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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her  
guardian; STUDENT B, by and through  
12 PARENT B, his guardian; STUDENT C, by  
and through PARENT C, his guardian; and  
13 STUDENT D, by and through PARENT D, her  
guardian, each one individually and on behalf  
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL  
DISTRICT and THE BOARD OF  
18 EDUCATION OF THE BERKELEY UNIFIED  
SCHOOL DISTRICT,

19 Defendants.  
20

Case No. 4:17-cv-02510-JST

**DECLARATION OF BRENDAN E.  
RADKE IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND PROVISIONAL  
CLASS CERTIFICATION ORDER**

Current Hearing:

Date: January 20, 2021  
Time: 2:00 p.m.  
Courtroom: 6, 2nd Floor  
Judge: Hon. Jon S. Tigar

Action Filed: May 2, 2017

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25  
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28

1 I, Brendan E. Radke, declare and state as follows:

2 1. I am an attorney with the law firm of Goodwin Proctor LLP and I am counsel for  
3 Plaintiffs Student A, by and through Parent A, her guardian; Student B, by and through Parent B,  
4 his guardian; Student C, by and through Parent C, his guardian; and Student D, by and through  
5 Parent D, her guardian, each one individually and on behalf of themselves (collectively, “Plaintiffs”)  
6 in the above referenced action.

7 2. I make this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary  
8 Approval of Class Action Settlement and Provisional Class Certification Order (“Motion”). This  
9 declaration is made based upon my personal knowledge, and I am familiar with its contents. If  
10 called to testify, I could and would testify under oath to the facts set forth herein.

11 3. Plaintiffs and Defendants Berkeley Unified School District (“BUSD”) and the Board  
12 of Education of Berkeley Unified School District (the “Board,” and collectively with the BUSD,  
13 “Defendants,” and collectively with Plaintiffs, the “Parties”) began settlement discussions in late  
14 2017, and over the ensuing months the Parties exchanged multiple letters concerning possible  
15 settlement.

16 4. They agreed to stay discovery during the initial period of their settlement efforts,  
17 including through the period of the first and second settlement conferences with the Hon. Laurel  
18 Beeler. Discovery remained stayed until May of 2019, after which the parties engaged in significant  
19 discovery efforts, including written discovery, the depositions of each of the four Plaintiff parents,  
20 and six Defendant witnesses, including a day-long 30(b)(6) deposition of Defendants’ designee.

21 5. On March 26, 2019, the Parties conducted their final settlement conference. The  
22 Parties reached agreement on many core substantive terms of a settlement pertaining to injunctive  
23 relief but could not reach agreement on certain other terms.

24 6. The Parties continued to engage in discovery over the subsequent months, but  
25 ultimately were able to reach agreement on final terms on or about December 17, 2019. The Parties  
26 exchanged drafts of the Settlement Agreement and Literacy Improvement Program and engaged in  
27 numerous calls and correspondence over the next several months.

28 7. On August 28, 2020, the Parties appeared for a Case Management Conference before

1 this Court, at which time the Court set December 11, 2020 as the date by which Plaintiffs must seek  
2 either class certification or preliminary approval of the settlement. Dkt. No. 152.

3 8. In early October 2020, Defendants' counsel informed Plaintiffs' counsel that the  
4 Board approved the final terms of the Parties' settlement, and the parties proceeded to finalize the  
5 documents.

6 9. On December 11, 2020, the Parties executed the Settlement Agreement. A true and  
7 correct copy of the fully-executed Settlement Agreement is attached hereto as **Exhibit 1**.

8 a. The Literacy Improvement Program is attached to the Settlement Agreement as  
9 Exhibit A.

10 b. The [Proposed] Order Granting Preliminary Approval Of Class Settlement And  
11 Provisional Class Certification Order is attached to the Settlement Agreement as  
12 Exhibit B.

13 c. The Proposed Notice Of Proposed Settlement Of Class Action And Hearing Date For  
14 Final Court Approval Of Settlement is attached to the Settlement Agreement as  
15 Exhibit C.

16 d. The [Proposed] Order Granting Final Approval Of Class Settlement; Ordering Final  
17 Judgment Of Dismissal With Prejudice; And Ordering Award Of Attorneys' Fees  
18 And Costs is attached to the Settlement Agreement as Exhibit D.

19 10. The Parties' Settlement Agreement is the product of arms-length negotiations, with  
20 direct input and guidance from Magistrate Judge Beeler during the five settlement conferences over  
21 the course of two years.

22 11. In addition to five settlement conferences, at the suggestion of the court-affiliated  
23 mediator, the Parties attended multiple in-person meetings with nationally recognized experts to  
24 further settlement negotiations.

25 12. Subject to this Court's approval, Defendants have agreed to pay Plaintiffs' Counsel  
26 at total of \$350,000. This term was negotiated after all substantive settlement terms pertaining to  
27 injunctive relief had been resolved, and the ultimate amount was only agreed to by both Parties after  
28 lengthy negotiations and a significant fee reduction from Plaintiffs' Counsel.

