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ENDORSED  
FILED  
San Francisco Superior Court

MAR - 8 2005

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION,

Defendants.

No. 312236

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT**

Hearing:	March 23, 2005
Time:	9 a.m.
Department:	210
Judge:	Hon. Peter J. Busch
Date Action Filed:	May 17, 2000

CLASS ACTION

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**INTRODUCTION**

After notice to the class and the opportunity that the Court approved for objection to the settlement in this case, there have been no objections. Because the remedial measures have already been enacted into law, those measures are being implemented. The Court’s approval of the settlement will have two main effects: the litigation will not go forward; and the covenant not to sue that the defendants bargained for will be in effect, and will bind the plaintiff class. The settlement as a whole is fair and reasonable to the class. It should be approved, and these final elements of the quid pro quo should go forward.

**Notice to the Class**

Plaintiffs carried out their obligations under the order for notice to the class. Plaintiffs have maintained a toll-free voicemail information line, in English and in Spanish, disseminating information about the settlement, directing callers to the *Williams* website, [www.decentschools.org](http://www.decentschools.org), and providing a means for callers to request that information about the settlement be mailed to them. Callers could speak to a live attendant and could request to speak to an attorney or legal assistant involved in the case. A small number callers, not all of whom were class members, did so. Supplemental Declaration of Jack W. Londen in Support of Plaintiffs’ Motion for Final Approval of Settlement (“Londen Supp. Decl.”), filed concurrently with this brief, at ¶ 2. Plaintiffs posted notice of settlement on the *Williams* website, which received approximately 32,000 visits during the period after notice to the class was published, more than one-third higher per day than before publication of the Notice of Settlement. Plaintiffs also posted the notice of settlement on [www.publicadvocates.org](http://www.publicadvocates.org) and on [www.aclu-sc.org](http://www.aclu-sc.org), and issued two press releases announcing the notice to a broad list of relevant media sources. Londen Supp. Decl. at ¶ 3. Plaintiffs’ counsel disseminated the notice to plaintiffs’ full contact list of persons and organizations with interest in the case, including over 2000 addressees. Londen Supp. Decl. at ¶ 4. We distributed the notice, by electronic mail, to the California State PTA and the individual district PTAs and requested that they publish notice of the settlement on their websites or provide a link to the notice on the California Department of Education’s website. Plaintiffs also requested the California State PTA to publish the notice in their newsletter and

1 plaintiffs requested that the district PTAs request their school PTAs provide parents with the toll-  
2 free number to the voicemail information line at PTA meetings that took place during the notice  
3 period or in PTA newsletters that were distributed during the notice period. The California PTA  
4 distributed the notice and summary, in English and Spanish, to all district PTAs and published it  
5 in the PTA's statewide magazine. Londen Supp. Decl. at ¶ 5.

6 To the best of plaintiffs' knowledge, the defendants complied with the order for class  
7 notice as well. We are informed and believe that the California Department of Education:

- 8 (a) posted notice of the settlement on their website, [www.cde.ca.gov](http://www.cde.ca.gov);
- 9 (b) requested local school districts and county offices of education to post notice  
10 of the settlement or a summary, advising that the complete notice could be  
11 obtained by calling the toll-free voicemail information line or by downloading  
12 from the California Department of Education's website, in each public school's  
13 main office or by other means which it believes will reach class members;
- 14 (c) distributed the notice of the settlement, by post or electronic mail, to local  
15 school districts and county offices of education and requested that they publish  
16 the notice or, in the case they maintained their own website, provide a link to  
17 the notice on the California Department of Education's website; and
- 18 (d) requested the districts to request their schools to provide on school websites  
19 the toll-free number to the voicemail information line or a link to the notice on  
20 the California Department of Education's website.

21 **I. THERE HAS BEEN NO OBJECTION TO FINAL**  
22 **APPROVAL OF THE SETTLEMENT.**

23 Only one comment on the settlement was submitted. Three "Parent Advocates,"  
24 Mrs. Patty Lopez, Ms. Carolina Perez-Ayala, and Claudia Guterrez Esquivel, submitted a  
25 comment, attached as Exhibit A to the Londen Supp. Decl. They stated that they wished to share  
26 "additional matters of equal importance that should not be overlooked, and are necessary aside  
27 from the adjustments in the Williams Case for Parents/Guardians." *Id.* at 1. Nothing in their  
28 comment objects to the usefulness of the measures enacted in the *Williams* settlement legislation,  
the termination of the *Williams* case, or the covenant not to sue being applied to the plaintiff class.

Although the Parent Advocates do not object to approval of the settlement, an objection  
might be implicit if the settlement's covenant not to sue would impede plaintiff class members  
from seeking the remedies that the Parent Advocates advocate as "equally important" as the  
*Williams* "adjustments." But for at least two reasons, the covenant not to sue would not apply to

1 the measures viewed as important by the Parent Advocates. The covenant applies to claims  
2 plaintiffs actually litigated in *Williams*. First, *Williams* was limited from the outset to claims  
3 about the State’s obligations and not requests for district-specific relief. The proposals of the  
4 Parent Advocates focus on Los Angeles Unified School District, and most relate specifically to  
5 the organization and funding of that school district specifically. Second, the proposals also  
6 mainly relate directly to measures aside from the claims that were litigated in *Williams*: equal  
7 protection of the interests of students in quality of teachers, access to the curriculum through  
8 instructional materials, and decent school facilities.

9 The three Parent Advocates have, understandably, used this opportunity to point out that  
10 measures in addition to the *Williams* settlement are needed to improve public schools in  
11 California. This proposition is true but not a basis for declining to approve the settlement.

12 That no other comment, and no objection, was made to approving the settlement give  
13 strong implied support to settlement approval.

14  
15 **II. THE TEACHER QUALITY PROVISIONS OF THE SETTLEMENT ARE FAIR AND REASONABLE.**

16 We noted in our opening brief that the settlement provides less extensive remedies for  
17 inequalities in teacher quality as compared to instructional materials and facilities. During the  
18 hearing on class notice and the schedule for the final approval proceedings, the Court noted an  
19 interest in understanding the settlement remedies related to plaintiffs’ claims regarding teachers.

20 The specific commitments undertaken by the State, as part of this settlement, to enhance  
21 teacher quality for the class include the following oversight improvements:

- 22 (a) The State has created new standards in teacher quality, establishing for the first  
23 time in law definitions of “misassignment” (*i.e.*, where a teacher lacks subject  
24 matter, English Learner [“EL”] or other required training or authorization) and  
25 “teacher vacancies” (*i.e.*, where a classroom has no single, designated full-time  
26 teacher but is staffed by a series of substitutes). (SB 550, §§ 10, 12.)
- 27 (b) The State has required that teacher misassignments and vacancies be reported  
28 annually to parents on School Accountability Report Cards (“SARCs”).  
(SB 550, §§ 10, 11.)
- (c) Building on an existing monitoring system, the State has required that county  
superintendents review and correct misassignments in API decile 1-3 schools

1 and schools with teacher vacancy problems *annually* instead of once every four  
2 years, (AB 3001, § 3) and

3 (d) Has required that county superintendents review and correct assignments of EL  
4 teachers who lack the proper training. (*Id.*)

5 (e) The State has established new complaint procedures whereby students and  
6 parents can now file complaints with their districts if (a) a teacher lacks the  
7 proper subject matter training; (b) a teacher lacks training to teach English  
8 Learners and the class consists of greater than 20% EL's; or (c) the year or  
9 semester begins and a teacher vacancy exists. (SB 550, § 12.)

10 (f) The State has authorized county superintendents (for schools that also show  
11 signs of fiscal distress) and intervention teams (in schools under state review  
12 for poor academic performance) to assign the Fiscal Crisis and Management  
13 Assistance Team ("FCMAT") to review and recommend improvements in  
14 teacher recruitment, hiring, assignment and retention practices. In the case of a  
15 FCMAT team assigned by a county superintendent, FCMAT's  
16 recommendations must be followed absent a showing of good cause from the  
17 district. (AB 3001, §§ 1, 10.)

18 (g) New legislation requires the Commission on Teacher Credentialing to ensure  
19 that California's district and university interns (currently over 10,000 of  
20 California's teachers) are in programs that provide "high-quality professional  
21 development" "before and while teaching" and a program of "intensive  
22 supervision" with "structured guidance and regular ongoing support" as set  
23 forth in 34 C.F.R. 200.56. (AB 3001, §§ 6, 7.)

24 (h) The pool of experienced out-of-state teachers available to teach in California  
25 should increase as duplicative and unnecessary requirements for out-of-state  
26 teachers seeking California credentials have been eliminated (namely, a health  
27 education requirement and a fifth year of study and a basic skills test  
28 requirement where comparable requirements have already been met).  
(AB 3001, §§ 4, 5.)

(i) The Superintendent of Public Instruction shall incorporate into the Principal  
Training Program new training for principals to improve the hiring,  
recruitment, and retention of qualified teachers and to reduce the  
misassignment of unqualified teachers. (AB 3001, § 8.)

(j) In order to obtain and continue funding under the existing High Priority  
Schools Grant Program (which provides \$400 per student to the lowest-  
performing 10% of schools in the State), districts will be required to show an  
improvement in the distribution of experienced teachers across the district  
using the new standards of schools having at least 80% of their teachers  
credentialed and having classes with 20% or more of EL's taught by EL-  
trained teachers. (AB 3001, § 9.)

(k) All districts will be audited by county superintendents to verify that they are  
accurately reporting teacher misassignment information to county offices of  
education and SARC teacher misassignment and vacancy information to  
parents. (SB 550, § 1.)

(l) For the first time, the Commission on Teacher Credentialing will annually  
report to the Legislature and the public on the quality of California's teaching

1 force statewide, reporting specifically by county and school district the number  
2 of teachers fully credentialed and with sub-standard credentials; (AB 3001,  
§ 2) and

3 (m) The Legislature will consider holding hearings in the future based on the new  
4 teacher quality data that is reported and, in such hearings, will consider how to  
5 improve reviews to correct teacher misassignments and vacancies and how to  
6 assist low-performing schools eliminate misassignments and vacancies.  
(AB 3001, § 3.)

6 During the settlement negotiations, the State re-affirmed its intention, as required under  
7 federal law, to comply with the teacher quality provisions of the No Child Left Behind Act. See  
8 letter dated May 14, 2004 from Legal Affairs Secretary Peter Siggins describing settlement  
9 principles (“Every child in California should have access to qualified teachers within the time  
10 frame prescribed by the federal No Child Left Behind Act with priority given to providing fully  
11 credentialed teachers where most needed.”), attached as Exh. B to the Declaration of Jack  
12 Londen, filed August 13, 2004, in support of plaintiffs’ Notice of Proposed Settlement. The No  
13 Child Left Behind Act (“NCLB”) requires that there be a “highly qualified” teacher teaching  
14 every core academic class in all schools in all states receiving federal education funds by the  
15 2005-06 school year. 20 U.S.C. §6319(a)(2). NCLB defines “highly qualified” as follows:

16 (i) the teacher has obtained full State certification as a teacher (including  
17 certification obtained through alternative routes to certification) or passed  
18 the State teacher licensing examination, and holds a license to teach in such  
19 State, except that when used with respect to any teacher teaching in a  
20 public charter school, the term means that the teacher meets the  
21 requirements set forth in the State’s public charter school law; and

22 (ii) the teacher has not had certification or licensure requirements waived on an  
23 emergency, temporary, or provisional basis.

24 20 U.S.C. § 7801(23)(A).<sup>1</sup>

25 Given the federal-law requirement that the State meet the standard of a “highly qualified”  
26 teacher in every core academic class by no later than the end of the 2005-06 school year based on  
27 federal requirements, the State’s position in settlement negotiations was that there was no need,  
28

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25 <sup>1</sup> NCLB further articulates specific requirements for “highly qualified teachers” who  
26 are new to the profession and for those who are not new to the profession. 20 U.S.C.  
27 § 7801(23)(A). The California State Board of Education has further refined the federal  
28 “highly qualified” definition in light of state credentialing requirements. See 5 CCR § 6100 *et*  
*seq.*

1 and the State was not willing, to incorporate that same requirement — or a different requirement  
2 covering comparable ground — into State law via the new settlement legislation. Plaintiffs  
3 responded to the State’s reliance on its obligations under NCLB by requiring that the deadline for  
4 the State to comply with NCLB will be the termination date for the covenant not to sue on claims  
5 about teachers — a substantially shorter period for operation of the covenant not to sue than  
6 applies to other claims. Subject to the exception (found in the NCLB statute) extending the  
7 compliance deadline for certain rural districts,<sup>2</sup> the plaintiff class will not be barred after  
8 September 30, 2006 from pursuing the kinds of state constitutional teacher quality claims that  
9 were litigated in *Williams*. Covenant Not to Sue ¶ 2, attached as Exh. A to the London  
10 Declaration in support of plaintiffs’ opening brief.

11 The provisions on instructional materials, facilities, and teachers are part of an overall  
12 negotiated resolution of the case, and were not available in severable parts. There are substantial  
13 benefits to the plaintiff class from the specific settlement provisions on teachers, as well as a  
14 shorter period of restriction on the right to sue. Plaintiffs submit that the settlement is fair and  
15 reasonable as a whole, including the provisions regarding teachers.

16  
17 **III. THE SETTLEMENT SATISFIES THE REQUIREMENTS  
AND SHOULD BE APPROVED.**

18 The measures taken by the State in the settlement legislation and the funding for  
19 compliance with that legislation are very substantial, and address the substance of the issues  
20 plaintiffs have addressed in this case. The large majorities for approval in the Legislature, where  
21 education measures are often hotly disputed and narrowly passed, give implicit support for the  
22 conclusion that the settlement legislation is beneficial. The endorsement given by Governor  
23 Schwarzenegger to the benefits and importance of the settlement were quite explicit. There can

24 <sup>2</sup> Rural schools have been provided an extended deadline by the federal government  
25 by which to comply with NCLB’s “highly qualified” provisions. For those schools, the  
26 covenant not to sue extends to four years from the date the Court grants final approval of the  
27 Settlement Agreement. Covenant Not to Sue ¶ 2, attached as Exh. A to the London  
28 Declaration in support of plaintiffs’ opening brief.

1 be no question that plaintiffs and their counsel invested very substantial efforts to develop the  
2 factual and legal basis for pursuing this case on the merits, and that they were well informed to  
3 compare “the terms of the compromise with the likely rewards of litigation.” *Weinberger v.*  
4 *Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (quoting *Protective Comm. for Indep. Stockholders of*  
5 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Plaintiffs’ counsel have  
6 recommended that their clients agree to the settlement on behalf of the many students they  
7 represent, and the class representatives are very satisfied with the settlement. The absence of  
8 objection by class members, after widespread publicity about it and a number of forms of notice,  
9 also strongly reinforces the conclusion that the settlement should be given final approval. Indeed,  
10 all the information available supports the exercise of the Court’s discretion by entering the order  
11 of final settlement approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4<sup>th</sup> 1794, 1801 (1996).

12 **CONCLUSION**

13 Taken as a whole, the settlement, including the teacher quality provisions, is fair, adequate  
14 and reasonable for the class, and should be approved.

15  
16 Dated: March 8, 2005

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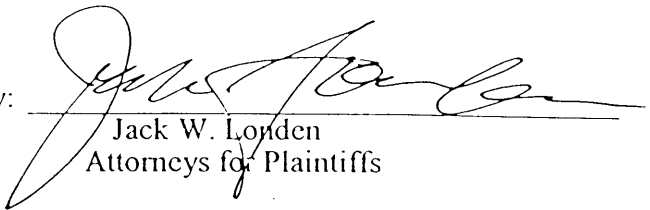
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 8th day of March, 2005.

\_\_\_\_\_ (signature)  
Carmen Robles  
\_\_\_\_\_ (typed)

1 **PROOF OF SERVICE BY MAIL**  
2 (CCP 1013a, 2015.5)

3 I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market  
4 Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of  
5 eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and  
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7 ordinary course of Morrison & Foerster's business practice the document described below will be  
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10 I further declare that on the date hereof I served a copy of:

11 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**  
12 **FOR FINAL APPROVAL OF SETTLEMENT;**

13 **SUPPLEMENTAL DECLARATION OF JACK W. LONDEN IN SUPPORT OF**  
14 **PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT**

15 on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for  
16 collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California,  
17 94105, in accordance with Morrison & Foerster's ordinary business practices:

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**Previously Served as Party to  
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 8th day of March, 2005.

Carmen Robles  
\_\_\_\_\_  
(typed)

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(signature)