

**Education Audit Appeals Panel
State of California**

Appeal of 2002-03 Audit Findings 03-82,
03-83, 03-91, 03-93, 03-94, 03-95, 03-96,
03-97, 03-99, 03-100, 03-101, 03-102, 03-
103, 03-105, 03-109, 03-110, 03-113,
03-114, and 03-117 by:

Oakland Unified School District,
Appellant.

EAAP Case No. 04-22

OAH No. 2004080481

Decision

The Education Audit Appeals Panel has adopted the attached Stipulation and Settlement Agreement of the parties as its Decision in the above-entitled matter.

Effective date: February 8, 2008.

IT IS SO ORDERED.

February 8, 2008

Date

Original Signed

Diana Ducay, Chairperson
for Education Audit Appeals Panel

1 N. Eugene Hill [SBN 32516]
William B. Tunick [SBN 245481]
2 OLSON HAGEL & FISHBURN LLP
3 555 Capitol Mall, Suite 1425
Sacramento, CA 95814
4 Telephone: (916) 442-2952
Facsimile: (916) 442-1280

5 *Attorneys for*
6 OAKLAND UNIFIED SCHOOL DISTRICT

7
8 BEFORE THE EDUCATION AUDIT APPEALS PANEL

9 STATE OF CALIFORNIA

10
11 In the Matter of the Statement of Issues Against:

EAAP No.: 04-22
OAH No.: 2004080481

12
13 OAKLAND UNIFIED SCHOOL DISTRICT,

**STIPULATION AND SETTLEMENT
AGREEMENT**

14 Appellant.

15
16 Appellant Oakland Unified School District ("District"), respondent Office of the State Controller
17 ("Controller"), intervenor California Department of Finance ("Finance"), and intervenor California
18 Department of Education ("Education") agree to complete resolution of this appeal of Audit Findings
19 03-82, 03-83, 03-91, 03-93, 03-94, 03-95, 03-96, 03-97, 03-99, 03-100, 03-101, 03-102, 03-103, 03-105,
20 03-109, 03-110, 03-113, 03-114 and 03-117 for fiscal year ended June 30, 2003, as follows:

21
22 **STATEMENT OF FACTS**

23 1. Pursuant to Senate Bill 39 (Stats. 2003, ch. 14), the Controller conducted a financial and
24 compliance audit of the District for the fiscal year ended June 30, 2003 and thereafter issued an Audit
25 Report.

26 2. The Audit Report, as certified by the Controller, contains Findings 03-82, 03-83, 03-91,
27 03-93, 03-94, 03-95, 03-96, 03-97, 03-99, 03-100, 03-101, 03-102, 03-103, 03-105, 03-109, 03-110,
28

1 03-113, 03-114 and 03-117.

2 **Findings 03-82, 03-83, 03-93, 03-94 & 03-99**

3 3. Findings 03-82, 03-83, 03-93, 03-94 and 03-99 all allege a variance in the calculation of
4 the District's Average Daily Attendance ("ADA") for part of the audit period. The P-2 Attendance
5 Report originally submitted by the District on April 23, 2003 did not include the four-week period
6 between March 17, 2003 and April 11, 2003.

7 **Findings 03-91, 03-95, 03-96 & 03-102**

8 4. Findings 03-91, 03-95, 03-96 and 03-102 involve various deficiencies of contract
9 agreements for different educational programs.

10 5. Finding 03-91 alleges that kindergarten continuation documents were either missing in
11 some schools or insufficient in other schools.

12 6. Finding 03-95 and Finding 03-102 allege that Independent Study Program agreements
13 were deficient or missing. Finding 03-95 involves Independent Study Program agreements for
14 kindergarten through fifth grade and Finding 03-102 involves one school site that was deficient in its
15 documentation.

16 7. Finding 03-96 alleges that some independent study agreements and work samples were
17 either not provided or deficient.

18 **Findings 03-100, 03-101, 03-103 & 03-105**

19 8. Findings 03-100, 03-101, 03-103 and 03-105 relate to the District's Adult Education
20 Program. The underlying concern of these findings was that the District's Adult Education Program be
21 open and accessible to the general public.

22 9. Finding 03-100 alleges that the District's adult education course catalog was deficient for
23 the audit period.

24 10. Finding 03-101 involves adult education classes provided to incarcerated students. The
25 finding alleges that the classes held at a placement center for incarcerated individuals were not
26 appropriate for state funding under Education Code sections 41841.5, subdivision (a) and 46191,
27 subdivision (a).

28 11. Finding 03-103 alleges that two adult education classes offered by the District were

1 comprised of concurrent students only. The finding cites provisions of law that mandate that “each
2 program area” be designed for and attended primarily by adults and that all adult education classes must
3 be open to the public. (See Cal. Code Regs., tit. 5, § 10524 and Ed. Code § 52523, subd. (a).)

4 12. Finding 03-105 alleges that two adult education classes were not on Education’s
5 approved list or did not have course outlines on file.

6 **Findings 03-109 & 03-110**

7 13. Findings 03-109 and 03-110 involve the Instructional Time and Staff Development
8 Reform (“ITSDR”) program in the District.

9 14. Finding 03-109 alleges insufficient documentation for this program.

10 15. Finding 03-110 alleges that the District claimed funding for instructional facilitators (67
11 attendance days) and substitute teachers (four attendance days) for ITSDR programs.

12 **Findings 03-113 & 03-114**

13 16. Findings 03-113 and 03-114 relate to the Class-Size Reduction program.

14 17. Finding 03-113 alleges the District computed class size by averaging the daily enrollment
15 in each class for each instruction day from the first day of instruction through March 14, 2003, instead of
16 April 15, 2003, as directed on the instructions for filing the J-7 CSR form.

17 18. Finding 03-114 alleges that the District was unable to provide sufficient documentation to
18 support its certification of participation in the Class-Size Reduction program for two courses in grade
19 nine.

20 **Finding 03-97**

21 19. Finding 03-97 alleges that the District failed to calculate the Independent Study Program
22 student-to-teacher ratio as required. (See Ed. Code § 51745.6, subd. (a).)

23 **Finding 03-117**

24 20. Finding 03-117 alleges that the District’s Digital High School program was not in
25 compliance with the Education Code requirements. The finding alleges that the District did not provide
26 a local match “for not less than the amount of the grant.” (See Ed. Code § 52253, subd. (a).)

27 21. The District timely submitted its appeal of Findings 03-82, 03-83, 03-91, 03-93, 03-94,
28 03-95, 03-96, 03-97, 03-99, 03-100, 03-101, 03-102, 03-103, 03-105, 03-109, 03-110, 03-113, 03-114

1 and 03-117 to the Education Audit Appeals Panel on August 15, 2004.

2 22. Subsequently Finance, on October 5, 2004 and Education, on December 13, 2004
3 intervened in the appeal.

4 23. Originally set for hearing in February of 2005, the hearing was continued several times as
5 the parties were able to resolve several findings prior to hearing.

6 24. Unable to reach a resolution on Finding 03-100, the parties agreed to a special hearing on
7 the legal question involved.

8 25. After receiving briefs from all parties, Administrative Law Judge Cheryl R. Tompkin
9 issued her Proposed Decision in favor of the District on November 1, 2005 (amended November 15,
10 2005.) She found that "having an adult education course catalog is not a condition of apportionment."

11 26. Following the Proposed Decision, the parties returned to settlement discussions which
12 have resulted in this Agreement.

13 27. This Agreement is subject to the approval of the Education Audit Appeals Panel,
14 pursuant to Education Code section 41344.1, subdivision (b).

15 NOW, THEREFORE, in consideration of the mutual promises contained herein and for good and
16 valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as
17 follows:

18
19 **AGREEMENT**

20 1. For the purposes of effecting a compromise of this action, and to prevent the uncertainty
21 and cost of further litigation, the Controller, Finance, Education and District agree:

22 a. That the amount withheld by the Controller from the District's principal
23 apportionments as a result of the allegations contained in Findings 03-82, 03-83,
24 03-91, 03-93, 03-94, 03-95, 03-96, 03-97, 03-99, 03-100, 03-101, 03-102, 03-103,
25 03-105, 03-109, 03-110, 03-113, 03-114 and 03-117, in lieu of any other penalty
26 or other loss of funding, shall be \$611,856.

27 b. That repayment of the above amount by withholding from the District's principal
28 apportionments pursuant to Education Code section 41344, subdivision (a) would

1 work a severe financial hardship upon the District, as that term is used in
2 Education Code section 41344, subdivision (a)(2).

3 c. That within 30 days from the date this Agreement is approved by the Education
4 Audit Appeals Panel, the District shall submit to the Superintendent of Public
5 Instruction and the Department of Finance a plan for repayment of the funds set
6 forth in paragraph (a), above, in accordance with the provisions of section 41344,
7 subdivision (a).

8 d. That in addition to the amount withheld by the Controller pursuant to paragraphs
9 (a), (b), and (c), the District shall expend \$300,000 to implement the Assessment
10 and Recovery Plan recommendations of the Fiscal Crisis and Management
11 Assistance Team ("FCMAT") as follows:

- 12 i. \$30,000 be expended in a professional development plan for training
13 business staff – workshops and conferences (FCMAT criteria 3.1);
- 14 ii. \$150,000 be expended to hire a consultant to assist in the development of
15 desk manuals and a fiscal handbook for sites regarding accounting,
16 purchasing, warehousing and payroll (FCMAT criteria 2.4, 12.2, 12.4 &
17 6.1.);
- 18 iii. \$75,000 be expended to hire a consultant to assist in the development of a
19 site handbook and to provide training to site staff on attendance
20 accounting, compliance training and development programs (FCMAT
21 criteria 11.1);
- 22 iv. \$20,000 be expended in a computer program that will produce reliable
23 multiyear financial projections (FCMAT criteria 14.1);
- 24 v. \$25,000 be expended toward Integrated Financial and Accounting System
25 upgrades (FCMAT criteria 7.9).

26 e. That the District shall request the FCMAT to monitor the expenditure required
27 above to ensure that funds are expended as required by this Agreement. In the
28 event that FCMAT declines to monitor the expenditures, the District shall contract

1 with an auditor for such purpose.

2 f. That all funds set forth in paragraph (d), above, shall be expended by the District
3 not later than June 30, 2010. The Controller shall withhold from the next second
4 principal apportionment following June 30, 2010 those amounts not expended as
5 required by paragraph (d).

6 g. That the District will make all reasonable efforts in the future to insure
7 compliance with the provisions of law at issue in this audit.

8 2. This Agreement shall fully resolve and/or cause to be withdrawn any and all claims,
9 demands, audit findings, appeals, obligations and/or causes of action, now and hereafter arising, relating
10 to alleged violations of law identified in Findings 03-82, 03-83, 03-91, 03-93, 03-94, 03-95, 03-96, 03-
11 97, 03-99, 03-100, 03-101, 03-102, 03-103, 03-105, 03-109, 03-110, 03-113, 03-114 and 03-117 of the
12 2002-03 fiscal year audit of the District.

13 3. Accordingly, Finance, Education, and the Controller expressly waive any right or claim
14 or right to assert thereafter any claim, demand, audit finding, obligation and/or cause of action relating
15 to the alleged violations of law identified in Findings 03-82, 03-83, 03-91, 03-93, 03-94, 03-95, 03-96,
16 03-97, 03-99, 03-100, 03-101, 03-102, 03-103, 03-105, 03-109, 03-110, 03-113, 03-114 and 03-117 of
17 the 2003 fiscal year audit of the District and will refrain from engaging in further activity to adversely
18 affect District funding based on the 2002-03 fiscal year audit findings.

19
20 Dated: 2/4/08

OAKLAND UNIFIED SCHOOL DISTRICT

21 By: Original Signed
22 William B. Tunick
23 Olson Hagel & Fishburn LLP
24 Attorneys for Oakland Unified School District

25 Dated: 2-11-08

OFFICE OF THE STATE CONTROLLER

26 By: Original Signed
27 Ana Maria Garza, Staff Counsel
28 Attorney for John Chiang, State Controller

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 1/31/08

DEPARTMENT OF FINANCE

By: Original Signed
Julie Weng-Gutierrez
Supervising Deputy Attorney General
Attorney for Department of Finance

Dated: Feb 1, 2008

DEPARTMENT OF EDUCATION

By: Original Signed
Todd M. Smith
Deputy General Counsel
Attorney for Department of Education