



1 The Court approved the FACD and the Ravenswood Self Improvement Plan  
2 (“RSIP”), which were intended to provide a roadmap for Defendants’ compliance with their  
3 legal obligation to provide a free appropriate public education in the least restrictive  
4 environment (“FAPE in the LRE”) to students with disabilities, in 2003. Between 2003 and  
5 the end of the 2006-07 school year, compliance with the RSIP improved more or less  
6 steadily. This progress essentially evaporated at the beginning of the 2007-08 school year, at  
7 which time began a period of special educational service deprivations and conflict among the  
8 parties.

9 On December 20, 2007, the Court issued an order that, among other things, instructed  
10 the CDE 1) to conduct a staffing analysis for the District, 2) to determine the extent of  
11 service deprivations during the first semester of the 2007-08 school year, 3) to ensure  
12 provision of compensatory educational services to those children, 4) to place IEP services  
13 coordinators in the District, 5) to appoint a person to provide technical assistance and  
14 oversight to the District’s human resources department for the remainder of the school year,  
15 and 6) to assist the District in applying for additional funds for special education. The Court  
16 observed that compliance with this order was inconsistent. On January 31, 2008, the Court  
17 issued an Order to Show Cause and sanctions for the CDE’s failure to timely complete its  
18 staffing analysis. On October 8, 2008, the Court issued another order emphasizing the  
19 CDE’s responsibility to ensure provision of compensatory educational services.

20 In May of 2008, the Court directed the parties to meet and confer on an enhanced role  
21 for the CDE in implementing the RSIP. The parties met and conferred multiple times with  
22 the Court Monitor to discuss this issue, but Plaintiffs indicate that due to the CDE’s failure to  
23 respond to the final July iteration of a drafted proposal, a new agreement was never reached.  
24 CDE submitted alternative language to the parties in November. On November 20, 2008, the  
25 Court ordered the CDE to provide a written response to the July proposal no later than  
26 November 26, 2008. The Court granted the parties until December 10, 2008, to resolve this  
27 matter by stipulated modification to the consent decree; if an agreement was not reached, any  
28 or all parties were to file a motion to amend with the Court on or before December 15. The

1 parties sought and received an extension of these deadlines to try to reach a stipulation. The  
 2 CDE informed the Court on December 17 that such a stipulation was not reached. On  
 3 December 22, 2008, the Plaintiffs filed this motion with the Court.

## 4 5 **DISCUSSION**

### 6 **Legal Standard**

7 The Court's legal authority to grant relief of various forms in IDEA cases is well-  
 8 established and arises from multiple sources. IDEA provides that State Education Agencies  
 9 ("SEAs") are "to provide special education and related services directly to children with  
 10 disabilities . . . if the [SEA] determines that the local educational agency . . . is unable to  
 11 establish and maintain programs of free appropriate public education that meet the  
 12 requirements of subsection (a) of this section." 20 U.S.C. § 1413(g)(1)(B). IDEA further  
 13 states that when a party brings a civil action pursuant to its provisions, the court, "basing its  
 14 decision on the preponderance of the evidence, shall grant such relief as the court determines  
 15 is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii).

16 The Supreme Court itself has highlighted that

17 [t]he ordinary meaning of these words confers broad discretion on the court.  
 18 The type of relief is not further specified, except that it must be "appropriate."  
 19 Absent other reference, the only possible interpretation is that the relief is to be  
 "appropriate" in light of the purpose of the Act [which is] principally to  
 provide handicapped children with a [FAPE].

20 *Sch. Comm. of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985).

21 IDEA litigation in the lower courts has reinforced the role of the courts in holding SEAs  
 22 responsible for fulfilling their obligations under IDEA when local education agencies fail to  
 23 do so. The Ninth Circuit has held that "[i]t would seem incontrovertable that, whenever the  
 24 local agency refuses or wrongfully neglects to provide a handicapped child with a free  
 25 appropriate education, that child 'can best be served' on the regional or state level." *Doe by*  
 26 *Gonzales v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986). In the FACD, the parties in this  
 27 case have agreed that the CDE is obligated to fulfill this responsibility as well:

1 4.1 Responsibilities to Class Members

2 CDE is responsible under federal and state law to ensure that children with  
3 disabilities who reside in Ravenswood have a free appropriate public education  
4 provided to them in the least restrictive environment. As part of this  
5 responsibility, CDE shall implement an effective monitoring system and  
6 complaint resolution procedure. CDE shall ensure Ravenswood's performance  
7 of all its obligations under this Decree. CDE's obligations shall continue until  
8 the Court makes the determination pursuant to Paragraph 18.10 below.

9 Aside from these particular provisions in statutory law, case law, and the FACD, that  
10 the Court has the authority to enforce its own orders and modify its own consent decrees is a  
11 well-established maxim of structural reform litigation. *See, e.g., Rufo v. Inmates of Suffolk*  
12 *County*, 502 U.S. 367, 380-81 (1992) ("The upsurge in institutional reform litigation since  
13 *Brown v. Board of Education* . . . has made the ability of a district court to modify a decree in  
14 response to changed circumstances all the more important. Because such decrees often  
15 remain in place for extended periods of time, the likelihood of significant changes occurring  
16 during the life of the decree is increased . . . . The experience of the District Courts of  
17 Appeals in implementing and modifying such decrees has demonstrated that a flexible  
18 approach is often essential to achieving the goals of reform litigation.") (internal citations  
19 omitted). Furthermore, in this case, the FACD specified the role of the Court in the  
20 continued management of this case during the period of the applicability of the FACD:

21 7.1 The Court shall have continuing jurisdiction of this action to ensure  
22 compliance with this Decree.

23 7.2 If, at any time after the Monitor has issued at least two monitoring reports  
24 pursuant to Paragraph 6.1.2 above, the Monitor or a Party believes that the  
25 District or CDE has failed to comply with its obligations under this First  
26 Amended Decree (including any obligations under the Revised RCAP), the  
27 Monitor or the Party, after conferring with Ravenswood or CDE in an effort to  
28 resolve the dispute, may request that the Court issue an Order to Show Cause re  
Contempt.

7.3 The Monitor or a Party may request that the Court issue any other order at  
any time.

For all of these reasons, the Court is well within its legal authority to consider  
Plaintiffs' motion, possesses continuing jurisdiction to ensure compliance with the FACD,  
and is free to order whatever "appropriate" remedy it may choose to rectify the egregious

1 civil rights violations that continue to plague children with disabilities in Ravenswood City  
2 Schools.

### 3 **Discussion**

4 In light of the Court's authority in this case to order an appropriate remedy in the  
5 situation of IDEA litigation, and to modify a consent decree in the instance of changed  
6 circumstances, that a new strategy for improving both service provision to the Plaintiff class  
7 and implementation of the RSIP is necessary in this case is obvious to the Court. Service  
8 deprivations and RSIP noncompliance are not merely pervasive, they are increasing. For  
9 example, the Court Monitor's 2008 Compliance Trends Report concluded that during the  
10 2007-08 school year, after removing the students for whom no determination could be made  
11 from the data (due to the District's failure to comply with the RSIP's staff timelog  
12 requirement; see below), the percentage of students who did not receive all adaptations,  
13 supports, and modifications called for in their IEPs was 42%; the percentage of students who  
14 did not receive all instructional and related services was 69.4%. These figures declined  
15 dramatically from the prior year. In addition, the District's level of compliance with the staff  
16 timelog requirement decreased dramatically, and the extent to which the District provided  
17 parents with compliant quarterly progress reports declined significantly.

18 Further, the District's rate of notifying parents that their child was entitled to  
19 compensatory education also declined significantly. In addition, the District's compliance  
20 with the two RSIP IEP requirements declined significantly, by 20% with one and by 30%  
21 with the other. Finally, the District's level of compliance with sending out compliant IEP  
22 notices within timeline and in primary language declined precipitously to the lowest level  
23 ever achieved by the District; the extent to which the District provided parents with  
24 assessment reports five days prior to IEP meetings in their primary language declined  
25 dramatically, also to the lowest level ever achieved by the District; and, after years of  
26 progress, the District's compliance with the requirement concerning interpretation at IEP  
27 meetings declined significantly. These painful facts paint a picture of a school district in dire  
28 need of significant assistance from California's SEA, assistance clearly contemplated and

1 mandated by the IDEA statute. Thus, whatever concerns any party may have with Plaintiffs’  
2 proposal, it is clear to the Court that the existing language of the FACD and RSIP has thus  
3 far been inadequate to achieve compliance with federal law. As a result, remaining wedded  
4 to the status quo of the existing FACD seems a prescription for continued failure to enforce  
5 disabled students’ civil rights to a free appropriate public education.

6 It is in recognition of these current facts in the case that the Court must assess the  
7 proposed modification before it. As an initial matter, it is important to note that both the  
8 Plaintiff class and the District have thrown their support behind this proposal. The substance  
9 of the proposal before the Court is essentially a process-oriented solution to the current  
10 problems. In summary, the Plaintiffs’ proposed plan entails two major changes from the  
11 existing FACD. First, it contains a mandatory process by which the parties will seek  
12 agreement about how to rectify service deprivations and instances of noncompliance with the  
13 FACD and RSIP. Second, in instances where the parties are unable to reach an agreement, it  
14 specifies a conflict-resolution process that relies on the Court Monitor as a first-line  
15 mediator, with ultimate resort to the Court to order resolution. The Court will refer to this  
16 two-step process as the “Additional Corrective Actions Process,” whereby the parties will  
17 first meet and confer to agree on corrective actions to rectify instances of noncompliance;  
18 and, second, if the parties cannot agree, the Court Monitor, and ultimately the Court, will  
19 consider the proposed corrective actions and issue, respectively, a directive or order that sets  
20 forth steps designed to ameliorate the noncompliance with the FACD and RSIP.

21 The Additional Corrective Actions Process proposal appears carefully tailored to  
22 overcome the inaction that has recently prevented progress in compliance with the RSIP and  
23 FACD. When instances of noncompliance have been reported by the Court Monitor, it has  
24 been unclear to the Court how the Defendants were working to change processes in order to  
25 improve compliance. The Additional Corrective Actions Process proposal here before the  
26 Court offers a procedure through which the Defendants can commit to new methods for  
27 working toward compliance. Further, it removes the Court from constant substantive  
28 engagement in the mundane details of the daily operation of the consent decree, and returns

1 the Court to its proper role of resolving conflict between the parties when they fail to reach  
2 agreement. In short, it appears that the Additional Corrective Actions Process will help the  
3 parties partner to achieve their collective goal of providing FAPE in the LRE to the disabled  
4 students of Ravenswood School District. Rather than being vague, as the CDE asserts, the  
5 Additional Corrective Actions Process appears to the Court to be adaptable to a wide variety  
6 of circumstances and to offer the kind of flexibility necessary to creatively work toward  
7 compliance.

8 The Court's residual concern with the Additional Corrective Actions Process as it is  
9 proposed is the allocation of the expenses associated with modification to the FACD. First,  
10 Plaintiffs seek to assign to the CDE all costs arising from any corrective action agreed to  
11 under or ordered by the Additional Corrective Actions Process. Second, the proposal further  
12 allocates to the CDE all costs associated with the provision of technical and software  
13 assistance to the CDE. These allocations are premature and fail to reflect the collective  
14 nature of the obligation jointly shouldered by the CDE and the District to provide FAPE in  
15 the LRE to the Plaintiff class.

16 As a result, the Court has modified the proposed Additional Corrective Actions  
17 Process to reflect a more equitable allocation of costs. First, as a general rule, the costs of  
18 any additional corrective action resulting from the Process shall be divided between the  
19 Defendants according to the cost allocation ratio for the RSIP budget for that school year.  
20 Any party objecting to the application of that allocation ratio in a specific instance may  
21 register its objections with the Court Monitor pursuant to the second step of the Additional  
22 Corrective Actions Process. The CDE may seek variance from this ratio by demonstrating  
23 that the District is already funded to perform the task agreed to as a corrective action; the  
24 District may seek variance from this ratio by demonstrating that its existing resources are  
25 insufficient to perform the corrective action competently. Second, as to the costs of technical  
26 and software assistance, the Court hereby instructs the parties to submit this need and its  
27 associated costs to the Additional Corrective Actions Process. Accordingly, the Court has  
28 adapted the proposed modification to reflect these alterations from the proposal.

1 **CONCLUSION AND RECOMMENDATION**

2 In light of continued noncompliance with the RSIP, the Court observes that the  
3 current language of the FACD has been insufficient to guarantee provision of a free  
4 appropriate public education to the Plaintiff class. For the foregoing reasons, the Court  
5 hereby MODIFIES the First Amended Consent Decree with the attached language of the  
6 Additional Corrective Actions Process. As the papers in this matter were sufficient to  
7 resolve the motion, no oral argument is necessary. Accordingly, the hearing currently  
8 scheduled for March 4, 2009, is VACATED.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: February 24, 2009



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Thelton E. Henderson  
United States District Judge

*Emma C. v. Eastin, et al.,*  
**Case No. C-96-4179**

The Additional Corrective Actions Process:  
A Modification to the First Amended Consent Decree

Pursuant to Section 12.0 of the FACD, the Court hereby modifies the FACD by including the following provisions in the FACD:

4.5 Collaboration Between CDE and the District in Implementing this Decree: The Additional Corrective Actions Process.

Within fourteen (14) days following the Monitor's issuance of any and all reports pursuant to Paragraph 6.1.2 of this Consent Decree, the CDE Liaison identified pursuant to Paragraph 4.2 and a CDE representative with final authority to negotiate on behalf of CDE and commit CDE resources shall meet with the Court Monitor, the District's Assistant Superintendent of Special Education and any other District personnel to review the findings of the report. Plaintiffs' Counsel shall be informed of this meeting and permitted to participate at their own discretion. At the meeting the Parties shall identify those areas of Consent Decree implementation, including the RSIP, that require corrective action by the District and/or the CDE to achieve compliance. The Parties shall further set forth a specific plan identifying the respective responsibilities of the District and/or the CDE to ensure implementation of each of the identified area(s) of the Consent Decree. The plan shall include a description of corrective actions necessary and a specific timeline for implementation of those corrective actions. Such corrective actions shall include specific actions by the CDE to ensure implementation of each of the identified areas of noncompliance. Such CDE actions may include, but not be limited to, CDE's provision of technical assistance and consulting services to the District, CDE's identification and/or provision of consultants and/or service providers to implement the corrective actions, CDE's provision of administrative support to assist in the implementation of the corrective actions, and/or CDE's provision of information and/or training to assist in the implementation of the corrective actions. CDE shall submit all such corrective actions in writing to the Court Monitor and all Parties within seven (7) days of the meeting.

In the event that any Party disagrees with the areas of Consent Decree implementation that require corrective actions or in the event that any party does not agree with the specific corrective actions and/or timeline proposed to address those areas, that Party may, at its discretion, submit in writing its proposed corrective action to the Monitor and all Parties within fourteen (14) days of the meeting. The Party refusing to undertake the corrective action shall submit in writing within fourteen (14) days of the meeting its specific reasons for refusing to agree to the proposed corrective action. Within twenty-one (21) days of the meeting, the Court Monitor shall either issue a Directive

regarding the proposed corrective action or a statement and reasons for not issuing such a Directive. The Defendant subject to the Directive shall have seven (7) days to perform, or state its commitment to perform, the activities in the Directive. In the event that the affected Defendant disagrees with the Directive, that Defendant shall seek relief from the Directive within fourteen (14) days of the day it notifies the Monitor of its refusal to comply with a Directive. It will do so by filing with the Court and serving on all Parties a memorandum or brief showing cause why the Court should not issue an Order enforcing the Directive.

First, as a general rule, the costs of any additional corrective action resulting from the Additional Corrective Actions Process shall be divided between the Defendants according to the cost allocation ratio for the RSIP budget for that school year. Any party objecting to the application of that allocation ratio in a specific instance may register its objections with the Court Monitor pursuant to the second step of the Additional Corrective Actions Process. The CDE may seek variance from this ratio by demonstrating that the District is already funded to perform the task agreed to as a corrective action; the District may seek variance from this ratio by demonstrating that its existing resources are insufficient to perform the corrective action competently.

Nothing in this Section shall be construed as limiting the Parties' from meeting and conferring at any other time to discuss implementation of this Consent Decree or limiting the Parties from proposing corrective actions to address areas of the Consent Decree or proposing modifications to this Consent Decree pursuant to Paragraph 12.0

At the invitation of the District, and upon no less than seven calendar days' notice, the CDE Liaison shall attend the meetings of the Assistant Superintendent identified in the agreed upon Methods of Supervision filed with the Court on May 30, 2008. To the extent the CDE Liaison is unable to participate in person, the Liaison may participate telephonically.

(a) These meetings include, but are not limited to, the following:

1. The meetings with the San Mateo County Special Education Local Plan Area (SELPA) to develop and/or review and revise policies and procedures for the District's Special Education Program;
2. The meetings with the District information technology coordinator to develop a comprehensive, web-based special education information system (SEIS),
3. The meetings with the Special Education Director and the District's Chief Financial Officer which is contemplated to occur within month after the District receives the special education budget allocation from the San Mateo County SELPA to review and revise the line item budget for the Special Education Department;
4. The meetings with the Chief Financial Officer following the District's Board's

approval of the line item budget in order to develop a monthly budget expenditure report.

5. The annual meeting with the District Human Resources Director to update hiring criteria and evaluation standards for special education and certificated staff, and the meeting to ensure that all special education positions are filled;
6. The annual meeting with the Human Resources Director to develop or review and revise a staff retention plan for special education staff;
7. The annual oversight meeting (Summer Retreat) with the special education staff
8. The bi-weekly meetings with the Superintendent which are intended to inform the Superintendent of critical activities in the Special Education Department;
9. The weekly meetings with the Special Education director to discuss critical issues related to implementing special education services in the District;
10. The monthly meetings with school site principals;
11. The weekly meetings with special education staff; and
12. The annual end-of-the-year meeting with special education staff.

(b) The role of the CDE Liaison in the meetings of the Assistant Superintendent identified in paragraph (a) shall be to (1) observe and (2) provide advice as it relates to the implementation of the RSIP and the Special Education Program. The CDE Liaison, unless expressly provided for by the RSIP, shall not have any authority to make any decisions regarding the District's Special Education program. If the District believes that the CDE Liaison's participation in any of the meetings identified in paragraph (c) would impair the ability of District staff to effectively fulfill their job duties, or prevent District staff from meeting in a timely manner, the District may in its sole discretion direct the CDE Liaison to leave a meeting.

(c) The CDE Liaison shall keep a log of his or her participation in each meeting identified in paragraph (a) above.

(d) In further the support of the District's development of a comprehensive, SEIS, web based IEP system, and special education service delivery and tracking system, the CDE shall partner with the District to secure such technical systems, offering technical assistance, including software development assistance. The precise nature of these measures shall be determined, and their costs shall be allocated between the Defendants, through submission to the Additional Corrective Actions Process.