipulated Order of Final Settlement to resolve the
5 remaining issues in this case without the need for further litigation, and in accordance with the
6 following terms and conditions:

7 8. Former Stage 3 families who are currently enrolled in CDE center-based child
8 care programs. If funding is appropriated for Stage 3 services for fiscal year 2011-2012, then,
9 unless any legislative enactment provides to the contrary, within 30 days of this appropriation
10 taking effect, CDE will instruct its contractors through a Management Bulletin to send written
11 notice in the next 14 days to former Stage 3 families in center-based care that clearly informs
12 them of the option to remain with their current child care and development services or to return
13 to Stage 3 child care services effective on or after the first day of the following month. CDE
14 shall also instruct its contractors in the Management Bulletin that the notice shall advise these
15 families that they will forfeit their right to return to Stage 3 child care if, within 30 days of the
16 mailing of this written notice, or such longer time voluntarily agreed to by the contractor(s), they
17 do not contact the contractor's office and request reenrollment back into Stage 3 child care.
18 CDE shall give Petitioners' Counsel the opportunity to review and comment on the draft of
19 CDE's proposed Management Bulletin prior to its issuance.

20 9. Former Stage 3 families who are currently enrolled in the APP voucher program.
21 Similarly to ¶ 8 above, if funding is appropriated for Stage 3 services for fiscal year 2011-2012,
22 then, unless any legislative enactment provides to the contrary, CDE will also instruct its
23 contractors via a Management Bulletin to send written notice in the next 14 days to former Stage
24 3 families currently in the APP voucher program that clearly informs them of the option to
25 remain with their current child care and development services or to return to Stage 3 child care
26 services effective on or after the first day of the following month. CDE shall further instruct its
27 contractors that the notices provided to these APP voucher families shall be similar in form to
28 those provided in ¶ 8 above, advising families of the opportunity to exercise their option to enroll
back into Stage 3, and that if they do not exercise that option by contacting the contractor's

1 office within 30 days of the date the contractor mailed out the written notification, or such longer
2 time voluntarily agreed to by the contractor(s), they will have lost their right to reenroll in Stage
3 3 funded child care services.

4 10. CDE shall further instruct its Stage 3 contractors that the notices provided for in
5 Paragraph 8 and 9 shall provide the contractor's contact information and advise families that if
6 they have questions regarding whether or not to exercise their option to reenroll in Stage 3, they
7 should contact the contractor for information.

8 11. In the event that the fiscal year 2011-2012 budget, when enacted, does not
9 provide funding for Stage 3 child care services, the former Stage 3 families enrolled in the CDE
10 center-based programs and the APP voucher programs shall remain in those programs, unless
11 any legislative enactments provide to the contrary, so long as they remain eligible for such
12 services.

13 12. This stipulation does not otherwise prevent CDE's contractors from modifying or
14 terminating a family's child care services, in accordance with CDE regulations, for failure to
15 meet eligibility requirements.

16 13. Within 15 days of the signing of this Stipulation, CDE will issue a Management
17 Bulletin (MB) to its Stage 3 contractors, as set forth below. The Management Bulletin shall
18 instruct the contractors that any former Stage 3 or timed out Stage 2 families and children who
19 were eligible to be placed on the CDE "hold list" as set forth in ¶¶ 18 and 19 of the November
20 Stipulation and Order, but may not have been placed on that list or may not have received
21 notification that Stage 3 child care has been restored, be given a final opportunity to reenroll in
22 Stage 3 child care. The MB shall also instruct contractors who have not already taken such
23 steps, to do the following: a) use available internal lists or databases to identify those families
24 and children who lost their Stage 3 child care as a result of the Governor's October 8, 2010 veto,
25 and/or who have timed out of Stage 2 on or after October 31, 2010; b) send written notice to
26 those identified families who were not already notified pursuant to MB 11-04 that Stage 3 child
27 care had been restored; c) include in the notice an explanation of the steps the identified families
28 care had been restored;

1 must take to be screened for Stage 3 eligibility; and d) allow an additional minimum 45 day re-
2 enrollment period. CDE shall also encourage contractors to inform child care providers serving
3 these families that the families may be eligible for Stage 3 reenrollment and should contact their
4 contractor to be screened for eligibility. Contractors who wish to do more than these minimum
5 guidelines may do so. Contractors are not required to send the notice described in "b" above to
6 those families where all the children are receiving center-based or APP voucher child care and
7 were specifically exempted from receiving notice at this time pursuant to ¶5 of the February 17
8 Supplemental Stipulation. Upon completion of these steps, it will be presumed that CDE has
9 complied with its obligations pursuant to the February Stipulation to notify affected families of
10 the opportunity to reenroll in Stage 3 child care. The parties agree to stay discovery on
11 enforcement issues pending fulfillment of the requirements of this paragraph. Once the
12 requirements of this paragraph have been met, Petitioners waive their right to conduct discovery
13 related to enforcement issues. CDE shall give Counsel for Petitioners, at least 24 hours prior to
14 issuance of the MB, the opportunity to review and comment on the draft MB.
15

16
17 14. The parties agree that neither the existence of this Agreement nor any of its terms
18 nor compliance with this Agreement shall be taken or construed as an admission of any
19 wrongdoing on the part of any party.

20 15. In the event of an alleged breach or non-performance by CDE of the terms of this
21 Stipulated Agreement, the Parties will make a good faith effort to meet and confer to resolve any
22 concerns about Respondent's actions or failure to act before filing any request for enforcement
23 with the Alameda County Superior Court.


24 16. The Parties shall try to negotiate a resolution of Petitioners' claim for attorneys'
25 fees, costs and litigation expenses to avoid the necessity of further litigation. Petitioners will
26 submit a written settlement proposal to resolve their claim for fees, costs and litigation expenses
27 to CDE within sixty (60) days from the date Respondents have completed their implementation
28 pursuant to ¶¶ 8, 9 and 13. CDE will respond to such proposal within sixty (60) days from

1 receipt of the written proposal. Thereafter, the Parties will make further efforts to negotiate a
2 final resolution of this claim for fees, costs and litigation expenses for a period not to exceed
3 thirty (30) days. Should that effort not result in a final resolution of these claims, Petitioners
4 shall file a motion for an award of reasonable attorneys' fees, costs and/or litigation expenses
5 within sixty (60) days following the close of the meet and confer period.

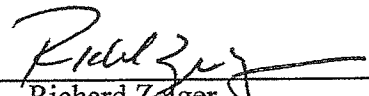
6 17. Following the enactment of the 2011-2012 budget, Respondent's compliance with
7 the terms and conditions of this Stipulation, and the resolution of Petitioners' claims for
8 attorneys' fees and costs, this Petition will be dismissed without prejudice as moot.

9
10 IT IS SO STIPULATED:

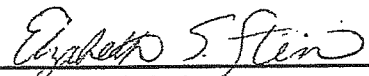
11 Dated: June 21, 2011

12 By: 
13 Stephen E. Ronfeldt
14 The Public Interest Law Project
15 Attorneys for Petitioners

16 Dated: June 16, 2011

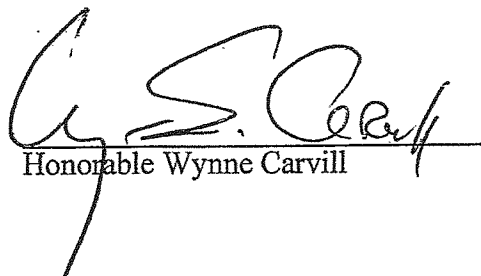
17 By: 
18 Richard Zelger
19 Chief Deputy Superintendent
20 California Dept. of Education
21 Respondent

22 Dated: June 16, 2011

23 By: 
24 Elizabeth S. Stein
25 Deputy General Counsel
26 Department of Education
27 Attorney for Respondents

28
IT IS SO ORDERED:

Dated: June 22, 2011


Honorable Wynne Carvill