

**Education Audit Appeals Panel
State of California**

Appeal of 2008-09 Audit Findings 09-24
and 09-28 by:

Vallejo City Unified School District,
Appellant.

EAAP Case No. 11-20
OAH No. 2012021010

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: March 25, 2013.

IT IS SO ORDERED.

March 25, 2013
Date

Original Signed
David Botelho, Chairperson
Education Audit Appeals Panel

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Attorneys for VALLEJO CITY UNIFIED SCHOOL DISTRICT

BEFORE THE EDUCATION AUDIT APPEALS PANEL

STATE OF CALIFORNIA

APPEAL OF FISCAL YEAR 2008-09
AUDIT FINDINGS 09-24 & 09-28 by
VALLEJO CITY UNIFIED SCHOOL
DISTRICT,

Appellant,

v.

OFFICE OF THE STATE CONTROLLER,
Respondent,

DEPARTMENT OF FINANCE,
Intervenor.

EAAP CASE NO.: 11-20
OAH NO.: 2012 021010

**STIPULATION AND SETTLEMENT
AGREEMENT**

Appellant Vallejo City Unified School District ("District"), Respondent Office of the State Controller ("Controller"), and Intervenor California Department of Finance ("Finance") agree to a complete resolution of the District's appeal of Audit Findings 09-24 and 09-28 in the Controller's Audit Report for fiscal year ended June 30, 2009.

STATEMENT OF FACTS

1. Pursuant to Senate Bill 1190 (Stats. 2004, ch. 53), the District received emergency funds from the Legislature and was placed under state-administration at the

direction of the California Department of Education. Among the other provisions pursuant to Senate Bill 1190, the Controller, or third party designated by the Controller, was mandated to conduct the annual financial and federal and state compliance audit of the District for fiscal year ended June 30, 2009. The Controller opted to conduct the annual financial and federal and state compliance audit of the District for fiscal year ended June 30, 2009 and subsequently issued an Audit Report.

2. The Audit Report contained, among things, 19 state and federal compliance Audit Findings. The District appealed two of these state Audit Findings, namely, 09-24 and 09-28.

3. Audit Finding 09-24 determined that there were excess administrators under the ratio of administrative employees-to-teacher requirements set forth in Education Code section 41402 and assessed a disallowance of \$1,306,388. In making this determination, the Controller's auditors relied upon the information the District provided to them before Finding 09-24 was finalized, including the California School Accounting Manual "object codes" that the District assigned to its certificated employees for school year 2008-09. Finding 09-24 (including the associated disallowance) is therefore based on the auditors' review of information provided by the District.

4. Audit Finding 09-28 determined that Vallejo Charter School did not retain attendance rosters for months 1, 7, and 8 as required by Education Code section 47612.5(a) for one of the four teachers whom the Controller's auditors tested when they audited the attendance claimed by the District for the fiscal year ended June 30, 2009. As a result of Vallejo Charter School not retaining the attendance rosters for one of the tested teachers for months 1, 7, and 8, the Controller determined that the District had over reported 1,247 days of attendance, which equates to 9.38 ADA for the P-2 reporting period, or \$57,304. Additionally, the Controller's testing of absent notes at Vallejo Charter School determined that one of 15 absent days was incorrectly claimed for attendance apportionment. The over reporting of one attendance day equates to .01 ADA

for the P-2 reporting period, or \$61. The Controller assessed a combined penalty of \$57,365 as a result of these determinations made in Finding 09-28.

5. The District timely submitted its appeal of Audit Findings 09-24 and 09-28 to the Education Audit Appeals Panel (“Panel”) on November 29, 2011.

6. Controller is a mandatory party in the District’s appeal and Finance moved to intervene on March 26, 2012. Finance’s motion to intervene was granted on March 29, 2012.

7. The Panel referred the District’s appeal to the Office of Administrative Hearings for hearing before an administrative law judge.

8. Four days of testimony on the District’s appeal was taken on December 3-6, 2012. At the request of the parties, the hearing was continued until March 11-15, 2013 to allow the parties additional time to discuss possible settlement.

9. The parties met and conferred after December 6, 2012 to discuss settlement of Audit Findings 09-24 and 09-28 to avoid the litigation expenses associated with additional hearing days and post-hearing briefs. Those discussions have resulted in this Agreement.

10. This Agreement is subject to the approval of the Panel, pursuant to Education Code section 41344.1, subdivision (b).

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

AGREEMENT

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

a. That as a result of the determinations made in Audit Finding 09-24 in lieu of any other monetary penalty or other loss of funding, the District shall repay \$120,000.00;

b. That as a result of the determinations made in Audit Finding 09-28 in lieu of any other monetary penalty or other loss of funding, the District shall repay \$30,000.00;

c. The total repayment of \$150,000.00 to Findings 09-24 and 09-28 shall be withheld in equal installments from the District's principal apportionments for the next five years, without interest, following the date this Agreement is approved by the Panel; provided, however, that the District shall have the right to accelerate repayment of the \$150,000.00 or any remaining balance thereof without any pre-payment penalty;

d. The District acknowledges that its internal control procedures need to be strengthened and in recognition thereof agrees to make the following prospective changes to its internal control procedures commencing with the 2013-14 school year, including, but not limited to, that: (1) the California School Accounting Manual "object codes" are accurately assigned based on the duties actually being performed by employees; (2) complete and accurate job descriptions are created and maintained for all categories of District employees; and (3) records are created and maintained to show which District employees provide direct instruction to students; and

e. The District further acknowledges that (1) for school year 2008-09, the California School Accounting Manual was an acceptable source to use in auditing the District's ratio of administrative employees-to-teachers; (2) that the District should

have included all 991.1 certificated employee full-time equivalents in its calculation and did not; (3) that the District is obligated to maintain auditable records to support its administrative employees-to-teachers ratio calculation and make the same available to auditors and that it did not do either for the 2008-09 school year; and (4) that the District was obligated to accurately assign "object codes" to the 991.1 certificated employee full-time equivalents per the California School Accounting Manual for the 2008-09 school year and the District was unable to provide the auditors with auditable records that showed that those codes were not accurately assigned for the 2008-09 school year.

2. This Agreement shall fully resolve and/or cause to resolve any and all demands, appeals, obligations, and/or causes of action, now and hereafter arising, relating to the alleged violations of law identified in Audit Findings 09-24 and 09-28 in the Controller's Audit Report of the District of the fiscal year ended June 30, 2009. No portion of this Agreement constitutes an admission by any party with respect to an audit finding for any other audit year, and no portion of this Agreement shall foreclose, limit, restrict or otherwise prejudice the arguments that may be made by any party in a dispute, including in a formal appeal to the Panel, over an audit finding for any other audit year.

3. The Controller, Finance, and District expressly waive any right or claim or right to assert hereafter any claim, demand, audit finding, obligation, and/or cause of action relating to the alleged violations of law identified in Audit Findings 09-24 and 09-28 in the Controller's Audit Report of the District of the fiscal year ended June 30, 2009.

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Dated: 3/1/2013

OLSON HAGEL & FISHBURN LLP

By: Original Signed
RICHARD C. MIADICH
Counsel for VALLEJO CITY U.S.D.

Dated: 3/4/2013

VALLEJO CITY UNIFIED SCHOOL DISTRICT

By: Original Signed
DR. RICHARD DAMELIO
State Administrator/State Trustee

Dated: 3/4/2013

OFFICE OF THE STATE CONTROLLER

By: Original Signed
GARY D. HORI
Attorney

Dated: 3/6/2013

DEPARTMENT OF FINANCE

By: Original Signed
NICK SCHWEIZER
Program Budget Manager

Dated: 3/6/2013

[AS TO FORM ONLY]
DEPARTMENT OF FINANCE

By: Original Signed
SUSAN J. KING
Deputy Attorney General