

**Education Audit Appeals Panel  
State of California**

Appeal of 2005-06 Audit Finding 2006-10  
by:

Perris Union High School District,  
Appellant.

EAAP Case No. 07-19  
OAH No. 2008010484  
Riverside County Superior Court  
Case No. RIC520862  
**4<sup>th</sup> DCA No. E055856**

**Decision**

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

Effective date: April 28, 2014

IT IS SO ORDERED.

April 28, 2014

Date

*Original Signed*

David Botelho, Chairperson  
for Education Audit Appeals Panel

## SETTLEMENT AGREEMENT

The Perris Union High School District (“District”), the Department of Finance (“Finance”), the California State Board of Education (“SBE”), the California Department of Education (“CDE”), Tom Torlakson, in his official capacity as Superintendent of Public Instruction (“SPI”), and John Chiang, in his official capacity as Controller for the State of California (“Controller”) (collectively, “Parties”), hereby agree to a complete resolution of the District’s appeal of audit finding 2006-10 for fiscal year 2005-2006.

### RECITALS

- A. In 2006, an accounting firm conducted an annual financial and compliance audit of the District for the 2005-2006 fiscal year, and thereafter issued a report (“Audit Report”).
- B. The Audit Report, as certified by the Controller, contains various audit findings, including finding 2006-10 which found that the District’s Choice 2000 Online Charter High School (“Choice 2000”) was required to comply with independent study program requirements as set forth in Education Code section 47612.5. The Audit Report determined that Choice 2000 was not in compliance with independent study program requirements (Education Code sections 51745 through 51749.3), which require, among other things, a written agreement for each student enrolled in an independent study program. As a result, the Audit Report disallowed all 189.83 units of average daily attendance (“ADA”) (which represents approximately \$1.2 million) reported by Choice 2000 for the 2005-2006 fiscal year.
- C. Pursuant to Education Code section 41344, the District timely appealed audit finding 2006-10 to the Education Audit Appeals Panel (“EAAP”).
- D. EAAP designated the District’s appeal as EAAP Case No. 07-19 and assigned the matter for hearing before an administrative law judge with the Office of Administrative Hearings in accordance with California Administrative Procedure Act (Gov. Code § 11500, et seq.). Finance timely intervened in the proceedings.
- E. A hearing on the District’s appeal was conducted by the Administrative Law Judge (ALJ) Greer D. Knopf, on May 27 and 28, 2008. ALJ Knopf issued her proposed decision on October 22, 2008.
- F. By order dated November 19, 2008, EAAP notified the Parties that it was rejecting ALJ Knopf’s proposed decision and that EAAP would decide the District’s appeal under Government Code section 11517(c)(2)(E).
- G. On February 4, 2009, EAAP issued a decision on the District’s appeal. EAAP’s decision denied the District’s appeal of audit finding 2006-10.

- H. On March 6, 2009, the District filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) under Code of Civil Procedure sections 1094.5 and 1085 challenging EAAP’s decision as to audit finding 2006-10. The Petition, filed in the Riverside County Superior Court, named EAAP, CDE, SBE, SPI, and Controller as Respondents, and Finance as Real Party in Interest. The case denominated Riverside Superior Court Case No. RIC520862, was assigned for all purposes to the Honorable Ronald L. Taylor.
- I. On January 5, 2012, the Superior Court entered judgment on the Petition and issued a Statement of Decision denying the District’s request for writ, declaratory, and injunctive relief.
- J. On or about March 6, 2012, the District filed a notice of Appeal from the Superior Court’s judgment. That appeal, filed in the Fourth Appellate District, Division 2, was denominated Court of Appeal Case No. E055856.
- K. On or about October 2, 2013, by order of the California Supreme Court, the case was transferred from Division 2 to Division 3 of the Fourth Appellate District and denominated Court of Appeal Case No. G049109.
- L. The Court of Appeal matter is fully briefed and was set for oral argument in December 2013, before the matter was taken off the oral argument calendar due to a tentative agreement to settle the matter along with seven similar audit appeals filed by the District that are currently pending before EAAP at the Office of Administrative Hearings in San Diego, California.

AGREEMENT

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

- 1. That, based on satisfactory evidence provided by the District, Choice 2000 has been closed and no longer operates, and is no longer authorized to operate as a charter school in the State of California.
- 2. The District agrees to comply with all applicable provisions of the Education Code, regulations, decisional law of the courts of California and of the EAAP. In particular, the District agrees that all existing and future charter schools chartered and/or authorized by the District which provide nonclassroom-based instruction shall comply with independent study law, as set forth in Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code, and all implementing regulations adopted thereunder. These independent study laws include (but are not limited to) the requirement that charter schools maintain independent study contracts in connection with the provision of nonclassroom-based instruction.

3. The Parties agree that the total amount to be disallowed as a result of audit finding 2006-10 for the 2005-2006 fiscal year shall be \$122,200.90, which sum represents approximately ten percent of the amount of the total overpayment (“Penalty Amount”). The Penalty Amount shall be withheld from the District’s apportionment over a period of eight years, in eight installments, commencing in fiscal year 2014-15, without interest, until fully repaid. The payment schedule is summarized as follows:

a.	2014-2015	\$15,275.12
b.	2015-2016	\$15,275.12
c.	2016-2017	\$15,275.11
d.	2017-2018	\$15,275.11
e.	2018-2019	\$15,275.11
f.	2019-2020	\$15,275.11
g.	2020-2021	\$15,275.11
h.	2021-2022	\$15,275.11

4. The Parties’ rights and obligations under this settlement agreement are contingent on the occurrence of all of the following conditions precedent:

- a. First, EAAP approves this settlement agreement pursuant to its power to approve settlements under Education Code section 41344.1(b).
- b. Second, EAAP approves the separate consolidated and stipulated settlement agreement for the seven audit appeals currently pending before EAAP and denominated EAAP Nos. 09-03, 09-22, 10-05, 11-08, 12-03, 13-10, and 13-23. (However, EAAP in no way obligates itself to approve the separate settlement agreement pertaining to those seven audit appeals even if it were to approve this agreement.)
- c. Third, upon EAAP’s approval of the settlement, the District dismisses with prejudice its Court of Appeal Case No. G049109 by filing a “Stipulation Re Dismissal and Order,” in substantially the form attached hereto as Exhibit A.
- d. Fourth, the Court of Appeal grants dismissal of the appeal on terms substantially the same as those set out in the “Stipulation Re Dismissal and Order.”

If any of the above conditions precedent do not occur, this settlement agreement is null and void, and the Parties’ rights and duties thereunder will not arise.

5. Each Party shall bear its own fees and costs incurred in connection with (1) EAAP Case No. 07-19, (2) Riverside County Superior Court Case No. RIC520862, (3) Court of Appeal Case Nos. E055856 and G049109, 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 and regulation identified in audit finding 2006-10 for the 2005-2006 fiscal year. Except as to any right or claim to enforce this agreement, the Parties expressly waive any right to assert or pursue thereafter any claim, demand, obligation, appeal, and/or cause of action relating to audit finding 2006-10.
7. This settlement agreement may be executed in counterparts, each of which shall constitute an original. Facsimile and pdf electronic copies of signatures transmitted to other Parties to this settlement agreement are deemed to be the equivalent of original signatures.

PERRIS UNION HIGH SCHOOL DISTRICT

Dated: 4-14, 2014

*Original Signed*  
By: \_\_\_\_\_  
JONATHAN L. GREENBERG, Ed.D.  
Superintendent  
Perris Union High School District

CALIFORNIA DEPARTMENT OF FINANCE

Dated: 4-2, 2014

*Original Signed*  
By: \_\_\_\_\_  
JENNIFER ROCKWELL  
Chief Counsel  
California Department of Finance

STATE CONTROLLER'S OFFICE

Dated: 4-10, 2014

*Original Signed*  
By: \_\_\_\_\_  
JOHN DICKERSON  
Staff Counsel for  
State Controller's Office

CALIFORNIA DEPARTMENT OF EDUCATION

Dated: 4-8, 2014

By: Original Signed  
RICHARD ZEIGER  
Chief Deputy Superintendent  
California Department of Education

STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION

Dated: 4-8, 2014

By: Original Signed  
TOM TORLAKSON  
State Superintendent of Public Instruction  
California Department of Education

STATE BOARD OF EDUCATION

Dated: 4-8, 2014

By: Original Signed  
KAREN STAPF WALTERS  
Executive Director  
State Board of Education

Dated: 4-8, 2014

By: Original Signed  
JUDY CIAS  
General Counsel  
State Board of Education

Approved as to form:

KAMALA D. HARRIS  
Attorney General of California

Dated: 4-18, 2014

By: Original Signed  
ERNEST MARTINEZ  
Deputy Attorney General  
Attorneys for Respondent,  
State Controller's Office  
Real Party in Interest,  
California Department of Finance

BEST, BEST & KRIEGER, LLP  
Attorneys at Law

Dated: 4/14, 2014

By: Original Signed  
DINA HARRIS, ESQ.  
Attorneys for Appellant  
Perris Union High School District

CALIFORNIA DEPARTMENT OF EDUCATION

Dated: 4-10, 2014

By: Original Signed  
TODD M. SMITH  
Deputy General Counsel  
Attorney for Respondents State Board of  
Education, California Department of  
Education, and State Superintendent of  
Public Instruction

IT IS SO APPROVED.

Dated: 4-28-2014

Original Signed  
DAVID BOTELHO  
For Education Audit Appeals Panel