

First Amended Consent Decree

In The Matter of

*Emma C. v. Delaine Eastin, et al.* Case No. C-96-4179

a certified class action pending in the United States District Court  
for the Northern District of California

This First Amended Consent Decree (herein the "Decree") is agreed to as of this 12th day of March, 2003, by and between the California Department of Education, the Superintendent of Public Education, Jack O'Connell in his individual capacity, the State Board of Education and any past or present member of the State Board of Education in their individual capacities (collectively referred to as "CDE"); and the Ravenswood City Elementary School District, Dr. Floyd Gonella, Adam Mitchell, Todd Gaviglio, Jaqueline Green, Marcelino Lopez, Chester Palesoo, the Board of Trustees of Ravenswood, and any past and present member of the Board of Trustees of Ravenswood (collectively referred to as "Ravenswood" or the "District"); and Plaintiffs in *Emma C. v. Eastin, et al.*, United States District Court Case No. C-96-4179 (TEH), a certified class action (the "Class Action" or "this Action"). Plaintiffs shall be referred to herein as either "Plaintiffs" or "Class Members." The Parties herein shall be referred to as the "Parties."

Whereas the Class Members, Plaintiffs in the Emma C. Class Action, are children with disabilities who were, are now, or will be in the future residing within the jurisdiction of Ravenswood, and who were, are now, or will be in the future entitled to a free appropriate public education ("FAPE") under federal and state laws, and

Whereas counsel for Plaintiffs filed a complaint initiating this Class Action by and through Plaintiffs' respective guardians ad litem (all Class Members' parents and/or guardians shall be referred to herein as "Parent/Guardian(s)"), against CDE and Ravenswood on November 18, 1996 (hereinafter the "Complaint"), and

Whereas Plaintiffs alleged in the Complaint, among other things, that Ravenswood failed to comply with federal and state laws which protect children with disabilities. Such laws include the Individuals with Disabilities Act ("IDEA") and Section 504 of the Rehabilitation Act of 1983

(“Section 504”). Plaintiffs further alleged that Ravenswood’s failure to comply with such laws results in the denial of FAPE in the least restrictive environment (“LRE”) to Class Members. Plaintiffs further alleged that CDE failed to monitor and ensure that all Class Members received FAPE and Compensatory Education services; and

Whereas an original Consent Decree was agreed to by the Parties on or around September 2, 1999 and approved by Judge Thelton Henderson of the United States District Court for the Northern District of California and adopted as an order of the Court on January 18, 2000, and that original Consent Decree incorporated a corrective action plan for Ravenswood (the “RCAP”) which was developed by monitors hired by the CDE; and

Whereas on March 19, 2001, Plaintiffs filed a motion for an order to show cause why Ravenswood should not be held in contempt for violation of the provisions of the original Consent Decree (including the RCAP), ultimately resulting in an Order by the Court of October 4, 2001 finding Ravenswood in contempt and delaying any decision on remedy until after March 31, 2002; and

Whereas the issues of whether Ravenswood has purged itself of contempt and, if not, the appropriate remedy, have been the subject of extensive litigation during the last several months, and the Parties wish to settle and resolve these issues without further contempt proceedings; and

Whereas the Parties wish to amend and supplant the provisions of the original Consent Decree with this First Amended Consent Decree (including its attachments and any future supplements and modifications made to it pursuant to the terms of this Decree); and

Whereas the primary goals of this First Amended Consent Decree are to guarantee that each Class Member, including past, present and future students who reside within the jurisdiction of Ravenswood, receives FAPE in the LRE.

NOW THEREFORE, the Parties agree on the following terms and conditions:

*1.0 Implementation of the Revised Ravenswood Corrective Action Plan ("RCAP")*

1.1 Presumption Regarding the Availability of FAPE for Class Members

The Parties have created a Revised RCAP, which is incorporated by reference into this First Amended Consent Decree. The purpose of the Revised RCAP is to ensure that all Class Members receive FAPE in the LRE. The Parties agree that compliance with the Requirements set forth in the Revised RCAP shall raise a rebuttable presumption that there exists in Ravenswood a system capable of providing FAPE to Class Members. As set forth in more detail in Paragraphs 7.0, 8.0 and 13.0 below, Class Members shall have the right to challenge whether Ravenswood has met the Requirements of the Revised RCAP, and/or whether Ravenswood is providing FAPE to Class Members.

Nothing in this First Amended Consent Decree limits or forecloses the rights of any individual Class Member to assert claims or otherwise seek redress against Ravenswood or the CDE for their failure to provide services or to otherwise fulfill their obligations to the individual Class Member under the IDEA or other applicable state or federal law. This includes, but is not limited to, individual Class Members' claims for compensatory education, claims regarding the provision of FAPE and Section 504, and claims made against the CDE for the provision of services directly to any Class Member if and when Ravenswood is unwilling or unable to fulfill its legal obligations. Nothing in this First Amended Consent Decree limits or changes the obligation of CDE to ensure that children in Ravenswood have available a FAPE in LRE.

*2.0 The Revised RCAP*

2.1 Percentages of Compliance. Ravenswood is required to demonstrate that it has achieved institutional compliance with the Requirements of the Revised RCAP. To the extent

the Expected Results or Corrective Activities in the Revised RCAP differ from the Requirements, the Requirements define Ravenswood's obligations. To demonstrate institutional compliance, Ravenswood must demonstrate (i) 100% compliance with each Requirement in the Revised RCAP, unless a different percentage of compliance is expressly stated with respect to a particular Requirement, or (ii) with respect to any and all of the Requirements in the Revised RCAP, Ravenswood will be deemed to have attained the Applicable Percentage Compliance if (a) the difference between Ravenswood's actual percentage compliance and the required percentage compliance is no more than 5% and (b) Ravenswood demonstrates that the required percentage compliance was not attainable despite Ravenswood's consistent and substantial efforts. By satisfying either subsection (i) or (ii) herein, Ravenswood will be deemed to have attained the Applicable Percentage Compliance.

Attainment of Applicable Percentage Compliance is a defense to a finding of contempt but is not a defense to the failure to provide FAPE to any individual class member or to comply with state and federal standards.

2.2 Maintenance Periods. The Revised RCAP requires Ravenswood to comply with certain Requirements for designated "Maintenance Periods." A Maintenance Period shall run from the first day of the reporting period for which the Monitor determines that the District has satisfied the Applicable Percentage Compliance, unless the Court finds to the contrary.

In order to satisfy a Maintenance Period, Ravenswood must maintain the Applicable Percentage Compliance for the entire, uninterrupted duration of the Maintenance Period.

Pursuant to Paragraph 14.0 below, Ravenswood and CDE shall begin to comply with the provisions of this First Amended Consent Decree on March 1, 2003. Ravenswood may demonstrate that the Maintenance Period for a Requirement should begin to run prior to final

entry of this Decree by the Court, if: (i) the Monitor determines that he has sufficient evidence to evaluate Ravenswood's compliance with the Requirement, and (ii) the Monitor determines that Ravenswood has satisfied the Applicable Percentage Compliance for the Requirement and the Plaintiffs do not object to that determination; or the Court finds that Ravenswood has satisfied the Applicable Percentage Compliance for the Requirement.

2.3 Quarterly Reviews. Pursuant to the Revised RCAP, evidence of Ravenswood's compliance with certain Requirements will be reviewed quarterly by the Monitor.

The Monitor shall complete his review of Ravenswood's compliance with the certain Requirements no later than the first Monday in the months of November, February, April and July each year. The Monitor shall conduct his first quarterly review under this Consent Decree for the fourth quarter of the 2002-03 school year. To the extent the Revised RCAP requires the Monitor to observe classrooms, interview teachers, or otherwise interact with Ravenswood's operations, Ravenswood and the Monitor shall work to coordinate schedules and otherwise minimize any disruption of classroom activities.

2.4 Parents/Guardians. In any instance in which the Revised RCAP refers to a child's parent or parents, it means either the parents of the child or the child's legal guardian(s).

### *3.0 Ravenswood's Obligations to Class Members*

#### *3.1 Responsibilities to Class Members*

Ravenswood is required under state and federal law to make available a free appropriate public education in the least restrictive environment to all children with disabilities who reside in the District. Ravenswood recognizes that, among other things, this means that it is legally obligated to identify children suspected of having disabilities; appropriately assess their needs; develop, review and revise appropriate and timely individualized education programs ("IEPs");

and provide all services called for in the IEPs. Ravenswood recognizes that this also means that it is required to provide compensatory education and related services to eligible students.

Ravenswood agrees to comply with the Revised RCAP and any amendments and/or modifications to the Revised RCAP that are made in accordance with this Decree. Ravenswood acknowledges that it must assure that corrective actions are implemented and services are provided in a manner designed to improve educational results for Class Members.

Ravenswood's obligation to implement the Revised RCAP shall exist and continue to exist until the Court determines, as set forth in Paragraph 18.10 below, that Ravenswood has complied with the Requirements of the Revised RCAP, there exists in Ravenswood a system capable of providing FAPE to the Class Members, and Ravenswood and CDE have satisfied each of their respective obligations under this First Amended Consent Decree.

### 3.2 RCAP Requirements

The Revised RCAP contains various Requirements that are designed to establish a system capable of providing FAPE in the LRE to all children with disabilities. Ravenswood shall demonstrate its compliance with each of the Requirements by gathering the Evidence of Performance for each Requirement and preparing a Report of Compliance with each of the Requirements approximately every three months of the school year. Ravenswood shall file its report with the Court and serve it on the Monitor and the Parties by no later than the fourth Monday in the months of November, February, April and July each year beginning with July 2003. Along with its report, Ravenswood shall also serve the Evidence of Performance on the Monitor for his review. The Monitor shall make the Evidence of Performance available to the Plaintiffs and CDE within 4 days of any request by Plaintiffs or CDE to review it. If any other Party has good cause to believe that Ravenswood's Report of Compliance does not accurately

reflect Ravenswood's compliance with the Requirements, that Party shall, within 30 days of receiving Ravenswood's Report of Compliance, provide to the Monitor, file with the Court and serve on all other Parties, a written statement setting forth in detail its objections to Ravenswood's Report of Compliance. The failure of a party to submit a written statement setting forth its objections shall not be considered to indicate agreement with the Ravenswood Report of Compliance.

Ravenswood's obligation to comply with the Requirements shall continue until the Court determines, as set forth below, that Ravenswood has complied with each Requirement for its applicable Maintenance Period.

### 3.3 Ravenswood to Provide Accounting

Ravenswood shall provide to the Court, the Monitor and the Parties by no later than July 15 each year, an accounting of the funds spent in connection with the implementation of the Revised RCAP during the immediately preceding school year, including identifying the recipients of such payments, nature of the goods and services provided, and the amounts paid.

### 3.4 Compensatory Education Claims

Parents of children with disabilities may submit claims for compensatory education. Claims for compensatory education shall be handled in accordance with the Procedural Safeguards established under California law (including, at the parents' request, mediation prior to or after a request for a due process hearing), with the following exceptions:

- a) The District shall consent to mediation of any claim for compensatory education services whenever a parent requests mediation in accordance with California law.
- b) The District shall submit a copy of all claims for compensatory education to the Monitor who will log the claim and record the results of the claim.

c) If any mediation of a claim for compensatory education services concludes with an impasse between the parties, the mediator shall, with the consent of the parent, provide the parent and the District with a non-binding recommendation concerning resolution of the claim.

#### *4.0 CDE's Obligations to Class Members*

##### 4.1 Responsibilities to Class Members

CDE is responsible under federal and state law to ensure that children with disabilities who reside in Ravenswood have a free appropriate public education provided to them in the least restrictive environment. As part of this responsibility, CDE shall implement an effective monitoring system and complaint resolution procedure. CDE shall ensure Ravenswood's performance of all of its obligations under this Decree. CDE's obligations shall continue until the Court makes the determination pursuant to Paragraph 18.10 below.

4.2 CDE Liaison. To facilitate the performance of this Decree, the CDE shall appoint a single liaison to Ravenswood, who shall be available to facilitate implementation of CDE's obligations, to receive and address complaints, inquiries, comments or suggestions regarding this Decree and/or the availability of FAPE in the LRE to children with disabilities in Ravenswood.

4.3 Reporting Regarding State-Level Monitoring. Immediately upon the issuance of this Amended Consent Decree and continuing on a semi-annual basis thereafter, the CDE shall file with the Court and serve upon the Parties, reports regarding the CDE's state-level monitoring system. The written reports satisfying this obligation are: those progress reports prepared in the normal course of CDE's business to the U.S. Department of Education, Office for Special Education and Rehabilitative Services, the California Legislature, the focused monitoring stakeholders group, SELPA directors, the State Board of Education, and the California Special Education Advisory Committee. Immediately upon issuance of this Amended Consent Decree

and continuing on a quarterly basis thereafter, CDE shall also file with the Court and serve upon the Parties, the management and monitoring documents prepared in the normal course of CDE's business regarding Ravenswood. The reports satisfying this obligation are: those written reports prepared in the normal course of CDE's business regarding verification review and follow-up verification review reports conducted of Ravenswood. To the extent that any of these documents reveal personally identifiable information concerning any individual student, such documents shall be filed and served under seal.

4.4 Work with Monitor. At the request of the CDE, the Monitor and the CDE shall meet before the deadline for submission of the Monitor's monitoring reports pursuant to Paragraph 6.1.2 below to attempt to reconcile any inconsistencies between the Monitor's monitoring of the Revised RCAP and the CDE's monitoring of federal and state requirements. In the event CDE believes that any inconsistency is not reconciled, CDE shall request that the Court resolve the believed inconsistency.

#### *5.0 The Superintendent*

##### 5.1 Vacancy of Superintendent's Position

In the event of a vacancy in the position of Superintendent of the Ravenswood City Elementary School District, the Board of Trustees of Ravenswood shall comply with Board Resolution 103102 attached hereto as Exhibit A.

#### *6.0 The Court Monitor*

##### 6.1 The Court Monitor's Authority and Duties

The Court Monitor's authority and duties shall be as follows:

6.1.1 The Monitor shall monitor Ravenswood's progress in implementing the Requirements in the Revised RCAP and its obligations under this First Amended Consent

Decree. The Monitor shall also monitor the CDE's performance of its obligations to ensure the provision of FAPE in the LRE to children with disabilities in Ravenswood;

6.1.2 Report Regarding Ravenswood's Ongoing Compliance with Requirements. The Monitor shall review the Evidence of Performance, the periodic Reports of Compliance provided by Ravenswood pursuant to Paragraph 3.2, any written statements of objections to Ravenswood's Reports of Compliance, and any other evidence (including, but not limited to, interviews with Ravenswood service providers and parents, and observations of classes, programs and IEP meetings) that the Monitor deems necessary or relevant to determine Ravenswood's compliance with the Requirements. Nothing in the Revised RCAP shall limit the evidence upon which the Monitor may rely to determine Ravenswood's compliance with any of the Requirements. Further, any evaluation or review of evidence of compliance by a team of consultants or other representatives of the Parties, as set forth in the Revised RCAP with respect to certain Requirements, shall be advisory only. The Monitor shall at all times retain sole discretion to reach his or her own independent judgments regarding Ravenswood's compliance with each of the Requirements.

The Monitor shall prepare a report of the Monitor's findings regarding the status of the District's compliance with the Requirements. Separately, for each Requirement, the Monitor's report shall set forth: (1) the Monitor's determination as to whether the District has complied with the Requirement, and (2) the reasons, in as much detail as possible, for the Monitor's determination (including information regarding any observations or interviews relied upon by the Monitor). Further, if any of the Parties submit written statements objecting to Ravenswood's Report of Compliance pursuant to Paragraph 3.2, the Monitor shall investigate the issues raised in the written statement and shall include a detailed summary of the results of his investigation in

his report. At least five days prior to finalizing a report, the Monitor shall deliver a draft report to the Parties to allow the Parties to object to any findings or to provide additional evidence relevant to any findings. The Monitor shall file his report with the Court and serve it on the Parties within 45 days of receipt of each of Ravenswood's periodic Reports of Compliance.

Any time the Monitor determines that the District (a) has complied with a Requirement for the applicable Maintenance Period, or (b) has discharged its responsibilities for the Requirement by demonstrating compliance with an outcome that is expressly identified in the Revised RCAP as a potential substitute for the Requirement, the Monitor shall set forth that determination in his report. Thereafter, the District shall be deemed to have discharged its responsibilities for the Requirement, and the Monitor shall cease monitoring the District's compliance with the Requirement, unless the Plaintiffs or the CDE object to the finding and file a request for a hearing, pursuant to Paragraphs 7.0, 8.1(a) or 8.1(c) below, within 45 days of the Monitor's report. If the Plaintiffs or the CDE object to the finding and file a request for hearing, the Court shall determine whether the District has complied with the Requirement for the applicable maintenance period.

6.1.3 Concluding Report. If, anytime after Ravenswood has been implementing this Decree for at least 2 ½ years, Ravenswood or any other Party believes in good faith that Ravenswood has complied with all of the Requirements of the Revised RCAP, Ravenswood or the other Party may request in writing that the Monitor issue a Concluding Report or the Monitor may do so on his own initiative. The request shall set forth in detail the reasons the Party believes that Ravenswood has complied with all of its remaining Requirements under the Revised RCAP (as modified by those items for which Ravenswood is deemed to have discharged its responsibilities under this Consent Decree pursuant to Paragraph 6.1.2 above), and shall be

filed with the Court and served on all the other Parties. Within 45 days, the Monitor shall file with the Court and serve on all the Parties his Concluding Report.

6.1.4 The Monitor shall review the progress reports submitted by the CDE pursuant to Paragraph 4.3 above, in order to evaluate CDE's continued monitoring of Ravenswood's compliance with state and federal law and to consider CDE's evaluation of Ravenswood's compliance. If there exist any inconsistencies between the Monitor's monitoring of Ravenswood's compliance with the Revised RCAP and CDE's monitoring of Ravenswood's compliance with state and federal law, the Monitor or the CDE may request a meeting prior to the deadline for submission of the Monitor's monitoring report pursuant to Paragraph 4.4 above to attempt to reconcile all such inconsistencies. If the Monitor and the CDE representative are unable to reconcile the inconsistencies, the Monitor shall describe, in as much detail as possible, any and all such inconsistencies in his monitoring report.

6.1.5 From time to time as the Monitor sees fit, he shall select qualified monitoring consultants to assist him solely in monitoring compliance. The Monitor shall provide to Ravenswood the name(s) of any monitoring consultants that he chooses. In the event that Ravenswood objects to the Monitor's selection of monitoring consultant(s), Ravenswood shall have ten days from the date of receipt of the identities of the chosen monitoring consultant(s) to file with the Court and serve on the Monitor and the Parties written objections to the request. The Court shall thereafter determine whether to permit the Monitor to retain the selected consultants.

6.1.6 If directed by the Court, the Monitor shall meet with the Court or the Court's designee to discuss progress with Ravenswood's compliance with the Revised RCAP, CDE's state-level monitoring system, and/or any other matters the Monitor or the Court may

deem appropriate. If requested by a Party, the Monitor shall meet with the Party to discuss the Party's concerns and the progress of the implementation of the Revised RCAP.

6.1.7 The Monitor or the Plaintiffs may request that the Court issue an order to implement or effectuate this First Amended Consent Decree (including the Revised RCAP). Absent extraordinary circumstances, the Monitor and the Plaintiffs shall do so only after efforts to resolve their concerns by conferring with the Defendant(s) which is the subject of the requested order.

6.1.8 The Monitor may participate in and provide recommendations regarding Ravenswood's personnel hiring and reassignment decisions affecting the provision of special education services. The Monitor shall submit any such recommendations in writing. If the District decides not to adopt the Monitor's recommendation, no later than seven days after making that decision, the District shall submit a brief written explanation to the Monitor as to why it did not accept the Monitor's recommendation. The Monitor's recommendations and the District's hiring explanations, if any, shall be submitted to the Court and counsel for the Parties under seal.

6.1.9 Ravenswood shall notify the Monitor at least 20 days prior to engaging any consultant regarding special education, and shall simultaneously provide to him the credentials and qualifications of the consultant. If the Monitor objects to the hiring of the proposed consultant, the Monitor shall notify the District in writing with an explanation. If the District wishes to hire the proposed consultant after receiving the written objections of the Monitor, the District shall submit a brief written explanation to the Monitor as to why it did not accept the Monitor's recommendation. The Monitor's recommendations and the District's hiring explanations, if any, shall be submitted to the Court and counsel for the Parties under seal.

6.1.10 The Monitor shall attend IEP team meetings as he deems appropriate. The Monitor may offer his opinion and recommendations during the IEP team meeting, but may not mandate a specific kind or level of service.

#### 6.2 Limitation on the Monitor's Authority

The Monitor shall have plenary authority to monitor Ravenswood's compliance with this First Amended Consent Decree (including the Revised RCAP). The Monitor is encouraged to offer Ravenswood suggestions and insights to assist Ravenswood's compliance. Except as set forth herein, the Monitor shall not directly provide services to the District.

#### 6.3 Access to Programs and Information

The Monitor shall have unrestricted access to Class Members' school records, IEP team meetings (subject to the objections of Parent/Guardian(s)), training sessions, classes, programs, and services; all Ravenswood's general and special education staff and programs at the District and school site levels; all Ravenswood records, policies, manuals, budgets, materials, resources and any other documents that may be relevant to, or necessary for, the performance of the Monitor's duties. The Monitor shall also have unrestricted access to records, materials, programs, staff and service providers relating to Class Members who attend school outside of Ravenswood. No advance notice by the Monitor of any visit or inspection shall be required. The Monitor shall sign out any student files s/he reviews which contain personally identifiable information.

#### 6.4 Term of Engagement

Unless otherwise ordered by the Court, the Monitor's term of engagement shall continue until the Court enters the order pursuant to Paragraph 18.10. Any party may move at any time for entry of an order replacing the Monitor or limiting or terminating the Monitor's term.

### 6.5 Vacancy in the Position of the Monitor

Within 70 days of receipt of notice of the need for a replacement Monitor, Plaintiffs and Ravenswood shall each provide the other with the name(s) of their proposed replacement monitors. Within 20 days thereafter, the parties shall meet and confer to try to select a neutral, qualified Monitor for appointment by the Court. In the event an agreement cannot be reached within that timeframe, Plaintiffs and Ravenswood shall each select no more than two qualified individuals, neither of whom shall have (a) been a former employee of Plaintiffs or Ravenswood, or (b) shall have previously acted as a monitor in this action. Within 15 days of receipt of notice of the need for a replacement Monitor, Plaintiffs and Ravenswood shall submit to the Court the names of their selected candidates, along with his or her current curriculum vitae and any other evidence or argument supporting the selection of the candidate. The Court shall thereafter choose the replacement Monitor from the candidates recommended by the Plaintiffs and Ravenswood.

### 7.0 Orders

7.1 The Court shall have continuing jurisdiction of this action to ensure compliance with this Decree.

7.2 If, at any time after the Monitor has issued at least two monitoring reports pursuant to Paragraph 6.1.2 above, the Monitor or a Party believes that the District or CDE has failed to comply with its obligations under this First Amended Decree (including any obligations under the Revised RCAP), the Monitor or the Party, after conferring with Ravenswood or CDE in an effort to resolve the dispute, may request that the Court issue an Order to Show Cause re Contempt.

7.3 The Monitor or a Party may request that the Court issue any other order at any time.

## *8.0 Evidentiary Hearings*

### 8.1 Requests for Evidentiary Hearing

The Parties may request an Evidentiary Hearing, as follows:

(a) Any time after the Monitor files with the Court a report under Paragraphs 6.1.2 above, any Party may file with the Court a Request for Evidentiary Hearing to determine if Ravenswood and/or the CDE should be held in contempt or to seek other relief regarding Ravenswood and the CDE's compliance with this First Amended Consent Decree (including the Revised RCAP). The Request shall set forth in detail the reasons for the need for an Evidentiary Hearing and shall be served on the Monitor and all other Parties.

(b) After the Monitor issues a Concluding Report, as described in Paragraph 6.1.3 above, Ravenswood may file with the Court a motion and Request for Evidentiary Hearing to establish complete compliance with all remaining Requirements of the Revised RCAP. The Request must be supported with detailed evidence demonstrating compliance with all of the remaining Requirements of the Revised RCAP. The Request must also specifically address any Requirements with which the Monitor's Concluding Report found Ravenswood to be noncompliant, including detailed evidence rebutting the Monitor's finding(s) of noncompliance. The Request shall be served on the Monitor and all other Parties.

(c) Any Party may request a hearing regarding any other matter related to this First Amended Consent Decree. The Court may, on its own motion or at the request of a Party, schedule an Evidentiary Hearing upon its determination that an Evidentiary Hearing is necessary or appropriate.

## 8.2 Pre-Evidentiary Hearing Status Conference

Upon receipt of a Request for Evidentiary Hearing, the Court shall set a Status Conference to evaluate the need for an Evidentiary Hearing and to set procedures for any such hearing. Ten (10) days prior to the Status Conference, each Party shall file with the Court and serve on the Monitor and all other Parties a Status Conference Statement, which shall include a statement of the reasons for the requested Evidentiary Hearing, a detailed request for any discovery needed in advance of the Evidentiary Hearing, an identification and description of the Party's anticipated witnesses for the Hearing, and a statement of the anticipated length of the hearing. Notwithstanding the foregoing, in the event that the Court issues an Order to Show Cause re Contempt directed to Ravenswood, whether on its own motion or at the request of the Monitor or a Party, the Plaintiffs may without further order of the Court take two depositions of relevant school personnel, including the Superintendent and/or the Assistant Superintendent of Special Education and/or one other person employed by the District.

## 8.3 Monitor's Role at Evidentiary Hearing

The Monitor and/or the monitoring consultants shall be available to be called as witnesses by any Party or the Court at any Evidentiary Hearing.

## 9.0 *Periodic Status Conferences*

At any time after entry of this First Amended Consent Decree, the Monitor or any Party may request a Status Conference for the purpose of reviewing the District's compliance with the Requirements of the Revised RCAP.

## 10.0 *Revised RCAP Committee*

Ravenswood shall arrange for the formation of an advisory Revised RCAP Committee. This Revised RCAP Committee may be integrated with the District's Strategic Planning

Committee. The Revised RCAP Committee shall include a minimum of three Parent/Guardians appointed by Plaintiffs, Ravenswood's Superintendent, one member of Ravenswood's Board of Trustees, Ravenswood's Assistant Superintendent of Special Education, the CDE liaison, a representative from the San Mateo County Office of Education, a SELPA representative, one general education teacher, one principal, one special education provider, and counsel for the Plaintiffs and Ravenswood. The Revised RCAP Committee shall meet at least once each semester and once during the summer break. At least ten days prior to any meeting of the Revised RCAP Committee, Ravenswood shall provide a copy of the Monitor's most recent monitoring reports pursuant to Paragraph 6.1.2 above. At each meeting of the Revised RCAP Committee, Ravenswood shall discuss its compliance with the Revised RCAP, including the manner in which it intends to comply with any Requirements for which the Monitor's report indicates noncompliance or the basis for the District's disagreement with the Monitor's determination, if any. The Revised RCAP Committee shall advise the Superintendent on any other matters related to performance of the Requirements of the Revised RCAP.

#### *11.0 Parent Advocates*

Parents Helping Parents have been engaged to work as Parent Advocates in the District. They assist, and shall continue to assist, Parent/Guardian(s) in (a) reviewing the records and IEPs of their students, (b) preparing for and participating in Class Members' IEP meetings; (c) submitting claims for compensatory education; (d) submitting formal complaints to Ravenswood and/or the CDE requesting due process hearings; and (e) conducting other related activities as necessary.

In the event that the current contract with Parents Helping Parents has to be replaced, Plaintiffs' counsel shall select replacement Parent Advocates. The CDE will contract with the

replacement Parent Advocates within 45 days from receipt of notice from Plaintiffs' counsel of the identity of the replacement Parent Advocates. In the event that it becomes necessary to train the Parent Advocates, the Monitor shall develop or identify a training program, which shall be paid for by the CDE.

#### *12.0 Modifications to and Approval of Supplements to the Revised RCAP*

Any Party (the "Initiating Party") or the Monitor may submit to all other Parties and the Monitor recommendations to supplement or modify the Requirements set forth in the Revised RCAP. The Parties shall have 20 days to review and submit their comments to the Initiating Party regarding the proposed modifications or supplements. The Monitor, in his discretion, may also submit his comments to all the Parties within the 20 day deadline. Within 15 days thereafter, all Parties shall meet and confer in an effort to reach agreement regarding the proposed modifications or supplements. Within 15 days thereafter, any Party may file and serve a motion to supplement or modify the Revised RCAP or this decree in a manner consistent with any of the proposed modifications or supplements.

#### *13.0 Determination that FAPE is Provided and that CDE has an Effective Monitoring System in Place*

If, after considering the motion(s) of Defendants and any opposition thereto, and after conducting an Evidentiary Hearing, if necessary, the Court determines that (1) Ravenswood has complied with all Requirements of the Revised RCAP, and (2) the state-level system in place is capable of ensuring continued compliance with the law and the provision of FAPE to children with disabilities in Ravenswood, there shall be a rebuttable presumption that there exists in Ravenswood a system capable of providing FAPE to Class Members and in CDE a system to adequately monitor, supervise and ensure FAPE to Class Members. To overcome this

presumption, the Class Members must affirmatively demonstrate, with specific evidence, that Ravenswood does not have a system capable of providing FAPE to Class Members.

At any time after an appropriate hearing, the Court may order any appropriate relief, including ordering the District to continue its efforts to comply with the Revised RCAP, modifying the scope and terms of the Revised RCAP, ordering the CDE to continue certain monitoring obligations, or dismissal with prejudice of Ravenswood and CDE in the event that they have complied with the terms of this Decree and Ravenswood has a system capable of providing FAPE to Class Members.

#### *14.0 Implementation of this Decree and Revised RCAP*

As set forth above, Ravenswood and the CDE shall begin implementing this First Amended Consent Decree on March 1, 2003. The Monitor shall operate under this First Amended Consent Decree, including the Requirements of the Revised RCAP, upon its entry by the Court as requested by the Parties pursuant to their Stipulation and [Proposed] Order or, if the Court determines that Notice to the Class Members and a Fairness Hearing are required, upon the Court's preliminary approval of this First Amended Consent Decree, as if it has been finally adopted as an order of the Court.

#### *15.0 This Decree and the Revised RCAP Shall Become a Court Order*

Upon final adoption of this First Amended Consent Decree by the Court, this Decree, including the Requirements of the Revised RCAP, and each and every one of its supplements or modifications, if any, shall become a Decree of the Court, and shall be enforced as an order entered by this Court. The Court will retain jurisdiction to ensure implementation of the Decree.

### *16.0 Attorneys' fees*

Plaintiffs may seek to recover reasonable attorneys' fees, costs and expenses for any work performed in this matter prior to entry of this First Amended Consent Decree and in the process of implementing and enforcing the terms of this Decree (including the Revised RCAP), and for any work performed between final approval of this Decree and the dismissal with prejudice of this action against both Defendants. Reasonable attorneys' fees, costs and expenses shall be awarded in amounts agreed to by the Parties or, absent agreement, as determined by the Court or an agreed upon neutral upon Plaintiffs' noticed motions. Defendants reserve the right to oppose any motions by Plaintiffs for reimbursement of attorneys' fees, costs and expenses.

Nothing in this First Amended Consent Decree limits or affects Plaintiffs' rights to recover fees, costs or expenses incurred prior to entry of this First Amended Consent Decree, including fees, costs or expenses incurred leading up to, implementing or enforcing the original Consent Decree, adopted as an order of the Court on January 18, 2000. Similarly, nothing in this First Amended Consent Decree limits or affects Ravenswood's or CDE's rights to oppose any request for fees, costs or expenses sought by Plaintiffs or constitutes any admission by Ravenswood or CDE that it is obligated to pay for attorneys' fees. By entering into this First Amended Consent Decree, CDE and Ravenswood do not admit that the entry of this Decree constitutes a basis for an award of attorneys' fees.

### *17.0 Costs of Implementation Efforts*

The Defendants shall pay all the costs of implementing this First Amended Consent Decree until the Court determines that they have complied with all of the requirements under this Decree, pursuant to Paragraph 18.10 below. Allocation of responsibility for such payments between the Defendants shall be determined by agreement of Defendants, or if they are unable to

agree, by further order of the Court. These payments shall include, but are not limited to, the following:

17.1 Monitor Costs. These costs shall include payment of the Monitor's salary, payment of the salary for any monitoring consultants hired by the Monitor pursuant to Paragraph 6.1.5 above, and payment of the salary for an assistant to the Monitor. The Monitor's salary shall be \$700/day, not to exceed \$150,000 annually without further order of the Court. Ravenswood shall also provide adequate office space, supplies and equipment for the Monitor to perform his duties effectively pursuant to this Decree.

17.2 Parent Advocates. The Defendants shall pay for all costs and fees of Parents Helping Parents. Such amount shall be limited to \$50,000 per year, without further order of the Court.

17.3 Expenses of Parent Members of the Revised RCAP Committee. The Defendants shall pay reasonable expenses for participation by parents in the Revised RCAP Committee meetings. The Defendants shall pay for such reasonable expenses within 45 days from a request for payment. These funds are intended to assist those parents who are obliged to miss work or who must pay for child care in order to participate in such meetings.

17.4 Neutral to Resolve Class Members' Compensatory Education and Other Compensatory Claims. The Defendants shall pay the costs and fees of a mediator, an early neutral evaluator or hearing officer ("Neutral") from the Special Education Hearing Office, in order to assist the resolution of Compensatory Education Claims of Class Members.

17.5 Notice to Class. If the Court determines that Notice to the Class and a Fairness Hearing are required prior to final adoption of this First Amended Consent Decree, the Defendants shall pay the costs of providing notice to the Class Members regarding the Fairness

Hearing, the final issuance of this First Amended Decree, and any hearing to determine Ravenswood's compliance with the Revised RCAP.

17.6 Attorneys' Fees. In the event attorneys' fees and/or costs are agreed upon or are awarded by the Court to Plaintiffs, the Defendants shall pay for such fees and costs.

*18.0 Release and Dismissal of Action*

18.1 This First Amended Consent Decree incorporates by reference the Release and Dismissal of Action found in Section F of the original Consent Decree, adopted as an Order of the Court on January 18, 2000. Except expressly provided herein, this First Amended Consent Decree replaces and supercedes the original Consent Decree and the original RCAP.

18.2 It is further agreed and understood by and between the Parties that this First Amended Consent Decree settles and concludes the contempt proceedings pending against Ravenswood arising from the October 4, 2001 Order finding Ravenswood in contempt, including any and all proceedings relating to whether Ravenswood has purged itself of contempt, and if not, the appropriate remedy.

18.3 The Parties hereto mutually agree to waive, release, and hold each other, and their respective officers, agents, employees, and attorneys, harmless from any and all claims, including claims filed with any administrative body, demands, or suits, or any other action based on, arising out of, or connected to the transactions, facts or events which gave rise to the October 4, 2001 Order finding Ravenswood in contempt and all proceedings relating to whether Ravenswood has purged itself of contempt.

18.4 Nothing in this First Amended Consent Decree shall limit or foreclose the rights of individual Class Members to bring claims or complaints against Ravenswood or the CDE for

failure to provide individual services or otherwise comply with their obligations under state or federal law.

18.5 The Parties warrant and represent that they have read and hereby expressly waive all rights under section 1542 of the Civil Code of California, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in her favor at the time of executing the release, which if known by her must have materially affected her settlement with the debtor.”

18.6 This Decree is entered into by and between the Parties to settle the current contempt proceedings, and shall not be construed as admission, express or implied, of fault, wrongdoing, liability and/or debt on the part of CDE, the Ravenswood Defendants, or any other entity or person released herein.

18.7 It is understood and agreed that this Decree is in full, final and complete settlement of any and all claims against CDE and the Ravenswood Defendants based on, arising out of or connected with the facts, transactions or events which gave rise to the October 4, 2001 Order and all proceedings relating to whether Ravenswood purged itself of contempt, except for the matters set forth in Paragraph 18.

18.8 It is understood and agreed that this Decree shall inure to the benefit of and shall be binding upon the heirs, successors, and assigns of the Parties.

18.9 It is understood and agreed that, except as expressly set forth herein, this Decree supercedes all prior negotiations, commitment, representations, promises, understandings, statements of stipulations, oral or written, between the Parties or their officers, employees, agents and attorneys, and this Decree reflects the entire agreement of the Parties. This Decree does not

invalidate previous agreements for the provision of compensatory education or other services to individual class members.

18.10 Upon determination by the Court that Ravenswood and the CDE have complied with the requirements of this First Amended Consent Decree, including the Revised RCAP, and there exists at Ravenswood a system capable of providing FAPE to Class Members, the Action shall be dismissed with prejudice by the Court.

*19.0 Responsibility for Obtaining Court Approval of the Terms of This Decree*

19.1 If the Court determines that Notice to the Class Members and a Fairness Hearing are required prior to final approval of this First Amended Consent Decree, within four weeks of that determination, Counsel for Ravenswood shall prepare all pleadings and papers necessary to obtain the Court's preliminary approval of the terms of this Decree. Counsel for Ravenswood shall also prepare all pleadings and papers necessary to obtain the Court's final approval of the terms of this Decree. Counsel for Ravenswood shall prepare the above-mentioned pleadings and papers in consultation with the counsel for all Parties, and shall submit such papers to counsel for all Parties for their approval before filing the papers with the Court.

*20.0 Notice to Class*

20.1 If the Court determines that Notice to the Class Members and a Fairness Hearing are required prior to final adoption of this First Amended Consent Decree, Counsel for Ravenswood shall prepare a proposed notice plan for providing class members with notice of the Fairness Hearing and notice of this First Amended Consent Decree after final approval by the Court. Notice of this action, the proposed resolution agreed to by the Parties, the Fairness Hearing, and the Class Members' right to object at the Fairness Hearing shall be sent to all ascertainable class members and published in local newspapers. Upon final approval of this

Decree by the Court, notice will be sent to all ascertainable Class Members informing the Class Members and their Parents/Guardian(s) of this Decree and their rights to: (1) request new evaluations of Class Members; (2) participate in IEP team meetings; (3) submit claims for Compensatory Education claims pursuant to Paragraph 3.4; (4) submit compensatory claims pursuant to Paragraph 17.3; (5) submit noncompliance complaints to Ravenswood or the CDE or requests for due process hearings; (6) receive assistance from the Parent Advocates; and (7) object to any Party's motion for a determination that the Revised RCAP has been implemented.

For CDE: \_\_\_\_\_ Approved as to Form: \_\_\_\_\_  
\_\_\_\_\_  
Name: \_\_\_\_\_ Ann M. Murray, Esq.  
Title: \_\_\_\_\_ Kronick Moskowitz Tiedmann &  
Date: \_\_\_\_\_ Girard  
Date: \_\_\_\_\_

For Ravenswood:

\_\_\_\_\_  
Name: \_\_\_\_\_ Thomas F. Casey III, Esq.  
Title: \_\_\_\_\_ Miguel Marquez  
Date: \_\_\_\_\_ County Counsel  
Date: \_\_\_\_\_

For the Plaintiffs:

\_\_\_\_\_  
Robert P. Feldman, Esq.  
Colleen Bal, Esq.  
Wilson Sonsini Goodrich & Rosati  
Class Counsel  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Arlene Mayerson, Esq.  
Disability Rights Education Defense  
Fund, Inc.  
Class Counsel  
Date: \_\_\_\_\_

\_\_\_\_\_  
William Koski, Esq.  
Youth & Education Law Project  
Class Counsel  
Date: \_\_\_\_\_

For California Department of Education  
and Superintendent of Public Education:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For State Board of Education:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Ann M. Murray, Esq.  
Kronick Moskovitz Tiedmann &  
Girard  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Ann M. Murray, Esq.  
Kronick Moskovitz Tiedmann &  
Girard  
Date: \_\_\_\_\_