

**Education Audit Appeals Panel
State of California**

Appeal of 2004-05 Audit Findings
05-56 and 05-67 by:

Vallejo City Unified School District,

Appellant.

EAAP Case No. 06-15

OAH No. N2006080727

Decision

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

Effective date: January 12, 2011.

IT IS SO ORDERED.

January 12, 2011

Date

Original Signed

Diana Ducay, Chairperson
for Education Audit Appeals Panel

SETTLEMENT AGREEMENT

The VALLEJO CITY UNIFIED SCHOOL DISTRICT ("District"), JOHN CHIANG, in his official capacity as Controller of the State of California ("Controller") and the DEPARTMENT OF FINANCE ("Finance") (collectively, "Parties"), hereby agree to a complete resolution of the District's appeals of Audit Findings 05-56 and 05-67 for the 2004-2005 fiscal year:

RECITALS

A. Pursuant to Senate Bill 1190 (Stats. 2004, ch. 53), the Office of the State Controller conducted a financial and compliance audit of the District for the 2004-2005 fiscal year, and thereafter issued an Audit Report.

B. The Audit Report, as certified by the Controller, contains various Audit Findings, including Audit Findings 05-56, 05-66, and 05-67.

C. Pursuant to Education Code section 41344, the District timely appealed Audit Findings 05-56, 05-66 and 05-67 to the Education Audit Appeals Panel ("EAAP").

D. EAAP designated the District's appeal as EAAP Case No. 06-15 and assigned the matter for hearing before an administrative law judge with the Office of Administrative Hearings in accordance with the California Administrative Procedure Act (Gov. Code § 11500, et seq.). Finance timely intervened in the proceedings.

E. A hearing on the District's appeals was conducted by the Honorable Steven C. Owyang, Administrative Law Judge, on June 11, 12, and 15, 2007. ALJ Owyang issued his proposed decision on December 17, 2007.

F. By order dated March 19, 2008, EAAP notified the parties that it was rejecting ALJ Owyang's proposed decision and that EAAP would decide the District's appeals under Government Code section 11517(c)(2)(E).

G. On May 22, 2008, EAAP issued a decision on the District's appeals. EAAP's decision sustained in part and denied in part the District's appeals from Audit Findings 05-56 and 05-66, and denied the District's appeal from Audit Finding 05-67.

H. On July 28, 2008, the District filed a Verified Petition for Writs of Mandate ("Petition") under Code of Civil Procedure sections 1085 and 1094.5 challenging EAAP's decision only as to Audit Findings 05-56 and 05-67. The Petition, filed in the Solano County Superior Court, named EAAP as Respondent and the Controller and Finance as Real Parties in Interest. The case, denominated Solano County Superior Court Case No. FCS031849, was assigned for all purposes to the Honorable Harry S. Kinnicutt.

I. On February 10, 2010, the Superior Court entered judgment on the *Petition*. A copy is attached as Exhibit A hereto. The judgment granted a peremptory writ of mandate pursuant to Code of Civil Procedure section 1094.5(f) and directed EAAP to vacate its decision denying the District's appeals of Audit Findings 05-56 and 05-67. The judgment further directed EAAP to issue a new decision sustaining the District's appeals from Audit Findings 05-56 and 05-67 on the grounds that the District substantially complied with the requirements for the audited programs at issue in those appeals. The judgment remanded the matter to EAAP to determine the appropriate remedy given the Court's decision. The judgment denied the *Petition* in all other respects.

J. On or about April 7, 2010, the District filed a notice of appeal from the Superior Court's judgment. That appeal, filed in the First Appellate District, was denominated Court of Appeal Case No. A128215. EAAP filed a notice of cross-appeal on or about April 8, 2010. The Controller and Finance filed notices of cross-appeal on or about April 21, 2010.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and for good and valuable consideration, the parties agree as follows:

1. The Parties agree that EAAP's decision to deny the District's appeals of Audit Findings 05-56 and 05-67 shall be vacated and set aside.

2. The District, Finance, and the Controller agree that the total amount to be disallowed as a result of the determinations contained in Audit Findings 05-56 and 05-67 for the 2004-2005 fiscal year shall be \$100,000. Within 30 days of the occurrence of the events set out in Paragraph 3a. to 3c., the District shall submit the payment of the \$100,000 to the State as provided in this agreement.

3. The parties' duties and obligations under this settlement – including the District's repayment as described in Paragraph 2 – are subject to, and arise upon the occurrence of, the following conditions precedent:

a. First, EAAP must vacate and set aside its decision to deny the District's appeals of Audit Findings 05-56 and 05-67. EAAP must also approve this settlement agreement pursuant to its power to approve settlements under Education Code section 41344.1(b).

b. Second, upon EAAP's approval of the settlement, all of the parties in Court of Appeal Case No. A128215 (EAAP, the District, Finance, and the Controller) must dismiss its/his respective appeals and cross-appeals with prejudice by jointly filing dismissal papers substantially in the same form as the "Stipulation Re Dismissal and Order" attached hereto as Exhibit B.

c. Third, the Court of Appeal must grant dismissal pursuant to the terms of the "Stipulation Re Dismissal and Order."

4. Following the occurrence of the conditions precedent set out in Paragraph 3, and once the Court of Appeal issues a remittitur, a notice of settlement shall be filed in Solano County Superior Court Case No. FCS031849 in substantially the same form as attached hereto as Exhibit C.

5. Each party shall bear its own fees and costs incurred in connection with (1) EAAP Case No. 06-15, (2) Solano County Superior Court Case No. FCS031849, (3) Court of Appeal Case No. A128215, and (4) the negotiation, drafting, and preparation of this agreement.

6. This Agreement shall fully resolve any and all claims, demands, appeals, obligations and/or causes of action, now and hereafter, arising from or relating to the alleged violations of law or regulation identified in Audit Findings 05-56 and 05-67 for the 2004-2005 fiscal year. Except as to any right or claim to enforce this Agreement, the District, the Controller, and Finance expressly waive any right to assert or pursue thereafter any claim, demand, obligation, appeal, and/or cause of action relating to those Audit Findings.

7. The parties agree that the Superior Court shall have jurisdiction to enforce this agreement and that nothing in this agreement precludes the parties from seeking a court order to enforce the agreement set forth herein.

For the District:

Dated: 1/10/2011

Original Signed

DR. RICHARD J. DAMELIO
State Administrator / Trustee
Vallejo City Unified School District

Dated: 1/10/2011

Original Signed

DR. FLOYD GONELLA
Superintendent
Vallejo City Unified School District

Dated: 1/10/2011

Original Signed

RICHARD C. MIADICH
Olson Hagel & Fishburn LLP
Attorneys for Vallejo City Unified School
District

For John Chiang, State Controller of the State of California and Department of Finance

KAMALA D. HARRIS,
Attorney General of the State of California
KARIN S. SCHWARTZ
Supervising Deputy Attorney General

Dated: 1/7/2011

Original Signed

SARAH E. KURTZ
Deputy Attorney General
Attorneys for State Controller John Chiang
and Department of Finance

IT IS SO APPROVED.

Dated: 1/12/2011

Original Signed

DIANA L. DUCAY
For Education Audit Appeals Panel